

REG. V. JÁFAR ALÍ.

1871.
Aug. 11.

Complaint upon Oath—Issuing of Warrant upon Complaint—Report of Police Officer—Offence for which the Police cannot arrest without Warrant—Crim. Proc. Code, Secs. 66 A and 155.

In cases in which the police cannot arrest without a warrant, a warrant cannot be legally issued by a Magistrate except on a complaint made upon oath (or under the provisions of Sec. 68), whether the Magistrate issuing the warrant is authorised to entertain cases either on complaint preferred directly to himself, or on the report of a police officer, under Sec. 66 A of the Criminal Procedure Code or not.

The report of a police officer referred to in the above section means, not any communication made by a police officer, but the formal report drawn up under Sec. 155 of the Criminal Procedure Code, in cases in which the police may arrest without warrant.

THE accused, Jáfár Alí, was convicted by Major T. E. Britten, a Railway Full-Power Magistrate in the Khándesh District, of dishonest misappropriation, under Sec. 403 of the Indian Penal Code, and sentenced to rigorous imprisonment for three months.

On appeal, A. C. Watt, Assistant Session Judge of Khándesh, annulled the conviction and sentence, on the ground that the proceedings of the Magistrate F. P. were illegal, as they were held without a complaint, as required by Sec. 66 of the Criminal Procedure Code. The following was the finding of the Assistant Session Judge:—

“In this case the appellant has been convicted of an offence punishable under Penal Code Sec. 403, which is an offence for which arrest cannot be made without warrant. In the vernacular papers there is a warrant signed by the Magistrate F. P., Major Britten, which is dated February 25th, 1871, and in which it is stated that a complaint had been made. There is no document of the nature of a complaint made to the Magistrate F. P. in the proceedings, and, as far as can be gathered from them, the complainant did not appear before the Magistrate F. P. till February 27th. The Magistrate F. P. is, therefore, called upon to send into this court and to certify the complaint upon which he issued his warrant (Crim. Proc. Code Secs. 66 and 248), and if no such complaint were made before him, to explain under what provision of the Law the warrant was issued. The

1871.
REG.
v.
JA'FAR ALI.

Magistrate's proceedings, as received by this court, are returned for reference."

The Magistrate stated in reply that the warrant had been issued on a complaint made by the police, and not by the complainant. The Session Judge thereon passed the following final order in the case, on the 4th of May 1871 :—

"I annul the conviction and sentence passed upon the appellant, as I consider that without a complaint made to the Magistrate on solemn affirmation he had no jurisdiction. He had no right to issue the warrant, and the proceedings were illegal *ab initio*. The cases" (a) "reported in Bombay High Court Reports, Vol. IV., Crown Cases, pages 30 and 33, seem to support my decision, as also the case in Vol. V., page 29, Crown Cases" (b).

The Assistant Session Judge afterwards, considering that his decision annulling the conviction and sentence was wrong in point of law, submitted the original and appeal proceedings in the case for the orders of the High Court with the following observations :—

"I have the honour to submit for the orders of their Lordships the original and appeal proceedings in the case of *Reg. v. Jafar Ali*, as I have very recently had reason to believe that my decision on the point of law, annulling the conviction, is incorrect, and I may have misled the Magistrate thereby.

"Under Sec. 66 A of the Criminal Procedure Code as amended by Act VIII. of 1869, it appears that Major Britten, the Magistrate F. P., had power to entertain the case on the report of a police officer were he specially empowered to do so, and I find from page 823 of the *Government Gazette* dated 15th July 1869 that Major Britten was so empowered. Had Major Britten only told me this when I made the first reference to him, I should probably have avoided the mistake which I believe I have made."

The reference was considered by the Judges in chambers, and the following letter was by their order addressed by the

(a) *Reg. v. Dipchand Khushál; Reg. v. Vishwanáth Daulatráv.*

(b) *Reg. v. Sadáshiváppá Pándurangáppá.*

Registrar of the High Court to the Session Judge:—

“ I am directed to inform you, in reply to your letter No. 837, dated the 21st ultimo, that the Honorable Judges do not clearly understand the reason of your reference.

“ As far as can be judged from the proceedings, your decision of the 4th of May 1871 was perfectly right. The case was one in which the police might not arrest without warrant, and a warrant could not be legally issued except on a complaint made upon oath.

“ The fact that Major Britten was empowered, under Sec. 66 A of the Criminal Procedure Code, to entertain cases ‘ on the report of a police officer,’ does not appear to their Lordships to affect the question. By the words ‘ report of a police officer,’ used in that section, are intended, not any communication made by a police officer, but the formal report forwarded to the Magistrate under Sec. 155 in cases in which the police may arrest without warrant.”

1871.
REG.
v.
JA'FAR ALI'.

—o—o—o—
REG. v. A'JAM DULLA' et al.

Aug. 24.

Alternative Charge—Offences punishable under Enactments other than the Ind. Pen. Code—Crim. Proc. Code, Sec. 242—Jurisdiction—Reg. XVII. of 1827, Sec. 16.

In order to make an alternative charge of two or more offences regular under Sec. 242 of the Crim. Proc. Code, the offences specified in such alternative charge must all be offences against the Indian Penal Code. Therefore, a charge against a prisoner either of “criminal breach of trust” under Sec. 409 of the Indian Penal Code, or of “undue exaction of money” under Sec. 16 of Reg. XVII. of 1827, is irregular.

An offence under the latter section, being punishable by imprisonment for seven years, is triable exclusively by a Court of Session, under the provisions of the Schedule of the Code of Criminal Procedure Amendment Act (VIII. of 1869), last page.

ON the 31st of May 1871, the accused, A'jam Dullá and Narbhárám Ganpatráam were convicted by F. Birkbeck, Magistrate F. P. in the Súrat District, on an alternative charge of the offence either of criminal breach of trust as public servants, under Sec. 409 of the Indian Penal Code, or of unduly exacting money under colour of the authority of revenue officers, under Sec. 16 of Reg. XVII. of 1827, and were each