

1919.

CHANDULAL
RANCHHOD,
In re.

amount of that maintenance should be. The proceedings should be returned to the Magistrate for this purpose.

We set aside the order which the Magistrate has made.

SHAH, J. :—I agree.

Order set aside.

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Macleod and Mr. Justice Pratt.

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May 7.

EMPEROR *v.* DHONDYA DUDHYA.*

Indian Railways Act (IX of 1890), sections 126 (a), 130—Minor offender—Magistrate—Jurisdiction to try.

A minor committing an offence punishable under section 130, read with section 126 (a), of the Indian Railways Act, 1890, can be tried by a Magistrate: he is not exclusively triable by a Court of Session.

THIS was a reference made by E. L. Sale, District Magistrate of Belgaum.

The reference was in the following terms.

“The accused Dhondya *bin* Dudhya, a boy of nine years, put a nail in the joint of the rails at mile No. 19/20 between Belgaum and Desur stations on 21st January, 1919. The Cantonment Magistrate, First Class, Belgaum, convicted him under section 126 (a) and ordered that his guardian Rama should execute a bond of Rs. 50 to prevent the boy from committing such offence again under section 130 of the Indian Railways Act, IX of 1890.

* Criminal Reference No. 18 of 1919.

"The punishment provided for the offence under section 126 (a) is transportation for life or imprisonment for a term which may extend to 10 years. The offence is therefore exclusively triable by a Court of Session as mentioned in the Second Schedule to the Criminal Procedure Code. In section 130 of the Indian Railways Act special provision has been made for such cases when the offender is under the age of 12 years; this does not appear to grant jurisdiction to a Magistrate to try the offence under section 126 (a).

"The Magistrate has tried this case in a summary way. If the procedure be wrong, the proceedings will be void under section 530 (g) of the Criminal Procedure Code."

There was no appearance on either side.

MACLEOD, J.:—This is a report by the District Magistrate of Belgaum under section 438 of the Criminal Procedure Code of the case of the accused Dhondya *bin* Dudhya a boy aged nine years who has been convicted by the Cantonment Magistrate of Belgaum after a summary trial of an offence under section 130 of the Indian Railways Act of 1890.

The District Magistrate considers that, as the act which the boy committed, viz., putting a nail on a railway line, amounted to an offence under section 126 (a) of the Indian Railways Act, the case was triable only by a Court of Session.

We think it clear that section 130 enacts an offence distinct from the offences in sections 126 to 129. A minor who is entitled to the benefit of section 82 or section 83 of the Indian Penal Code does not commit an offence when he is guilty of any of the acts or omissions referred to in sections 126 to 129. It is section 130 which by excluding the operation of these exceptions creates the offence.

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No doubt if the accused had been charged with an offence under section 126 (a) the Magistrate should have committed the case to the Court of Session and left the accused to establish his defence under section 83 of the Indian Penal Code.

But the accused was not prosecuted under section 126 (a). The summary register shows that he was prosecuted under section 130 read with section 126 (a) of the Indian Railways Act. The prosecution therefore conceded that though the accused had committed the act described in section 126 (a) he had not attained sufficient maturity of understanding to judge the nature and consequences of the conduct and elected to proceed under section 130.

The offence with which the accused was charged was therefore under section 130 and this offence the Magistrate had jurisdiction to try: Schedule II, Criminal Procedure Code; and to try summarily: section 260, Criminal Procedure Code.

There is therefore no occasion for our interference and we direct the record and proceedings to be returned to the District Magistrate.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Shah.

1919.

March 18.

ALIMAHMAD ABDUL HUSSEIN VOHORA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS v. VADILAL DEVCHAND PARIKH (ORIGINAL PLAINTIFF), RESPONDENT.*

Insolvent—Insolvent acquiring property after vesting order but before his final discharge—Insolvent can alienate property bona fide and for value, before intervention of Official Assignee.

* Second Appeal No. 917 of 1916.