

1889  
JULY 20.  
—  
APPEL-  
LATE  
CRIMINAL.  
—  
14 B. 160.

[164] The next question is, whether any other law gives this Court jurisdiction to admit his appeal. As pointed out in *Queen-Empress v. W. D. Edwards* (1), the 27th clause of the Amended Letters Patent of 1865 require us to "exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force." I am not aware of any law which confers on this Court an appellate criminal jurisdiction over persons, not European British subjects, convicted in the territories of the Nizam. The Act of Parliament 28 and 29 Vict., c. 15, s. 3 enables the Governor-General in Council to authorize and empower us to exercise all or any portion of the jurisdiction conferred by the Letters Patent "in respect of Christian subjects of Her Majesty resident within the dominions of such of the Princes and States of India in alliance with Her Majesty" as the Governor-General in Council may, by order from time to time, determine. In pursuance of this Statute the Governor-General in Council has by a notification, No. 178 J., dated 23rd September 1874, (printed in both Prinsep's and Agnew's Code of Criminal Procedure under s. 458), conferred on this High Court of Judicature an appellate Criminal Jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native State of Hyderabad, excepting the Assigned Districts. No other order in Council or enactment (see *Thornton, v. Thornton* (2) has been shown us, which extends the appellate criminal jurisdiction of this High Court to persons in the Nizam's territories other than the persons described. In the absence of any averment or other reason to believe that Solomon is a European British subject and a Christian, I am of opinion that we have no jurisdiction to entertain his appeal, and that we must reject it.

*Appeal rejected.*

14 B. 165.

[165] REVISIONAL CRIMINAL.

*Before Mr. Justice Scott and Mr. Justice Jardine.*

QUEEN-EMPRESS v. LAKHMIDAS MAKANDAS.\* [25th July, 1889.]

*Criminal Procedure Code (Act X of 1882), s. 144—Magistrate's authority to prohibit the public generally from giving caste-dinners—Notice.*

Owing to the prevalence of cholera, the District Magistrate of Broach issued an order, in the form of a proclamation, under s. 144 of the Criminal Procedure Code (Act X of 1882), forbidding the public generally to give caste-dinners in the city. The order was posted in different quarters of the city, including the street in which the accused had his dwelling-house.

A few days after the promulgation of this order, the accused gave a feast in a private house to about 500 people of his caste. He was thereupon convicted of disobedience to an order duly promulgated by a public servant under s. 188, cl. (b), of the Indian Penal Code, (XLV of 1860) and sentenced to a fine Rs. 35.

*Held*, reversing the conviction and sentence, that the District Magistrate's order was, both in its substance and, its manner of publication, illegal, as being beyond the powers conferred by s. 144 of the Code of Criminal Procedure (Act X of 1882). The power of the Magistrate under that section is confined to the direction to a particular person to abstain from acts of a certain character, or to the public generally to abstain from similar acts when frequenting a *particular* place.

[R., 24 B. 527 (532) ; 17 A.W.N. 50.]

\* Criminal Review No. 210 of 1889.

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882).

1889

JULY 25.

On the 20th March, 1889, owing to prevalence of cholera, the District Magistrate of Broach issued a notification in the form of a proclamation, under s. 144 of the Code of Criminal Procedure (Act X of 1882), forbidding the public in general to give caste-dinners in the city of Broach. The notification was posted in different quarters of the city, including the street in which the accused had his residence.

REVI-

SIONAL

CRIMINAL.

14 B. 165.

On the 23rd March, 1889, the accused gave a feast in a private house to about 400 or 500 persons of his caste in honour of the thirteenth day of his wife's death.

Thereupon the accused was prosecuted, under s. 188 of the Indian Penal Code, for disobeying the order of the District Magistrate duly promulgated on the 20th March, 1889.

[166] The First Class Magistrate of Broach convicted the accused under cl. (b) of s. 188, and sentenced him to pay a fine of Rs. 35, or in default to suffer simple imprisonment for a fortnight.

