

[APPELLATE CRIMINAL JURISDICTION.]

*Application under the Extraordinary Jurisdiction.*1874.
July 2.

REG. v. SAKHA'RA'M MANOHAR.

The Code of Criminal Procedure, Sections, 283, 297, and 300—"Material error"—Misappreciation of evidence—Powers of the High Court.

The expression "material error" in Section 297 of the Code of Criminal Procedure does not include error in appreciating evidence, and the High Court, which, as a Court of Revision, is as much bound as a Court of Appeal by the provisions of Section 283 of the Code extended by Section 300, will not be justified in rectifying an error merely in the appreciation of evidence, nor, even an error in law, unless it be shown to the Court that such error has caused a failure of justice.

THIS was an application for the exercise of the Court's extraordinary jurisdiction. The accused was convicted by A. Wingate, Magistrate, First Class, Satara, under Section 161 of the Indian Penal Code.

The application was heard by NA'NA'BHA'I HARIDA'S and LARPENT, JJ.

V. N. Mandlik for the appellant.

Dhirejlal Mathuradas, Government Pleader, for the Crown.

The facts sufficiently appear from the judgment of the Court delivered by

NA'NA'BHA'I HARIDA'S, J.:—In this case the record and proceedings have been sent for under Section 294 of the Code of Criminal Procedure, and we have looked into them as a Court of Revision. The petitioner has also appeared before us, and urged that the decision of the Magistrate, Mr. Wingate, is tainted with illegality, inasmuch as he has imported into this case evidence taken in another, and relied upon statements of witnesses which, as regards the present charge, are perfectly irrelevant, and otherwise inadmissible. The question we have, therefore, to decide in this case is, whether a "material error" within the meaning of Section 297 of the Criminal Procedure Code has been committed by the Magistrate. The charge against the petitioner, which the Magistrate has held proved, and with which alone we are at present concerned, was that he, the petitioner, being a public

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servant, committed an offence punishable under Section 161 of the Indian Penal Code, by accepting from one Zagu Rs. 15, the same not being a legal remuneration, as a motive for showing to him, Zagu, favour in the exercise of his official functions, *i. e.*, by promising him an appointment. In considering this charge, the Magistrate takes into account a statement made by Antáji, a witness, as to an alleged payment by one Lakshuman of Rs. 5 to the petitioner, the subject-matter of another charge upon which he was acquitted, and also another statement by Antáji, that "one Krishnáji told him that Rs. 14 had been stopped from his pay." He further takes into account a statement (not recorded), alleged to have been made to him by the Rahimatpur Post Master (not examined as a witness in the case), to the effect that "he heard accused try to pay off two of the complainants," and comes to the conclusion that "the accused seems to have largely introduced the purchase system." It is urged before us that the admission of this evidence has vitiated the conviction, and that it should, on that ground, be set aside. The Government Pleader, on the other side, contends that if there was any illegality in admitting that evidence, there was other evidence, not liable to any such objection, and quite sufficient for the Magistrate to convict the accused upon, and he points out to us the statement of the complainant Zagu himself as to the delivery of Rs. 15. If Zagu is to be believed, we cannot say that his statement is in law insufficient for conviction (Section 134, Act. I. of 1872). Therefore, even if it stood alone, we could not reverse the conviction; but there is also the evidence of Námá, not specially noticed by the Magistrate, which fully corroborates it. He says he was present when the Rs. 15 were paid by Zagu to Antobá, who paid the same over to the accused. The Magistrate has, upon this evidence, based the conviction complained of, and it is impossible for us to say that he had not materials before him to come to the conclusion he did.

But it is urged by Ráv Sáheb Vishvanáth Náráyan Mandlik, for the petitioner, that those statements are flatly contra-

dicted by Antáji, another witness for the prosecution, and that, under the circumstances, the Magistrate ought not to have recorded a conviction. It is pressed upon us that the expression "material error" in Section 297 of the Code of Criminal Procedure is comprehensive enough to include error in appreciating evidence, as well as error in law, and that as the Magistrate has committed an error, inasmuch as he has misappreciated the statements in question, his error may, and ought, to be rectified by the High Court interfering with his finding. We are thus asked to go further than any High Court has, to our knowledge, yet gone in the exercise of its power of revision. The practice of this Court has been not to notice any but errors of law affecting the merits or justice of the case, always accepting the facts as found by the Lower Court, and the practice of the Bengal High Court also is the same as ours in this respect: See *Reg. v. Debi Churn Biswás (a)*, *Abdool Huq Chowdhry v. Idrak (b)*. If the present contention is to be considered good, there is hardly a case in which some violation of the law of evidence may not be laid hold of to obtain the reversal of a Magistrate's finding. Could such a result have ever been intended? The Legislature obviously intended the evidence, in certain cases, to be considered and appreciated by one Court only, by expressly prohibiting an appeal in them, and we do not think it was intended virtually to give, in an indirect way by Section 297, that which was thus directly denied by Section 273 of the Code of Criminal Procedure.

Section 283 of the Code forbids an Appellate Court interfering, except in cases in which it may appear that there has been a failure of justice. This section has been extended, by Section 300, to courts of revision. We are, therefore, as much bound by its provisions as a court of appeal. Mere errors in law are not sufficient to warrant a reversal of the Magistrate's decision. It must be shown that they caused a failure of justice. Finding on the record the evidence to which the Government Pleader has drawn our attention, and

(a) 20 Calc. W. R. Cr. Rul. 40. (b) 21 *Id.* Cr. Rul. 57.

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1874. which the Magistrate has chosen to believe, we cannot interfere. It seems, however, that upon similar evidence in other cases against the petitioner, the Session Judge, on appeal, arrived at conclusions different from those of the Magistrate, and if we may hazard an opinion on such a matter, it is not at all unlikely that the same Session Judge would have differed from the Magistrate in his view of the evidence in this case also, could it have been taken before him in appeal. But be that as it may, as the law at present stands, we are not in a position to interfere with the Magistrate's finding. We must, therefore, reject the petition of Sakháram Manohar, and return the record and proceedings. The petitioner may, if so advised, represent his case to Government, to remit the sentence.

We may observe that the judgment in this case has not been drawn up in accordance with Section 464, Criminal Procedure Code, and we must direct the Magistrate in future to follow strictly the provisions of that section.

Petition rejected.
