

Assistant Magistrate, to whom the accused had been sent for enhanced punishment, had no power to send the case for inquiry to another Magistrate. For this reason and because the case was referred to the Second-Class Magistrate of Matukulutur; not for final disposal, but for inquiry only, the acquittal of the accused was illegal, and it is hereby annulled.

The Acting Head Assistant Magistrate must now proceed with the trial.

[234] APPELLATE CRIMINAL.

The 27th, and 31st October, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Pollard *against* Mothial and another.*

Act XIII of 1859—Breach of contract by artificers—Trial—Procedure.

The inquiry to be made under Section 2 of Act XIII of 1859 is not an inquiry into an offence which may be tried summarily.

IN these cases one Captain Pollard charged the accused with breach of contract under Section 1 of Act XIII of 1859 before the Cantonment Magistrate of Pallavaram. The Magistrate, having tried the cases summarily, acquitted the accused in one case, and in the other found the accused guilty, and ordered him to complete his contract under Section 2 of Act XIII of 1859.

The District Magistrate of Chingleput referred the cases for the orders of the High Court on the ground that the proceedings were illegal, as the offence was not triable summarily under Section 222 of the Code of Criminal Procedure.

No one appeared at the hearing.

The Court (KINDERSLEY and MUTTUSAMI AYYAR, J.J.) delivered the following

Judgment :—It appears to us that when a complaint has been made against an artificer, workman, or labourer under Act XIII of 1859, that, having received an advance, he has failed without reasonable excuse to perform his contract, the inquiry to be made under the first part of the second section of that Act is not an inquiry into an offence which may be tried summarily. It is an inquiry of a special character, which, in some cases, may require to be conducted with much care and patience.

The case at present under notice do not call for any further orders.

* Case No. 58 of 1881 referred by J. F. Price, District Magistrate of Chingleput, under Section 296 of the Code of Criminal Procedure.

[235] APPELLATE CRIMINAL.

The 31st October and 7th November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen against Khader Moidin.*

Penal Code Section 283†—Madras Police Act, Section 48, Clause 3‡—Spreading fishing nets by roadside not within.

To spread fishing nets by the side of a thoroughfare in a town is neither an offence punishable under Clause 3, Section 48 of Act XXIV of 1859, nor, without proof of obstruction caused to any particular person or class of persons, under Section 283 of the Indian Penal Code.

IN this case the prosecutor (a Policeman) deposed that he "saw a bad-smelling net dried on the road by the side of the house of the first accused so as to cause obstruction to persons passing by."

The second accused admitted the net was his and had been left there by him.

The Magistrate convicted the second accused under Clause 3 of Section 48 of the Madras Police Act (Act XXIV of 1859) and fined him one rupee.

The case was referred by the District Magistrate of Madura for the orders of the High Court on the ground that the action of the accused in drying nets in the street did not, in his opinion, constitute such an obstruction as is contemplated in Clause 3, Section 48 of Act XXIV of 1859.

No one appeared at the hearing.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

Judgment :—Clause 3, Section 48, of the Police Act (Act XXIV of 1859), under which the accused has been convicted, refers to obstruction of the road

* Case No. 51 of 1881 referred by H. J. Stokes, District Magistrate of Madura, under Section 296 of the Code of Criminal Procedure.

†[Sec. 283 :—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred Rupees.]

‡[Sec. 48 :—Any person who in any street, road, thoroughfare, or passage, within the limits of any town, commits any of the following offences to the obstruction, inconvenience, annoyance, risk, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer to take in custody without warrant any person who within view commits any such offence.

Cl. 3.—Any person who shall keep any cattle, or conveyance of any kind standing in any road or street longer than is required for loading or unloading, or for taking up or setting down passengers, or who shall leave any conveyance in such a manner as to cause inconvenience or danger to the public.]