

1872.
May 23.

[APPELLATE CRIMINAL JURISDICTION.]

REG. V. VENKU NARSA'.

Acquittal of accused by Magistrate—Power of Sessions Court to direct committal—Crim. Proc. Code, Secs. 255 and 435.

After an accused person has been acquitted under Sec. 255 of the Code of Criminal Procedure, it is not competent to the Session Judge to interfere under Sec. 435 of the same Act.

THE accused was prosecuted before G. B. Reid, Magistrate F. P., in the District of Púna, by a woman named Bhágu, on a charge of defamation under Section 500 of the Penal Code. The Magistrate F. P., after taking evidence for the prosecution and after framing and reading the charge to the accused, recorded a verdict of acquittal, on the 1st November 1871, under the provisions of Section 255 of the Criminal Procedure Code.

On the 24th January 1872, the Sessions Judge, R. H. Pinhey, of Puna, on the application of the complainant, Bhágu, set aside the above order of acquittal, and, under the provisions of Section 435 of the Code of Criminal Procedure, directed the Magistrate F. P. to commit the accused for trial before the Court of Session.

The case was submitted for the consideration and orders of the High Court by J. E. Oliphant, District Magistrate of Puna, with the following remarks :—

“It will be seen that the order set aside by the Sessions Judge of Puna was an order of acquittal passed by a F. P. Magistrate, under Section 255 of the Criminal Procedure Code, after preparing a formal charge against the accused Venku Narsá.

“Section 435 of the Criminal Procedure Code, as amended by Act VIII. of 1869, empowers the Court of Session in cases triable by the Court of Session only, or Court of Session or Magistrate of the District, to order the commitment of any person who may have been *discharged* by any Magistrate. The word ‘discharged’ seems to refer only to cases disposed of under Sections 225 and 250 of the Criminal Procedure Code.

“In the present case, the order being under Section 255, the Sessions Judge is, in my humble opinion, not authorized by law to set it aside and order commitment under Section 435, because the accused person was acquitted after a charge had been prepared.”

The proceedings were considered in Court by Bayley and Kemball, JJ., on the 23rd May 1872.

PER CURIAM :—The Court annuls the order of the Session Judge, directing the committal of the said Venku Narsá to the Session Court, for the reason that the said accused having been acquitted after trial, it was not competent to the Session Judge to interfere under Section 435 of the Code of Criminal Procedure.

Order annulled.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. JETHYA' valad VESTYA'.

May 23.

Breach of contract of service—Act XIII. of 1859, Sec. 2.

A labourer agreed to serve in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service in violation of the agreement. He was prosecuted and convicted of breach of contract of service under Act XIII. of 1859.

Held that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract within the meaning of Act XIII. of 1859, and because, further, *no money in advance was received*, the consideration for the agreement to serve being an old debt.

THE accused was convicted by G. W. Anderson, Magistrate, F. P., in the Khandesh District, of the offence of committing breach of contract of service under Section 2 of Act XIII. of 1859, and was, on the 20th February 1872, sentenced to suffer rigorous imprisonment for two months.

The accused owed Rs. 195 to one Náná Prayág on account of former debts. On the 24th August 1871, he passed to Náná a writing, in which he agreed to serve him (Náná) for ninety-seven months and a half, in consideration of this sum of Rs. 195. Accordingly, Jethyá entered Náná's service, but