

CRIMINAL REFERENCE.

Before Mr. Justice Beaman and Mr. Justice Heaton.

EMPEROR v. JOHN FRANCIS LOBO.*

Criminal Procedure Code (Act V of 1898), sections 435 and 438—District Magistrate—Reference to High Court—Power to refer a case heard by Sessions Judge.

1916.

September 4.

A District Magistrate is not empowered to make a reference to the High Court questioning the propriety of a judgment by a Sessions Judge.

Queen-Empress v. Karamdi,⁽¹⁾ followed.

THIS was a reference made by S. M. Bharucha, District Magistrate of Thana.

The facts were that the accused and the deceased went at night into a jungle, armed with guns, to hunt wild pigs. They parted on different roads in search of the game. After the accused had walked a little distance, he heard a rustle among the trees, when he fired thinking it was a pig. The shot, however, struck the deceased and caused his death. The accused was tried by the First Class Magistrate at Thana for an offence under section 304A of the Indian Penal Code: but the Magistrate, being of opinion that the affair was merely an accident, discharged the accused. The complainant applied to the Sessions Judge against the order; but the application was dismissed.

The District Magistrate of Thana being of opinion that the accused had committed the offence punishable under section 304A of the Indian Penal Code, referred the case to the High Court.

The reference was heard.

A. G. Desai, for the accused:—The District Magistrate has no jurisdiction to make this reference against the

*Criminal Reference No. 38 of 1916.

(1) (1895) 23 Cal. 250.

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order passed by the Sessions Judge. Under sections 435 and 438 of the Criminal Procedure Code, he can only refer proceedings "before any inferior Court:" see *Queen Empress v. Karamdi*.⁽¹⁾

S. S. Patkar, Government Pleader, for the Crown:—The District Magistrate can report any irregularity he observes in any criminal proceeding in his District. In any event, as the record of the case is brought here, this Court can interfere under section 439 of the Code.

D. R. Patwardhan, for the complainant.

BEAMAN, J. :—In my opinion this reference is entirely without jurisdiction and of a kind that ought to be severely discouraged. It is no part of the business of District Magistrates to criticise the judicial decisions of Sessions Judges. The point has been considered in exactly similar circumstances in the Calcutta High Court (*Queen Empress v. Karamdi*)⁽¹⁾ and with the conclusion arrived at by those learned Judges I entirely concur.

Quite apart from that, the case was first investigated and very thoroughly investigated by a Magistrate who discharged the accused. It was then again fully considered by the Sessions Judge in February 1916 who came to the same conclusion as the Magistrate. This concurrent finding is really a finding of fact, being merely as to the degree of care and prudence exercised by the accused. Four months later the District Magistrate makes this reference to the High Court.

In these circumstances we do not think that this is a proper case for interference in the exercise of our revisional jurisdiction. We accordingly direct the record and proceedings to be returned.

(1) (1895) 23 Cal. 250.

HEATON, J. :—I entirely agree. We are quite satisfied from a perusal of sections 435, 437 and 438 of the Criminal Procedure Code that that Code emphatically does not contemplate a reference of this kind. I only add that if we encourage references of this kind, it would open up an alarming vista of undesirable possibilities.

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Answer accordingly.

R. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

THE MADHAVJI DHARAMSEY MANUFACTURING CO., LTD. (APPELLANTS AND DEFENDANTS), v. THE CENTRAL INDIA SPINNING WEAVING AND MANUFACTURING CO., LTD. (RESPONDENTS AND PLAINTIFFS).^o

1916.

January 18.

Infringement of trade-name—Manufacturers of cloth affixing numbers on pieces sold—Cloth known by the numbers affixed as being of a particular manufacture—Numbers, not quality marks—Agents and middlemen ordering out goods by numbers alone—Use of numbers protected, when they are particular marks of a manufacturer's goods—Numbers, when a trade-name—Cases of actual deception not necessary.

The plaintiffs were manufacturers of cloth on a large scale at their Mills in Nagpore, Central Provinces. In the year 1904, they commenced to manufacture a certain quality of black twill and to distinguish this particular cloth from all other cloths of their manufacture stamped on each piece of cloth the No. 2051 and immediately below that number stamped each piece with the No. 10 which denoted the colour and shade of the cloth. There was also on each piece of cloth a woven device of a serpent surrounded by a scroll containing the name of the Empress Mill. This twill had acquired a great reputation in the Indian markets and particularly in Sindh, the North-West Frontier Provinces and the Punjab, where the plaintiffs had their selling agents at Amritsar, Peshawar and Karachi. The dealers in these towns

^o O. C. J. Appeal No. 44 of 1915 ; Suit No. 26 of 1914.