

1928

—
EMPEROR
v.
MERWANJI

Act, 1888, with reference to the contravention of sections 372 (f) and 258 (d) of the Act that was complained of, and sentence the accused in each case, to a fine of Re. 1 which must be paid within three days.

MIRZA, J. :—I concur.

Rule made absolute.

R. R.

CRIMINAL REVISION

Before Mr. Justice Parrett and Mr. Justice Mirza.

EMPEROR v. GANU SADU.*

1928
January 12

Criminal Procedure Code (Act V of 1898), sections 260, 530, clause (q) and 537—Summary trial—One of offences not summarily triable—Conviction for offence summarily triable—Irregularity—Illegality—Void proceedings.

A Magistrate tried the accused summarily for offences punishable under sections 147, 323 and 506 of the Indian Penal Code, but convicted him only for an offence under section 323 of the Code. On an application for revision on the ground that an offence under section 147 was not triable in a summary way, the Sessions Judge was of opinion that the irregularity had not led to any injustice and was cured under section 537 of the Criminal Procedure Code. On further application to the High Court :—

Held, that the case fell under section 530, clause (q) of the Criminal Procedure Code, and that the proceedings of the Magistrate were void.

THIS was an application under criminal revisional jurisdiction of the High Court against conviction and sentence passed by M. R. Deshpande, Resident Magistrate, First Class, at Karad, upheld on revision by A. Montgomerie, Sessions Judge of Satara.

The accused was tried summarily for offences punishable under sections 323, 147 and 506 of the Indian Penal Code, and was convicted only for the offence under section 323 of the Code and fined in a sum of Rs. 60.

An application was made to the Sessions Judge to interfere in revision on the ground that the offence under section 147 was not one which could be tried summarily, and that the illegality of the procedure vitiated

*Criminal Application for Revision No. 372 of 1927.

the trial, but the Judge declined to interfere, being of opinion that the irregularity mentioned had not in fact led to any substantial injustice.

The accused applied to the High Court.

K. V. Joshi, for the accused.

No appearance for the Crown.

FAWCETT, J. :—In this case a complaint was made against the two applicants and four others that they had forcibly opened the door of the complainant's house, dragged him out into the verandah, and then assaulted him so as to have committed offences under sections 147, 323, 452 and 506, Indian Penal Code. A complaint was made to the Resident First Class Magistrate, Karad. He held a preliminary inquiry under section 202, Criminal Procedure Code; and as he found that the complainant's story was supported by two witnesses, he ordered process to issue under the sections I have mentioned, except section 452, which he cut out. On the accused appearing, the Magistrate tried the case summarily and eventually acquitted all but the two petitioners. In regard to them he held that it was proved that they had given the complainant a beating, and he convicted them under section 323, Indian Penal Code, and directed each of them to pay a fine of Rs. 60. An application was then made to the Sessions Judge, Satara, to interfere in revision. It was objected before him that the Magistrate erred in trying the case summarily because the offence under section 147, Indian Penal Code, is not in fact triable summarily under section 260, Criminal Procedure Code. The Sessions Judge, however, held that this was a mere irregularity and had not led to any injustice, as not one of the accused was convicted under that section. He, accordingly, dismissed the application.

The petitioners came before us and repeat the same objection. Under section 530, clause (g), Criminal

1928

EMPEROR
v.

GANU SADDU

1928

EMPEROR
v.
GANU SADU

Procedure Code, if a Magistrate not being empowered by law in that behalf, tries an offender summarily, his proceedings shall be void. The question is whether in fact the First Class Magistrate did try the two petitioners for the offence under section 147, Indian Penal Code. I can see no sufficient ground for saying that he did not so try the two petitioners, inasmuch as process was issued to them to answer a charge under that section, and there is nothing to show that either at the commencement of the trial, or even during the trial before the conviction of the accused, that particular charge was withdrawn. In fact the evidence of the complainant substantiated that particular charge, although that evidence was considered to be exaggerated and was not wholly credited by the Magistrate. No doubt, if the ordinary procedure for a warrant case had been followed, the Magistrate would have had to frame a charge, and probably he would not have framed a charge under section 147, Indian Penal Code. A question might then reasonably arise whether he could be said to have tried the offender under section 147, Indian Penal Code. But in a case triable summarily, where a non-appealable sentence is given, the Magistrate under section 263, Criminal Procedure Code, need not frame a formal charge; but under clause (f) of that section he has to specify in his record the offence complained of, and the offence (if any) proved. It seems to me in these circumstances that it is mainly the offence complained of, in regard to which process had been issued, that determines whether a particular accused has been tried for an offence in a case where the trial is held summarily and falls under section 263; and I can see no sufficient ground for saying that in this case the petitioners were not put in peril of conviction in regard to the accusation of their having committed an offence under section 147, Indian Penal Code, and that they were not actually tried for that

offence. This view is in accordance with that taken by the Calcutta High Court in *Chandra Mohan Das Mandal v. King-Emperor*.⁽¹⁾ Therefore it seems to me that the contrary view taken by the Sessions Judge that the summary trial was a mere irregularity curable under section 537, Criminal Procedure Code, is not correct. In my opinion the case falls under section 530, clause (g), Criminal Procedure Code. Therefore the proceedings of the Magistrate must be held to be void. The convictions of the two petitioners under section 323, Indian Penal Code, are set aside. The amount of fine, namely Rs. 60, if paid, should be refunded to each of the accused; and if it has been paid as compensation to the complainant in accordance with the Magistrate's order under section 545, Criminal Procedure Code, it must be refunded by the complainant. As to whether there should be a re-trial, we do not ourselves think that it is necessary to order a re-trial. But if the complainant renews his complaint, that is a matter which will not be affected by our present order. We do not mean to prejudice any rights he may have in the matter.

MIRZA, J. :—I concur.

Rule made absolute.

R. R.

CRIMINAL REFERENCE

Before Mr. Justice Fawcett and Mr. Justice Mirza.

EMPEROR *v.* AMBAJI DHAKYA KATKARI*

Criminal Procedure Code (Act V of 1898), sections 195, 248, 403—Indian Penal Code (Act XLV of 1860), sections 173 and 174—Acquittal of accused on ground that charge was under wrong section—Second acquittal on ground that complaint was by wrong person—Another complaint against accused—Previous acquittal is no bar.

A prosecution instituted against the accused under section 173 of the Indian Penal Code was withdrawn on the ground that it was lodged under a wrong section, and the accused was acquitted under section 248 of the Criminal Procedure Code. A complaint was next filed against the accused under the

*Criminal Reference No. 103 of 1927.

⁽¹⁾ (1921) 27 C. W. N. 148.

1928

EMPEROR
v.
GANU SADU

1928
January 12