

[233] APPELLATE CRIMINAL.

The 29th October, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen against Velayudam.*

Criminal Procedure Code, Section 46—Duty of Superior Magistrate.

A Magistrate, to whom a case is referred under Section 46 † of the Criminal Procedure Code for enhanced punishment, has no power to send the case for inquiry to another Magistrate.

THIS case was referred by the District Magistrate of Madura for the orders of the High Court under Section 296 of the Code of Criminal Procedure.

The accused having been charged with cattle lifting before the Second-class Magistrate of Tirushuli was sent up for enhanced punishment under Section 46 of the Code of Criminal Procedure the Head Assistant Magistrate, who preliminary to passing an independent judgment in the case, directed the Second-class Magistrate of Muttukulatur to make further inquiry on certain points.

The latter Magistrate accordingly recorded further evidence, but proceeded to dispose of the case and acquitted the prisoner, considering that the words "transfer the case to his file," used by the Head Assistant Magistrate, gave him jurisdiction.

No one appeared at the hearing.

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

Judgment :—Following the Proceedings of this Court of the 8th November 1870 (6 M. H. C. R., App. II), we must hold that the Acting Head

* Case No. 72 of 1881 referred by H. J. Stokes, District Magistrate of Madura, under Section 296 on the Code of Criminal Procedure.

†[Sec. 46 :—Whenever a Magistrate of the second or third class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a more severe punishment than such Magistrate is competent to adjudge, he may record the finding and, if sentence has not been passed, may submit his proceedings, and forward the accused person to the Magistrate of the district, or to the Magistrate of the Division of the District, to whom he is subordinate.]

The Magistrate, to whom the proceedings are submitted, may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case; and may summon any further witnesses and take their evidence; and shall pass such judgment, sentence, or order in the case as he deems, proper, and as is according to law: Provided that he shall not exceed the powers ordinarily exercisable by him under Section twenty of this Act.

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.]

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.