CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896. October 13.

IN RE BHOLASHANKAR. *

Panchnáma—Refusal to attend in order to make a panchnáma—Police—Bombay District Police Act (Bom. Act IV of 1890), Secs. 53, Cl. 2, and 65.

The accused refused to attend to make a *panchnáma* regarding an obstruction to a public road caused by a grain-dealer by keeping his grain bags on the road. He was thereupon convicted under section 53, clause (2), and section 65 (1) of the Bombay District Police Act (Bom. Act IV of 1890).

Held, that the conviction was illegal. Non-attendance to make the *panchnáma* in question was not an offence punishable under the Police Act.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882).

The accused was prosecuted for refusing to attend to make a *panchnáma* regarding the obstruction to a public road caused by one Bhau Budmal by keeping his grain bags on the road.

The Second Class Magistrate of Karmála convicted the accused under sections 53, clause (2), and 65 of the Bombay District Police Act (Bom. Act IV of 1890), and sentenced him to pay a fine of Rs. 3.

The District Magistrate of Sholápur, being of opinion that the act of the accused did not amount to an offence under the Police Act, referred the case to the High Court.

The reference was heard by a Division Bench (Parsons and Ranade, JJ.)

There was no appearance for the Crown or for the accused.

PER CURIAM:—There appears to be no obligation on any person to attend to make such a *panchnáma* as the one in question. Certainly non-attendance would not be an offence punishable under section 53 (2) or section 65 of the Police Act (IV of 1890).

The conviction under these sections is illegal, and we reverse it and the sentence.

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* Criminal Reference, No. 105 of 1896.

(1) Bombay District Police Act (Bom. Act IV of 1890):—

Section 53, *Cl.* 2:—"All persons shall be bound to conform to the reasonable directions of a police officer given in fulfilment of any of the said duties."

Section 65:—"Whoever . . . . (*b*) opposes or fails to conform to any direction given by the police under section 53 . . . . shall be punished with fine which may extend to fifty rupees."