

1872

IN THE
MATTER OF
THE PETITION
OF W. N. LOVE.

Municipal Bye-laws (1), and fined Re. 1 for infringement thereof, as well as ordered to pay a daily fine of Rs. 2 (I presume until he complies with the Bye-law).

An order of this description has been held, not only to be contrary to law, but to vitiate the entire conviction—*In re Sagar Dutt* (2); and following that rule, I feel bound on the petitioner's application to submit the proceedings under s. 434 of the Code of Criminal Procedure to have that order set aside."

The judgment of the Court was delivered by.

MITTER, J.—We think that the daily fine of Rs. 2 was illegal, and ought to be set aside. But under the circumstances of this case, we do not think it necessary to exercise our special powers of discretion by setting aside the fine of Re. 1 which was inflicted upon the prisoner for an offence actually committed. The conviction on that offence is not bad in law, and we do not see any reason for exercising our extraordinary powers by setting aside that conviction.

Before Mr. Justice Kemp and Mr. Justice Glover.

1872
July. 26

QUEEN v. MOZAFAR KHALIFA.*

Criminal Procedure Code (Act XXV of 1861), s. 62—Order by a Magistrate prohibiting the Straying of Cattle—Conviction for Breach of such Order.

An order by a Magistrate, prohibiting the straying of cattle within certain local limits, is not an order within the meaning of s. 62 of the Code of Criminal Procedure. There can be no conviction for disobedience of such order under s. 289 of the Penal Code.

THE Deputy Magistrate of Jamalpore, purporting to Act under s. 62 of the Code of Criminal Procedure, promulgated an order on the 27th August 1869 in general terms prohibiting the owners of cattle, calves, goats, sheep, and ponies from allowing such animals to stray loose within and about the town and station of Jamalpore, and prescribing the limits within which the said order should have effect.

On the 6th May 1872, one Mozafar Khalifa was convicted, under s. 289 of the Penal Code, for permitting his pony to stray about loose, and sentenced to pay a fine.

* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Officiating Sessions Judge of Mymensing, dated the 12th June 1872.

(1) The external roofs and walls of any of grass, leaves, or any other inflammable hut or any other building whatever about materials. The commissioners may from be erected or renewed, in or near any time to time notify what bazars and roads large bazar or main road, shall not be made come under the above denomination.

(2) 1 B. L. R., O Cr., 41.

The Sessions Judge of Mymensing being of opinion that the Deputy Magistrate had no authority, under s. 62 of the Criminal Procedure Code, to pass the order of the 27th August 1869, sent the proceedings in the above case to the High Court, under s. 434 of the Criminal Procedure Code, to have the conviction, under s. 289 of the Penal Code, quashed. He was also of opinion that the conviction was not warranted by anything within the meaning of s. 289 of the Code. The Sessions Judge, in making the reference, relied on the case of *Queen v. Amiruddin* (1).

The Deputy Magistrate was called upon by the Sessions Judge to support his order, and he cited the case of *Queen v. Abbas Ali Chowdhry* (2).

The judgment of the High Court was as follows:—

We concur with the Sessions Judge in the view he has taken of this case. The order of the Deputy Magistrate must be quashed, and the fine, if paid, refunded.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainstie. ”

1872
Sept. 6.

GAURINATH MOOKERJEE (PLAINTIFF) v. MADHUMANI PESHAKAR
(DEFENDANT).*

Landlord and Tenant—Lodgingslet to a Prostitute.

A landlord cannot recover the rent of lodgings knowingly let to a prostitute who carries on her vocation there.

THE following case was submitted by the Judge of the Small Cause Court of Kishnagar for the opinion of the High Court:

“ In this case the plaintiff sued the defendant, a prostitute, for rent of a room in a certain building in which she lives and plies her vocation.

The Court held that the plaintiff could not recover the rent sued for, as a Court of Justice would give no assistance to the enforcement of a contract opposed to public policy, and no subject can lawfully do that which has a tendency to be injurious to the public or against the public good. There being no Indian precedent bearing on the subject, the plaintiff desired a reference under s. 22, Act XI of 1865, and the judgment of this Court was pronounced contingent on the opinion of the High Court, which is solicited on the following point:—

Whether a landlord can recover rent of lodgings knowingly let to a prostitute, who also carries on her vocation there?

* Reference, No. 11 B, dated the 8th July 1872, from the Judge of the Small Cause Court at Kishnagar.

(1) 6 B. L. R., 78.

(2) 5 B. L. R., F. B., 74.