

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.”

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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

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sentenced to rigorous imprisonment for a period of six months and to pay a fine of Rs. 75, or in default to suffer further rigorous imprisonment for one month. The Magistrate F. P. passed the above sentence under Sec. 16 of Reg. XVII. of 1827 (a), as he considered that that section provided a lighter punishment than Sec. 409 of the Penal Code.

A'jam Dullá and Narbhárám Ganpatráam were respectively *pátíl* and *taláti* of the village of Moticher in Mándvi. The facts on which the prosecution relied were as follow :—On the 30th of December 1870 the accused sent for one Dhotáro Beláro and informed him that he must pay Rs. 7-8-0 on account of the toddy drawn by him from the date-trees growing on his land. Dhotáro, accordingly, thinking it to be a Government demand, paid the money, giving Rs. 6 to the *taláti* and Rs. 1-8-0 to the *pátíl*.

On appeal the Session Judge of Súrat (W. H. Newnham) confirmed the conviction and sentence passed by the Magistrate F. P.

A'jam Dullá thereon presented a petition to the High Court in the exercise of its extraordinary criminal jurisdiction. The record and proceedings in the case were sent for, to consider their legality. The High Court also reviewed, *motú proprio*, the conviction of, and sentence passed upon, the second prisoner, Narbhárám Ganpatráam.

The petition of A'jam Dullá was heard before MELVILL and KEMBALL, JJ., on the 24th of August 1871.

Nánabhái Haridás, for the petitioner :—Under Sec. 242 of the Criminal Procedure Code, an accused person can be tried on alternative charges only when the offences alternatively charged are offences under the Indian Penal Code.

(a) Reg. XVII. of 1827, Sec. xvi., cl. 1 :—“All undue exactions made under the colour or by the exercise of the authority of any revenue officer are hereby declared criminal offences, and may be prosecuted criminally; they shall be punishable by imprisonment for a period not exceeding seven years, and a fine not exceeding ten times the amount of the undue exaction, commutable into a further period of imprisonment at the rate of two days of imprisonment per each rupee of fine.”

In the present case one offence was under the Penal Code, and the other under Sec. 16 of Reg. XVII. of 1827. This was an error of law on the part of the Magistrate.

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Under Reg. XVII. of 1827, Sec. 16, under which the sentence against the accused A'jam Dullá is passed, the offence is punishable by imprisonment for a period not exceeding seven years. By the amended Schedule of the new Criminal Procedure Code, offences against other laws than the Indian Penal Code for which the punishment is imprisonment for seven years are triable exclusively by a Court of Session. The present case, therefore, was one which was exclusively within the jurisdiction of the Session Court.

Dhirajlál Mathurádás (Government Pleader) was heard in support of the convictions.

PER CURIAM :—The Court is of opinion that the alternative charge in this case was irregular, inasmuch as both the offences did not fall within the Indian Penal Code (Criminal Procedure Code, Sec. 242) (b), and with regard to the offence of which the appellate court has considered that the prisoners were properly convicted, namely, an undue exaction under Sec. 16, Reg. XVII. of 1827, the Court is of opinion and decides, with reference to the last page of the amended Schedule of the Criminal Procedure Code, that such an offence, being punishable with imprisonment for seven years, is not cognisable by a Magistrate, but by the Court of Session only. On this ground the Court annuls the convictions and sentences, and orders that the accused persons be committed for trial before the Court of Session.

Convictions and sentences annulled.

(b) Sec. 242 :—“When it appears to the Magistrate that the facts which can be established in evidence show a case falling within some one of two or more sections of the Indian Penal Code, but it is doubtful which of such sections will be applicable, or show the commission of one of two or more offences falling within the same section of the said Code, but it is doubtful which of such offences will be proved, the charge shall contain two or more heads framed respectively under each of such sections, or charging respectively each of such offences accordingly.