

CRIMINAL REFERENCE.

Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranade.

QUEEN-EMPRESS v. BHAU.

1898.

October 6.

Criminal Procedure Code (Act V of 1898), Sec. 337—Pardon tendered to one of the accused—Approver—Trial of approver for non-fulfilment of the condition on which pardon was offered—Practice.

No action can be taken against a person who has accepted a pardon for breach of the condition on which the pardon was tendered until after the case in the Court of Session has been finished, and then his trial should be commenced *de novo*.

REFERENCE under section 438 of the Code of Criminal Procedure (Act V of 1898) by J. B. Alcock, Sessions Judge of Nasik.

The reference was in the following terms :—

"I have the honour to submit, for the High Court's revisional orders, the magisterial record of proceedings in the case of *Imperatrice v. Bhau valad Bhiva and others* committed to the Sessions Court by H. O. Brooke, Esquire, Magistrate, First Class, Nasik,

"Accused No. 1, Bhau valad Bhiva, accepted a tender of pardon made to him by Mr. Brooke, and gave evidence as a witness. The Magistrate thought that he gave false evidence on certain points, though he has not given good reasons for thinking so, and declared the tender of pardon forfeited on the 16th August, 1898. The pardon was tendered on the 2nd August, 1898. The evidence of the witnesses for the prosecution was concluded on 6th August, 1898. The accused were examined on the 16th August. It appears, therefore, that the evidence for the prosecution was not taken in the presence of the accused Bhau, and he was not in the position of an accused person during the hearing of that evidence.

"Following the ruling of the High Courts in Indian Law Reports, 14 Allahabad, 336, and 15 Madras, 352, I hold that the commitment of accused No. 1, Bhau, is not legal, and that he cannot be tried until after the disposal of the case against the other accused.

"I, therefore, recommend that the committal of accused No. 1, Bhau valad Bhiva, may be quashed."

This reference came on for hearing before a Division Bench (Parsons, C. J., and Ranade, J.).

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

PARSONS, C. J. (ACTING):—The Magistrate, being of opinion that the accused No. 1 had not complied with the condition on which the

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tender of pardon was made to him, committed him along with the other accused for trial by the Sessions Court. We think that the commitment is illegal. Section 337 of the Code of Criminal Procedure provides that every person accepting a pardon shall be examined as a witness in the case, and if not on bail shall be detained in custody until the termination of the trial by the Court of Session. It seems, therefore, to be clear that nothing can be done against him till after the case in the Court of Session has been finished, and that then his trial should be commenced *de novo*. This is what has been decided by the other High Courts in India—*Queen Empress v. Sudra*⁽¹⁾, *Queen Empress v. Malua*⁽²⁾, *Queen v. Pelumber*⁽³⁾, *Queen v. Bipro Dass*⁽⁴⁾, *In re Joyudee Paramanick*⁽⁵⁾, *Queen Empress v. Rama*⁽⁶⁾—and we follow them. The commitment is quashed. After the trial in the Sessions Court is finished, proceedings can, if it is thought necessary, be taken against him.

(1) (1891) 14 All., 336.

(1) (1873) 19 Cal. W. R., 43 (Cr. Rul.)

(2) (1892) 14 All., 502.

(5) (1880) 7 Cal. L. R., 66.

(3) (1870) 11 Cal. W. R., 10 (Cr. Rul.)

(6) (1892) 15 Mad., 352.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

NARAYAN GOVIND v. VISAJI.*

1898.
November 15.

Criminal Procedure Code (Act X of 1882), Secs. 522, 523, 524—Order to restore possession of immoveable property.

An order made under section 522 of the Criminal Procedure Code (Act X of 1882) restoring possession of immoveable property to a person who has been dispossessed of it by criminal force, is an independent order and may be made subsequently to the date of the conviction of the offender. It need not be made at the same time as the conviction.

The case contemplated by section 522 is that of a person in possession (the complainant) being dispossessed by force by another person (the accused) and the latter being in possession at the date of conviction. In such a case the section gives the Magistrate power to order possession to be restored to the complainant. In the case of a proper order, third persons could not be affected; if they are, the order is not thereby necessarily invalid. Clause 2 of the section gives them a remedy by civil suit.

* Criminal Reference, No. 89 of 1898.