

1880

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CIVIL.

5 B. 83.

NOTE.—The case of *Nemchand v. Savaichand* (S.A. 591 of 1865) was decided on the 31st of July 1866, by COUCH, NEWTON, TUCKER, WARDEN and GIBBS, JJ. The suit in that case was brought by certain members of the Sharavak caste at Surat to obtain a decree declaring them to be the proper recipients of half the compensation granted by the Collector of Surat, in regard to certain shops belonging to the caste which had been divided into two factions, the plaintiffs forming one and the defendants the other of such factions. The defendants contended that the cognizance of the suit by the Civil Court was barred by s. 21 of Regulation II of 1827. The Munsif of Surat having allowed the claim, the defendants appealed to the Judge who raised three issues, of which the first was, "Is this a caste question with which a Court cannot interfere by law?" He decided the issue in the affirmative for the following reasons:—

"The property in which a right is sought to be so established as caste property belonging to a temple, respecting the disposal of which the caste alone adjudicate, none of the caste have any individual right in it, and the plaintiffs' only claim is on the ground that they have seceded, or rather that the caste has split into two divisions, and they demand a declaratory decree proclaiming the said right to the half of the said compensation money awarded by the Collector for certain houses, the property of the caste temple. Now this seems to me to be clearly a caste question: who but the caste can decide whether the plaintiffs had sufficient reason for separating themselves from the rest of the caste, and who but the caste can decide whether a seceding party has any right to the religious caste property?"

"In the circumstances of this case I cannot see that there is any alleged injury to the caste and character of the plaintiffs arising from any illegal or unjustifiable conduct of the other parties. The question of plaintiffs' right to the half the temple property is simply a caste question; it is not a right of any individual, nor can it be looked on as affecting the separate individual right of the parties. It is a question solely affecting the well-being of the caste, and, as such, I consider the Court cannot interfere."

[85] Against this decision the plaintiffs appealed to the High Court, urging that the District Judge was wrong in holding that the question involved was a caste question not cognizable by the Civil Court, and that it related merely to a civil right, *viz.*, a right of property. A Full Bench of the High Court, consisting of the Judges named above, confirmed the decree of the District Judge.

[F., 5 B. 83; R., 19 B. 507 (521); 26 B. 174 (188, 189); 34 B. 467=11 Bom. L.R. 1014=4 Ind. Cas. 108; D., 12 B. 225; 9 Bom. L.R. 569 (577).]

5 B. 85=5 Ind. Jur. 428.

## [85] APPELLATE CRIMINAL.

*Before Sir Charles Sargent, Kt., and Mr. Justice M. Melvill.*

*EMPRESS v. JAFAR M. TALAB.\** [22nd September, 1880.]

*Presidency Magistrates' Act, No. IV of 1877, s. 167, Plea of guilty—Conviction—Sentence.—Appeal.*

Where a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal and therefore also the sentence, does not lie according to the provisions of s. 167 of the Presidency Magistrates' Act No. IV of 1877, albeit that the Magistrate has sentenced the person to imprisonment for a term exceeding six months or to a fine exceeding two hundred rupees.

THIS was a petition of appeal purporting to be under s. 167 of Act No. IV of 1877, praying for a reversal of the sentence of a fine of Rs. 250 passed on him by C. P. Cooper, Chief Presidency Magistrate of Bombay.

By virtue of the authority vested in the Municipal Commissioner for the city of Bombay by s. 74, cls. 1 and 2 of the Bombay Municipal Acts of 1872 and 1878, the accused Jafar Talab was required by a notice, dated the 1st of October 1879, to make a true return in writing showing the rent or annual value of a house belonging to him. The said accused was

\* Criminal Appeal No. 2 of 1880.

cautioned that in the event of his failing to furnish the return within a week of the receipt of the notice, he would render himself liable under cl. 2, s. 74, to the penalty provided in s. 176 of the Indian Penal Code. A return was accordingly made on the 23rd October, 1879, but inquiries in the Municipal Office having awakened suspicions as to the accuracy of the returns, Edalji Rustamji Reporter, Assistant Assessor to the Municipality, laid an information before Mr. Cooper on the 17th of June 1880, [86] charging Jafar Talab under s. 177 of the Indian Penal Code, with having furnished false information to a public servant, and a summons was issued the same day.

*Lang*, for the petitioner.—This is a conviction under s. 74 of Bombay Act III of 1872 for having knowingly made a false or incorrect return. Section 296 of the Act provides that no person shall be liable to any penalty under the Act, for any offence made cognizable before a Magistrate, unless the complaint respecting such offence shall have been made before a Magistrate within three months next after the commission of such offence. The alleged false return in this case was made on the 23rd October 1873, and the complaint was not made till the 17th of June 1880; hence the Magistrate had no power to entertain the charge much less to convict the accused and pass sentence upon him.

