

REVISIONAL CRIMINAL.

1886.
January.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* HAVIA' TELLA'PA'*

Criminal Procedure Code (Act X of 1882), Sec. 349—Order—Committal.

Under section 349 of the Criminal Procedure Code (Act X of 1882) a Second Class Magistrate transmitted a case to a Sub-divisional Magistrate, being of opinion that a more severe punishment was deserved than he (the Second Class Magistrate) was empowered to inflict. The Sub-divisional Magistrate, instead of disposing of the case himself, returned it to the Second Class Magistrate for committal and thereupon the latter committed it.

Held, that the action of the Sub-divisional Magistrate, in returning the case to the Second Class Magistrate, was illegal, as he was bound to pass a final judgment, sentence, or order. His order was, therefore, annulled, and he was directed to dispose of the case himself.

Imperatrix v. Abdulla⁽¹⁾ followed.

THIS was a reference by E. M. H. Fulton, Acting Sessions Judge, Belgaum, under section 438 of the Criminal Procedure Code (X of 1882).

The reference, so far as it is material for the purposes of this report, was as follows:—

“The Second Class Magistrate, in the first instance, sent the case up for severer punishment than he could inflict to the Divisional Magistrate, under section 349 of the Code. That officer, instead of disposing of it himself, returned it to the Second Class Magistrate for committal. Thereupon the latter committed it.

“The action of the Divisional Magistrate, in returning the case to the Second Class Magistrate, appears illegal, inasmuch as he was bound to pass a final judgment, sentence, or order (see *Imperatrix v. Abdulla*⁽¹⁾); and the order of the Second Class Magistrate committing the case seems also illegal, as he, having once referred the case under section 349, had no further jurisdiction to deal with it.

“If these views are correct, I think the case should be sent back to the Divisional Magistrate, with instructions to dispose of

* Criminal Reference, No. 168 of 1885.

(1) I. L. R., 4 Bom., 240.

it according to law. He can then either pass judgment himself, or, if he think proper, commit the accused to this Court for trial."

No one appeared for the prosecution or the accused.

Per Curiam.—For the reasons stated by the Sessions Judge, the Court annuls the Sub-divisional Magistrate's order of the 12th October, and directs him to deal with the case according to law.

Sub-divisional Magistrate's order reversed.

1886.

QUEEN-
EMPRESS
v.
HAVIA
TELLÁÁ.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

IN *RE* ANANT RA'MCHANDRA LOTLIKAR.*

1886.

January 8.

Criminal Procedure Code (Act X of 1882), Sec. 517—Order for the disposal of property by First Class Magistrate—Appeal from such order to the Sessions Court.

A decree-holder preferred a complaint against his judgment-debtors, charging them, under section 207 of the Indian Penal Code (XLV of 1860), with concealing certain moveable property for the purpose of screening it from execution. Some property was found by the police to have been so concealed in the house of a third person. The chief constable took possession of it, and kept it in his custody pending the inquiry which the First Class Magistrate was about to make in the matter. Before the Magistrate entered upon the inquiry, the complainant caused the property in the custody of the police to be attached and sold in execution of his decree against the accused. At the Court sale the complainant himself purchased the property, and thereupon the Magistrate ordered the property to be handed over to him. This order was reversed, in appeal, by the Sessions Judge.

Held, that the order of the First Class Magistrate for the disposal of the property was not, and could not have been, made under section 517 of the Criminal Procedure Code (X of 1882), as the Magistrate did not hold any inquiry, nor form any opinion on the conclusion of such inquiry as to whether "any offence appeared to have been committed regarding such property." The Sessions Judge had, therefore, no jurisdiction to hear any appeal from the First Class Magistrate's order.

THIS was a petition for revision of an order of C. B. Izon, Sessions Judge of Ratnágiri, annulling the First Class Magistrate's order directing the chief constable to hand over certain property in his custody to the petitioner.

* Criminal Reference, No. 295 of 1885.