

1890

FEB. '97.

CRIMINAL
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14 B. 572.

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[572] CRIMINAL REFERENCE.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*QUEEN-EMPRESS *v.* SAHADEV VALAD TUKARAM.*

[27th February, 1890.]

Criminal Procedure Code (Act X of 1882), s. 555—Incompetency of a Magistrate to try a case in which he is personally interested.

The accused was convicted of reckless and furious driving on a public thoroughfare under cl. 3 of s. 31 of Bombay Act VII of 1867. The complainant was a servant of the Magistrate who tried the case, and it appeared that the Magistrate's wife was driving in a dog-cart on the thoroughfare when the tonga driven by the accused passed by.

Held, that the Magistrate was incompetent to try the case, as he was "personally interested" in it, within the meaning of s. 555 of the Code of Criminal Procedure (Act X of 1882).

It is extremely improper for a Magistrate, in disposing of a case, to rely in any way on statements made to him out of Court.

[R., 15 A. 192 (194) (F.B.); L.B.R. (1893—1900), 445 (446).]

THIS was a reference, under s. 438 of the Criminal Procedure Code, by J. W. Walker, Sessions Judge of Ahmednagar.

The accused was convicted by the Cantonment Magistrate (First Class) at Ahmednagar of reckless and furious driving on a public thoroughfare under s. 31, cl. 3 of the Bombay District Police Act (VII of 1867), and sentenced to pay a fine of Rs. 20.

The complainant in the case was a servant of the Magistrate, and it appeared the Magistrate's wife was driving in a dog-cart on the thoroughfare when the tonga driven by the accused passed by; that the facts were reported to the Magistrate by several persons who had witnessed the furious driving of the accused; and that for that reason the Magistrate had not considered it necessary to take the evidence.

On these facts the Sessions Judge was of opinion that the Magistrate acted improperly in disposing of the case himself. Hence the present reference.

There was no appearance for the Crown or for the accused.

OPINION.

PER CURIAM.—In *Imperatrix v. Lahana valad Maruti* (1) this Court held that a Magistrate who was one of several persons [573] obstructed by a person driving on the wrong side of a road could not himself, as having been personally interested in the case, try the offender under ss. 28 and 29 of Bombay Act VII of 1867.

So, also, in the present case, we must hold that the Magistrate was "personally interested" within the meaning of s. 555 of the Code of Criminal Procedure, as it was his wife who was driving the dog-cart, for passing which the accused has been convicted of rash and negligent driving, and sentenced under cl. 3 of s. 31 of Bombay Act VII of 1867. The conviction and sentence must, therefore, be reversed; and the fine, if paid, be refunded.

* Criminal Reference, No. 1 of 1890.

(1) B. H. C. Crim. Rul. (No. 7) of the 15th Feb. 1887.

It was extremely improper for the Magistrate, in disposing of the case, to rely in any way on statements made to him out of Court. Section 244 of the Code of Criminal Procedure ought to have been more carefully followed. Any person aggrieved may now commence proceedings, if so advised, on a new complaint before another Magistrate.

Conviction and sentence reversed.

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APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Telang.*

JANARDHAN BHASKAR (*Original Plaintiff*), *Appellant v.*
THE SECRETARY OF STATE FOR INDIA IN COUNCIL (*Original
Defendant*), *Respondent*.* [10th March, 1890.]

*Jurisdiction—Abkari revenue—Pensions Act XXIII of 1871—Construction—Inamdar,
right of, to abkari revenue under grant from Peshwa.*

The Peshwa's Government granted in *inam* to the plaintiff's ancestor, by *sanad*, the villages of Golap and Randpar. The *sanad* granted "water, trees, grass, wood, quarries, mines, buried treasure, present and future cesses, and taxes and assessments." The plaintiff brought the present suit to recover from the defendant a part of the abkari revenue for 1884-85 and 1885-86. He contended that the revenue derived by the Government for tapping trees in the villages aforesaid was a tax within the contemplation of the grant.

Held, that the Court had no jurisdiction to entertain the suit, under the Pensions Act XXIII of 1871. The tax in question was a money tax, and as soon as it was imposed, the grant, if it entitled the *inamdar* to the tax, operated as a grant of the money to be derived from the tax, and was, therefore, within the spirit, if not the letter, of the Pensions Act, [374] the object of which was to reserve to the Government the determination of all questions affecting grants of money, the bestowal of which was an act of grace or State policy on the part of the ruling power.

APPEAL from a decision of G. C. Whitworth, District Judge of Ratnagiri.

The plaintiff, as the *inamdar* of the villages of Golap and Randpar, sued to recover from the defendant a part of the abkari revenue for the years 1884-85 and 1885-86. The plaintiff claimed to be entitled to it under the grant of the villages made to him by the Peshwa's Government. He alleged that he had received it for the years previous to the suit.

The grants relied upon by the plaintiff were in the following form:—

"To the ever opulent and highly respected Gosavis" (term of respect).
"Gopal Mahadev and Dinkar Mahadev, astrologers, whose lineage is Shandil, ritual Ashvalayan, inhabitants of mauje Golap, taraf Pavas, subhprant Rajapur.

"I, your servant Jagjivan Parashram Pratinidhi, make profound prostrations. The *Sur* year one thousand one hundred and fifty-two (1751—52 A.D). You have rendered service with a singleness of purpose in the dominion of the Maharaja, the King of Satara. The Maharaja, therefore, deeming it necessary that you and your descendants in succession should be

* Appeal, No. 85 of 1888.