

1911.  
 EMPEROR  
 v.  
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of his wall as falling within the section and had applied for leave to re-erect it but did not wait to see if the permission would be granted or refused and there was no appearance on behalf of the accused. In the present case the wall is a small wall and has all along been regarded by the applicant as not a building within the section 96. I concur with Mr. Justice Heaton in thinking that the application should be dismissed.

*Application dismissed.*

R. R.

## CRIMINAL REVISION.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton ; again,  
 before Mr. Justice Chandavarkar and Mr. Justice Hayward.*

EMPEROR v. KESHAVLAL VIRCHAND.\*

1911.  
 April 10.  
 June 29.

*Practice—Sentence—Magistrate passing non-appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to decide it on merits—Criminal Procedure Code (Act V of 1898), section 413.*

The Magistrate trying a case passed at first a non-appealable sentence on the accused, but at the request of the accused, made an addition to the sentence passed so as to make it appealable. When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. In revision :—

*Held*, that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal ; for though the Magistrate had no jurisdiction to alter the sentence once passed by him, yet for the purposes of the Sessions Judge's jurisdiction, so far as the appeal was concerned, that was the very mistake which he was called upon to correct by way of appeal.

When the appeal was heard again by the Sessions Judge he struck out the addition made by the Magistrate in the sentence, and having done that, dismissed the appeal on the ground that the sentence appealed from was not appealable. In revision :—

*Held*, that when the Magistrate had passed a sentence beyond one month, an appeal lay to the Sessions Judge, under section 413 of the Criminal Procedure Code, whether that sentence was passed legally or illegally.

\* Criminal Applications for Revision, Nos. 19 and 113 of 1911.

*Held*, also, that the Sessions Judge being once seized of the appeal, the whole appeal became open to his Court, even on merits.

1911.

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THESE were applications made to revise the orders passed by Dayaram Gidumal, Sessions Judge of Ahmedabad, under the following circumstances.

The applicant was tried by the City Magistrate of Ahmedabad, for an offence punishable under section 324 of the Indian Penal Code. The Magistrate convicted the applicant of the offence charged, and sentenced him to undergo one month's rigorous imprisonment. The applicant's pleader requested the Magistrate shortly afterwards to add one day's imprisonment to the sentence passed, to make it appealable. The Magistrate acceded to the request. The applicant then appealed to the Sessions Judge of Ahmedabad who admitted the appeal, but dismissed it on the ground that no appeal lay to his Court inasmuch as the sentence originally passed was unappealable and the Magistrate had no jurisdiction to make the addition.

The applicant applied to the High Court.

The application was heard by Chandavarkar and Heaton, JJ.

*D. A. Khare* and *T. R. Desai*, for the applicant.

*G. S. Rao*, Government Pleader, for the Crown.

The following judgments were delivered.

CHANDAVARKAR, J. :—The Sessions Judge has clearly committed an error in holding that his Court has no jurisdiction to hear the appeal, because of the alteration in the sentence, made by the Magistrate, after he had delivered judgment. It is true that a Magistrate has no jurisdiction to alter his judgment and the sentence, after he has once delivered it and signed it. But for the purposes of the learned Sessions Judge's jurisdiction, so far as this appeal was concerned, that was the very mistake which he was called upon to correct by way of appeal. Therefore, the appeal was within his jurisdiction to that extent, at any rate. We must, therefore, make the rule absolute and remit the appeal to the Sessions Court for disposal according to law.

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HEATON, J. :—I agree. The sentence which was actually imposed and that which, unless altered, the jailor will carry out, was the sentence of one month and one day's imprisonment. It is an appealable sentence and when an appeal is presented that appeal ought to be heard. It may be, and it is said in this case that it is so, that that sentence was illegally imposed. If so, all the more reason for taking it up to the Appellate Court and for having it corrected by that Court. Therefore, I think that the Sessions Judge was wrong in declining to hear the appeal, and that he was bound to hear and dispose of it according to law.

The appeal was accordingly remitted to the Sessions Judge of Ahmedabad for disposal according to law. The Sessions Judge on that occasion struck out the addition of one day's imprisonment which was made by the Magistrate. This being done, he held that the sentence then left was non-appealable. He, therefore, dismissed the appeal without going into its merits.

The applicant again applied to the High Court.

*G. B. Rele* and *D. A. Khare*, for the applicant.

*L. A. Shah*, acting Government Pleader, for the Crown.

The application was heard by Chandavarkar and Hayward, JJ.

*Per Curiam*.—It is quite clear from the provisions of section 413 of the Code of Criminal Procedure, that where a Magistrate has passed a sentence exceeding one month, then an appeal lies, whether that sentence was passed legally or illegally. The Sessions Judge being once seized of the appeal, the whole appeal becomes open in his Court, and therefore, the Sessions Judge ought to have heard this appeal on the merits also. We make the Rule absolute, and discharging the order under revision, we remand the appeal to the Sessions Court for disposal according to law, with reference to the observations made in this judgment.

*Rule made absolute.*

R. R.