In convicting the accused, the Magistrate observed as follows:—

"It is proved by the evidence that the accused did give the caste-dinner three days after the promulgation of the District Magistrate's notification. His plea, that he had made every preparation beforehand and that he was under the impression that the prohibition applied only to roads, does not hold good, because the notification clearly prohibits the giving of caste-feasts in Broach, and not on roads alone. Moreover, even if he had made any preparation, that would not justify his taking the law into his own hand. The notification was issued in the interest of the public safety. Medical opinion shows that such feasts endanger human life."

On the application of the accused, the High Court called for the record and proceedings of the case, under s. 435 of the Code of Criminal Procedure.

*Manekshah Jahangirshah*, for the accused.—The notification issued by the District Magistrate is *ultra vires*. Under s. 144 of Act X of 1882, the notice must be addressed to a particular individual, or, if it be issued to the public at large, its operation should be confined to a particular place of public resort. Moreover, there is no evidence to show that the accused had notice of this order.

#### JUDGMENT.

SCOTT, J. —This is a conviction under s. 188 of the Indian Penal Code for disobedience of an order duly promulgated by a public servant. The order in question purports to be made under s. 144 of the Code of Criminal Procedure. We are of opinion that the particular order which was disobeyed, and on which the Magistrate acted, does not conform to the requirements of that section. The power of the Magistrate is there confined to the direction to a particular person to abstain from acts of a certain character or to the public generally to abstain from similar acts when frequenting a particular place. In this case the order was put forth in the form of a proclamation posted [167] in the streets of Broach, forbidding the inhabitants generally to indulge in caste-feasts. The order thus issued was not even brought to the notice of the accused. The feast in question was held in a private house. We are of opinion that the order both in

1889  
JULY 25.

REVI-  
SIONAL  
CRIMINAL.

14 B. 165.

its substance and in its manner of publication was illegal, as being beyond the powers conferred by s. 144 of the Code of Criminal Procedure. It is not directed to a particular person, nor to the public when frequenting a particular place, nor was it served on any person individually. The conviction and sentence must be reversed, and the fine returned. (See Criminal Ruling dated 3rd March 1870).

*Conviction and sentence reversed.*

14 B. 167.

APPELLATE CIVIL.

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

WAMAN JAGANNATH JOSHI AND OTHERS (*Original Plaintiffs*), Appellants  
v. BALAJI KUSAJI PATIL (*Original Defendant*), Respondent.\*

[30th July, 1889.]

Joshi—*Right to officiate at a marriage—Yajman, liability of—Cause of action—Invasion of privileges.*

A village *joshi*, who is entitled by hereditary right to perform religious ceremonies at his *yajman's* house, can recover his fees if the ceremonies are performed, no matter by whom they may be performed.

[Diss., 12 C.L.J. 74=14 C.W.N. 1057=6 Ind. Cas. 864; R., 11 Ind. Cas. 231=96 P. R. 1911=216 P.L.R. 1911=143 P.W.R. 1911; 3 N.L.R. 47.]

THIS was a second appeal from a decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge (A. P.) at Poona.

The plaintiffs, who were the hereditary *joshis* of the village of Otur, in the Poona District, complained that at the marriages of the daughters of the defendant their services were not employed, although as such *joshis*, they had a right to officiate on such occasions, and were ready and willing to conduct the ceremonies. They claimed to recover damages, no fees having been paid to them, from the defendant.

The defendant Balaji (a *sudra*) denied that the plaintiffs had a right to the office of *joshi*, and alleged that he employed his own [168] caste fellows to perform the religious ceremonies, as did his ancestors.

The Subordinate Judge, who tried the suit, awarded the plaintiffs' claim. The defendant appealed to the Subordinate Judge with appellate powers, who reversed the decree of the lower Court.

The plaintiffs preferred a second appeal to the High Court.

*Mahadev Chimnaji Apte*, for the appellants.—The appellants are the hereditary *joshis*, and as such are entitled to officiate at the marriage ceremonies at the defendant's house. There was an invasion of their privilege by the person who performed the ceremonies. They were entitled to whatever was paid to the Kunbi priest employed by the defendant—*Krishnumbhut v. Anunt Gangadhurbhut* (1); *Vithal Krishnaji Joshi v. Anant Ramchandra* (2). The priest, who had a right to perform the ceremonies, is entitled to his fees.

\* Second Appeal No. 55 of 1888.

(1) 4 Morris 111.

(2) 11 B. H. C. R. 6.