

[APPELLATE CRIMINAL JURISDICTION.]

1872.
May 23.

REG. V. SUBHA'NA' bin GANU.

Retrial—Power of District Magistrate to direct retrial—Crim. Proc. Code, Sec. 435.

Where a Sub-Magistrate discharges a person accused of an offence not being an offence specified in the seventh column of the schedule to the Criminal Procedure Code as triable by the Court of Session only, or by the Court of Session or Magistrate of the District, the District Magistrate has no power to direct a retrial under the provisions of Section 435 of the Code of Criminal Procedure.

ON the 13th December 1871, the accused Subháná was tried by Vináyak Ganesh, 2nd Class Subordinate Magistrate of Salsette, in the Tanna District, on a charge of voluntarily causing hurt, under Section 323 of the Penal Code, and was discharged under Section 250 of the Criminal Procedure Code, there being no satisfactory evidence against him.

The Magistrate of the District (W. A. Robertson), considering the discharge improper, submitted the proceedings of the Sub-Magistrate for the orders of the High Court, and requested to know whether in such a case the District Magistrate could order a retrial under the provisions of Section 435 of the Code of Criminal Procedure.

The question was considered by Bayley and Kembal, JJ., on the 23rd May 1872.

PER CURIAM :—The offence of voluntarily causing hurt not being an offence specified in the seventh column of the schedule to the Criminal Procedure Code, as triable by the Court of Session only, or by Court of Session or Magistrate of the District, Section 435 is inapplicable so as to enable the District Magistrate to direct a retrial.