

REG. V. SHIVBASA'PA'.

1870.
Nov. 24.

Crim. Proc. Code, Secs. 404 and 434—Compensation—Session Judge's Power to call for the Record and Proceedings of a Magistrate F. P.

An award of compensation to the widow of a person who died in consequence of a fall into a pit, negligently dug by the accused, from the fine imposed on the latter, is illegal.

A Magistrate F. P. is not immediately subordinate to the Session Court, and, therefore, a Session Judge has no concurrent jurisdiction with the Magistrate of the District, under Sec. 434 of the Code of Criminal Procedure. His proper course, if he thinks that an illegal sentence or order has been passed by a Magistrate F. P., is to make a report to the High Court, which will then, if it thinks fit, call for the proceedings, under Sec. 404.

THE proceedings in this case were referred by C. F. H. Shaw, Session Judge of the District of Belgám, under Sec. 434 of the Code of Criminal Procedure, for the orders of the High Court. The prisoner was convicted, under Sec. 283 of the Indian Penal Code, of having caused the death of two persons, by omitting to take order with a grain-pit in his possession, and was sentenced to pay a fine of Rs. 100, to be levied, in case of non-payment, by distraint, Rs. 50 of which were directed to be paid to the widow of one of the deceased, as compensation for the injury she had received. The Session Judge, in referring the case, stated: "It is in evidence that one Shivbasápá opened a grain-pit on the road in front of his house, and in immediate proximity to other houses in the village of Kunmuchunhal, and, failing to protect the mouth of the pit, a child of one Revarshidá fell into the pit. Seeing what had happened, one Chanápá went to his assistance, but both were overpowered by noxious gases, and died then and there. The Magistrate F. P. has properly punished Shivbasápá for his neglect of a public duty, and has awarded compensation to the widow of Chanápá from the fine imposed.

"Act XIII. of 1855, modelled upon Lord Campbell's Act, specially provides for compensation to the heirs of persons killed by actionable wrong, and the Calcutta High Court, in *Reg. v. Lall Singh (a)*, has distinctly ruled that Sec. 44 of the

(a) 10 Calc. W. Rep., Cr. R. 39.

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SHIVBASA'PA'. Criminal Procedure Code does not apply to cases like the present.

“The order of the Magistrate F. P. awarding compensation of Rs. 50 to be paid to the widow of Chanápá is illegal, and the proceedings of the Magistrate F. P. are submitted for the orders of the High Court.

“Under Secs. 23 a and 434 of the Criminal Procedure, it was competent to the Magistrate of the District to refer the case for the orders of the Honourable the Judges of Her Majesty's High Court, but, to avoid delay, and as the Judge has a concurrent jurisdiction, present action has been taken.”

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM :—The Court considers that the Session Judge's view is correct, and reverses the order awarding compensation to the widow of the deceased.

A Magistrate F. P. is not immediately subordinate to the Session Court, and, therefore, the Session Judge is in error in supposing that he has concurrent jurisdiction with the Magistrate of the District, under Sec. 434 of the Code of Criminal Procedure. His proper course, if he think that an illegal sentence or order has been passed by a Magistrate F. P., is, not to call for the proceedings under Sec. 434, but to report to the High Court, which will then call for the proceedings under Sec. 404.

Order of compensation reversed.

REG. v. HA'U NA'GI *et al.*

Dec. 1.

Nuisance—Gambling—Common Gaming-house—Bombay Act III. of 1866, Sec. 14—Ind. Pen. Code, Sec. 268.

A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of Sec. 268 of the Indian Penal Code.

THE accused were convicted by the 1st Class Subordinate Magistrate of Dhandhuká, under Sec. 291 of the Indian