[APPELLATE CRIMINAL JURISDICTION.]

Before Mr. Justice West and Mr. Justice Pinhey.

1877. August 1.

IMPERATRIX *v.* BA'BAN KHA'N VALAD MHASKOJI.*

The Indian Penal Code (Act XLV. of 1860), Section 217—Charge—Vagueness in charge.

The accused was charged under Section 217 of the Indian Penal Code; but the charge did not distinctly state what the direction of the law was, which he disobeyed, and how he disobeyed it.

Held, that when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial.

THE accused was convicted by M. H. Scott, Acting Session Judge of Satárá, under Sections 217 and 213 of the Indian Penal Code, and sentenced for the former offence to one year's rigorous imprisonment, and for the latter offence to two years' rigorous imprisonment and a fine of Rs. 50, in default to three months' further imprisonment, of the like nature.

The charge under Section 217 ran as follows :—

"In that the accused, on or about the 25th day of October 1876, at the village of Sambhuked, taluka Mán, district Satárá, being a public servant—head constable—knowingly disobeyed the direction of the law as to the way in which he had to conduct himself as such public servant, with respect to the property found in an investigation held in a case of theft, with house-breaking, committed in the house of one Náráyanbhat bin Bajibhat, intending thereby to save, or knowing it to be likely that he would thereby save, Pandu valad Náná and several others from legal punishment."

At the trial of the accused, on this charge, the Judge framed the following issue :—

"Did accused cause any of the stolen property to be returned to the owner with intent to save certain persons from punishment?"

From the evidence of several witnesses, adduced on this point, it appeared that property alleged to be stolen from Náráyan-

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bhat's house was found in the presence of the accused, and that it was taken to Náráyanbhat by the accused's orders. Náráyanbhat himself deposed that the accused told him that it would be better for him not to move further in the matter, lest he should incur the enmity of the villagers. The accused, in his defence, denied all knowledge of the matter, and endeavoured to prove that he only heard of the theft casually; that as soon as he heard of it he made inquiries, but could obtain no material information; and that, therefore, he made a report to that effect to his official superior.

After weighing the evidence produced on both sides on this charge, the Session Judge found the accused guilty. He also found him guilty on the charge of receiving a gift to screen offenders.

Macpherson (with him *V. N. Mandlik*), for the appellant, argued on the evidence to show that the Judge had not properly appreciated it.

[WEST, J.:—We are satisfied on the evidence that the accused has been rightly convicted on the charge as to receiving a gift. We shall not, therefore, call on the Government Pleader to address us on evidence. But with regard to the first charge, it seems to us that it is vague, and does not give the accused the information which the law intends should be furnished to him in order to enable him to rebut the precise accusation intended. We should like to hear the Government Pleader on this point.]

Nánábhái Haridás, Government Pleader:—I am not aware of any circular or rule forbidding a policeman from returning property seized by him on suspicion of a cognizable offence; but the accused himself was asked, at his trial, whether there was any authority to return such, and he admitted that there was none. The Code of Criminal Procedure, in Section 92, directs a police officer to arrest any person found with property reasonably suspected to be stolen; and by Section 415 makes it obligatory on him to report the seizure of such property to a Magistrate. The accused asserts that he made this report, but he is found not to have done so; and in this consists the disobedience of a direction of the law. Section 114 also requires an officer in charge of a police station

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to send intimation of the suspected commission of a cognizable offence to a Magistrate having jurisdiction. Then Section 21 of the District Police Act (Bombay Act VII. of 1867) says it shall be the duty of every police officer to prevent the commission of offences, and to detect and bring offenders to justice. The conduct of the accused in returning stolen property to its owner without making a report, was in disobedience of the law as laid down both in the Code of Criminal Procedure and the District Police Act. At any rate, there has not been in this case a failure of justice or such a prejudice to the accused in his defence as would justify a reversal of his conviction under Section 283 of the Code of Criminal Procedure.

The judgment of the Court was delivered by

WEST, J.:—We think that the first head of the charge in this case did not give to the accused the information which the law intended him to have of the particular offence, expressed circumstantially, to which he was called upon to answer. The descriptions of crimes in the Penal Code must of necessity be expressed in abstract terms, but the very object of a trial is to determine whether particular acts or omissions on the part of an accused fall or do not fall within the rule thus abstractedly stated. Conformably to this principle, all the models of charges in Schedule III. to the Code of Criminal Procedure contain or imply the setting forth with reasonable particularity of the matters alleged to constitute the offence. Here the accused was charged that he "being a public servant* * * knowingly disobeyed the direction of the law as to the way in which he had to conduct himself as such public servant with respect to the property found in an investigation held in a case of theft, &c.;" what the direction was, and what the conduct was, which contravened it, the accused is not informed. He may very well have been prejudiced in his defence by this omission, for we, having carefully perused the proceedings, understood that the gist of the charge was that the accused, a head constable, had allowed stolen property to be returned to the owner in order to hush up the offence; while the Government Prosecutor now insists that it consisted in the omission of the accused to make a report, under Section 415 of

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the Code of Criminal Procedure, of his having seized the property. We cannot find that, in fact, he had seized it. It appears rather that when it was found he allowed it to be restored to the owner instead of seizing it. That this was a disobedience of a direction of the law—what the direction is, and where it is set forth, has not been shown, as perhaps it might have been, in either court, and on this very account, it would seem, it is now contended that the conduct consisted in not sending a report. But the least that can fairly be allowed in favour of one criminally convicted is, that when a charge has been expressed in vague terms, the prosecution should be limited to the particular sense in which these terms have been understood in the actual trial. The mere circumstance that evidence was given about the omission to send a report in order to afford a collateral corroboration to the testimony going to prove a criminal breach of duty of another kind, did not, and does not, make the accused liable to punishment for the offence thus incidentally deposed to, but with which he was not clearly and directly charged.

We, therefore, reverse the conviction and sentence on the first head of the charge, confirming those on the second head.

Conviction and sentence on first head reversed, on second affirmed.

[APPELLATE CIVIL JURISDICTION.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice West.

August 14.

NA'RA'YAN MA'DHAVRA'O NA'IK AND ANOTHER (PLAINTIFFS AND APPELLANTS) *v.* THE COLLECTOR OF THA'NA' (DEFENDANT AND RESPONDENT).*

Section 12, Clauses I. and II., Schedule III., Act VII. of 1870, Section 6, Clause IV., Articles (c) and (d) and Clause IX.—Act VIII. of 1859, Sections 29, 31, and 36—Suit for setting aside a mortgage-deed and injunction against the mortgagee—Valuation.

There is no appeal against the order of a District Judge fixing the amount of the court fee chargeable on a plaint.

*Regular Appeal No. 28 of 1877.