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Relief Act, in every case where the interest or the inclination of the tenant led him to decline to bring the action." We do not say that the landlord can bring a suit under the Mamlatdars' Courts Act in every case of that sort, because that would offend against the Full Bench ruling in *Goma* v. *Narsingrao*.[1] But in a case like the present where the tenancy has in fact terminated and the landlord brings his suit within six months of dispossession, the ruling in *Goma* v. *Narsingrao*[1] does not, in our opinion, prevent the Mamlatdar having jurisdiction. The mere omission of the plaintiff to state all the facts in his plaint does not suffice to invalidate the Mamlatdar's order. There was evidence given upon the point, and the defendant had notice of the contention that the tenancy had terminated and cross-examined witnesses upon the point. Having regard to these circumstances, we do not think that there is any sufficient reason for our interfering in the exercise of our extraordinary powers of revision. The application is dismissed with costs.

MIRZA, J. :—I agree.

Rule discharged.

J. G. R.

[1] (1895) 20 Bom. 260.

CRIMINAL REFERENCE

Before Mr. Justice Fawcett and Mr. Justice Mirza.

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March 13

EMPEROR v. NARAYAN DHAKU BHIL.*

Criminal Procedure Code (Act V of 1898), section 349—Procedure where Magistrate cannot pass sentence sufficiently severe—Conviction recorded by Magistrate—Formal quashing of conviction not necessary.

Where a Magistrate forwards an accused, under section 349 of the Criminal Procedure Code, 1898, to another Magistrate, he should not record any conviction against the accused; and if he records one, it may be treated as a nullity which does not require to be formally quashed.

Queen-Empress v. *Mahadu*,[1] explained.

*Criminal Reference No. 38 of 1928.

[1] (1888) Ratanlal's Crim. Cas. 387.

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THIS was a reference by R. G. Gordon, District Magistrate of Nasik.

The Second Class Magistrate of Chandor was of opinion that the accused had committed the offence of receiving stolen property in three cases tried by him; but he felt that he could not pass a sufficiently severe sentence as there had been six previous convictions. He, therefore, passed orders of conviction, and forwarded the accused to the Sub-Divisional Magistrate in order that a sufficiently severe sentence might be passed under the provisions of section 349 of the Criminal Procedure Code, 1898.

The Sub-Divisional Magistrate was of opinion that the convictions passed on the accused stood in the way of his taking action under section 349.

The District Magistrate, therefore, referred the cases to the High Court for quashing the convictions.

The reference was considered.

There was no appearance on either side.

FAWCETT, J. :—In this Reference we are concerned with three cases, where an accused person was charged with offences under sections 380, 457, 414 and 411, Indian Penal Code, which a Second Class Magistrate sent up to the Sub-Divisional Magistrate under section 349, Criminal Procedure Code. Under that section the Magistrate who sends up a case is merely empowered to record his opinion that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict. In the present cases the Magistrate went a little further, and said that he convicted the accused in each of the three cases under section 411, Indian Penal Code.

In *Queen-Empress* v. *Mahadu*[1] it was held in a similar case that the conviction recorded by the Second Class Magistrate was illegal; and the conviction was

[1] (1888) Ratanlal's Crim. Cas. 387.

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reversed and the Second Class Magistrate was directed, after recording his opinion, to proceed according to law. The District Magistrate of Nasik, having regard to this ruling, is of opinion that, as the accused has already been convicted, the Sub-Divisional Magistrate was precluded from hearing the cases; and in order to enable the Sub-Divisional Magistrate to pass orders, he proposes that the orders of conviction should be quashed.

We agree that they should be quashed, and do so accordingly. At the same time it may be pointed out that since the ruling in *Queen-Empress* v. *Mahadu*,[1] section 245, sub-section (2), and section 258, sub-section (2), have been amended so as to run : " Where the Magistrate does not proceed in accordance with the provisions of section 349.... he shall, if he finds the accused guilty, pass sentence upon him according to law." Those sub-sections, as now worded, can be read as prohibiting the Magistrate from passing any sentence in a case which he deals with under section 349, Criminal Procedure Code, but as not necessarily prohibiting him from finding the accused guilty. The conviction will not of course be one that has any legality in the sense of prohibiting the Sub-Divisional Magistrate from dealing with the case under section 349, Criminal Procedure Code, or as constituting a conviction which would prevent any further trial under section 403, Criminal Procedure Code. In effect it is mere surplusage, which reiterates the opinion of the Magistrate that the accused is guilty of a particular offence. And we think that in future similar cases there is no legal objection to the conviction being treated as such surplusage and as a legal nullity, so that the Magistrate to whom the case is sent, can proceed with it, without a reference to this Court for the purpose of having the conviction formally quashed.

MIRZA, J. :—I agree.

Answer accordingly.

R. R.

[1] (1888) Ratanlal's Crim. Cas. 387.