

## APPELLATE CRIMINAL.

*Before Mr. Justice West and Mr. Justice Nándbháṅ Haridás.*

QUEEN EMPRESS v. HUSEIN GAIBU.\*

1884

*Acquittal—Retrial—Interference of the High Court—The Code of Criminal Procedure Act X of 1882, Secs. 403 and 530.*

February 14.

Where an offence is tried by a Court without jurisdiction, the proceedings are void under section 530 of the Code of Criminal Procedure Act X of 1882, and the offender, if acquitted, is liable to be retried under section 403. It is, therefore, not necessary for the High Court to upset the acquittal before the retrial can be had.

THIS was a reference, under section 438 of the Code of Criminal Procedure Act X of 1882, by A. Clarke-Jervoise, District Magistrate of Belgaum.

The facts of the case and the reasons for making the reference were stated as follows:—

“In the month of August last the accused obtained from the complainant, one Sálu kom Láxumana, a gold and a silver nose-ornament, a pair of ear ornaments, and a necklace of gold beads, valued together variously by complainant at Rs. 138, Rs. 177 and Rs. 95. The said ornaments were borrowed for a period of fifteen days for a ‘pat’ marriage ceremony. At the end of the said period complainant applied for the return of ornaments, but accused denied having received them. Some time after, complainant through some friends received back the nose and ear-ornaments. The necklace was not returned, but Rs. 45 were sent her as the value of it. It appears, further, that a receipt was prepared, purporting to have been passed by complainant, acknowledging that she had received the above ornaments and Rs. 45 as the value of the necklace. Complainant made a complaint to the chief constable, asserting that she passed no such receipt, and that the value of the necklace was about Rs. 138. After enquiry the chief constable sent the case for trial to the Second Class Magistrate as an offence under section 406, Indian Penal Code (criminal breach of trust). The Magistrate at the trial prepared a charge under section 417, Indian Penal Code (cheating), and acquitted the accused under section 258, Code of Criminal Procedure.

\*Reference, No. 14 of 1884.

1884

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"3. The Magistrate after acquitting the accused, ordered the property before the Court, consisting of gold and silver nose ornaments worth about Rs. 4, and the ear ornaments worth about Rs. 35, and the Rs. 45 to be given to the complainant.

"4. Complainant has petitioned me against the order of acquittal.

"5. The errors in the Magistrate's proceedings are—

"1st—That, if the circumstances are as stated, there was no ground for charging the accused with the offence of cheating, as accused is not shown to have had any intention of deceiving complainant when he borrowed the ornaments.

"2nd—That, if the Magistrate considered the offence to be one of cheating, he had no authority to try the case, as the cheating was accompanied by delivery of property, and the offence would fall under section 420, Indian Penal Code, and be beyond the Second Class Magistrate's jurisdiction.

"I understand, therefore, that the Magistrate has tried and acquitted the accused of an offence which it was not within his jurisdiction to try, and that, therefore, his proceedings being illegal they must be quashed, and the accused be put on trial for such offence as he appears to have committed, *viz.*, that entered in the charge sheet under section 406, Indian Penal Code.

"6. Whether there is, or is not, a reasonable prospect of the accused being convicted, the complainant appears to be entitled to have her complaint legally tried; and the trial held was without jurisdiction."

No one appeared in the High Court on behalf of the accused or the Crown.

*Per Curiam.*—If the Magistrate who acquitted the accused had no jurisdiction, his proceedings are simply void under section 530 of the Code of Criminal Procedure. There is nothing, therefore, to prevent a trial by a competent Court under section 403 of the Code. There is, accordingly, no reason for the interference of the High Court.