The Hon. *F. L. Latham*, Acting Advocate-General, for the Crown.—The petitioner having pleaded guilty before the Magistrate, cannot appeal to the High Court on the ground of the illegality of his conviction. The proviso of s. 167 of the Presidency Magistrates' Act gives to a person convicted on his own plea an appeal for a limited purpose only. If the sentence be too severe, he can appeal to have it reduced; or if it be not of the nature sanctioned by law, he can have that error remedied. If he has confessed to an offence punishable with fine only and the Magistrate has sentenced him to imprisonment, he can appeal to the High Court and have the illegality of the sentence removed; but he cannot urge that his conviction is wrong. Moreover, it is open to the High Court, under s. 174 of the Presidency Magistrates' Act, to find the petitioner guilty under either s. 177 or s. 192 of the Indian Penal Code quite independently of s. 74 of the Municipal Act. His offence is complete even though s. 74 had never become law. The limitation of three months provided in this section cannot operate as a limitation on any offence contained in the Indian Penal Code. The Municipal Act is an Act of the Bombay Legislature; under s. 43 of the Indian Councils' Act, 24 and 25 Vic., c. 67; and the enactment of such a limitation by it to affect an Act of the supreme legislature would be clearly *ultra vires*. To preserve harmony [87] it must be held that s. 296 of the Municipal Act was not intended to apply to s. 74.

*Lang*, in reply.—If the petitioner had pleaded guilty to acts which do not constitute any offence whatever, and the Magistrate had erroneously found him guilty of an offence he would have had a right of appeal, for his conviction and sentence would both have been clearly wrong. And this would have been the case even if he had been sentenced to imprisonment for less than six months, or to a fine not exceeding two hundred rupees.

#### JUDGMENT.

The judgment of the Court was delivered by  
SARGENT, J.—Section 167 of the Presidency Magistrates' Act (IV of 1877) provides that "any person convicted on a trial held by a Presidency

1880  
SEP. 22.  
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APPEL-  
LATE  
CRIMINAL  
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5 B. 83=  
5 Ind. Jur.  
428.

1880  
SEP. 22.  
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APPEL-  
LATE  
CRIMINAL.  
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5 B. 88=  
5 Ind. Jur.  
428.

Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees: Provided that when an accused person has been convicted on his own plea, no such appeal shall lie except as to the extent or legality of the sentence." We think that this proviso, construed in its plain and obvious sense, is to limit the right of appeal when the accused has pleaded guilty to such matter as may be special ground of complaint with respect to the sentence as distinguished from the conviction itself, whether on the ground that the extent of the sentence is beyond what the circumstances of the case required, or that the sentence is illegal as not authorized by law. The intention of the Legislature would appear to be to treat the plea of guilty as a waiver of the right to appeal except as to the justice and legality of the sentence itself. In the present case the petitioner, who had pleaded guilty, complains that his conviction on a charge of having committed an offence under s. 177 of the Penal Code is bad, having regard to s. 296 of the Bombay Municipal Act, and his application is, therefore, an appeal against the legality of the conviction which, in our opinion, is excluded by the proviso to s. 167 of the Presidency Magistrates' Act.

*Order accordingly.*

5 B. 88.

[88] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice  
and Mr. Justice M. Melvill.*

ANDARJI KALYANJI, DECEASED, HIS HEIRS HIS DAUGHTERS BAI AMBA  
AND ANOTHER (*Plaintiffs*), *Appellants v. DULABH JEEVAN*  
(*Defendant*), *Respondent*.\* [12th November, 1877.]

*Limitation Act No. XIV of 1859, s. 4—Acknowledgment—Signature.*

When an account stated was written by a debtor himself, with his name at the top of the entry, it was held to be sufficiently signed within the meaning of s. 4 of Act XIV of 1859.

[*F.*, 5 B. 89; 31 C. 1043=9 C.W.N. 83; *R.*, U.B.R. (1892—1896) Civil, 462.]

THIS case was submitted for the opinion of the High Court by E. Hosking, Assistant Judge at Surat, under s. 28 of Act XXIII of 1861. He stated it as follows:—

"The following is a translation of a stated account (Ex. 2) in the said appeal; 'Samvat 1924, Margashirsh vad 12th Saniyar (Saturday) the account of Desai Andarji Kalyanji passed by his own hand to Soni Dulabh Jairam after settlement of accounts—

145½, Balance Rs. 145½, in figures one hundred and forty-five and a half; by his own hand.'

"I have found that this account was written by Andarji Kalyanji. The point on which I feel doubtful is, whether this account should be held to be signed by Andarji Kalyanji within the meaning of s. 4 of Act XIV of 1859, and, therefore, I refer this point to the High Court for decision. I have made my decision in the appeal contingent on the

\* Civil Reference No. 20 of 1877.