

CASES

DETERMINED BY

THE HIGH COURT OF JUDICATURE,

AT FORT WILLIAM IN BENGAL,

IN ITS

APPELLATE JURISDICTION.

CRIMINAL.

Before Mr. Justice Phear and Mr. Justice Hobhouse.

THE QUEEN v TAJUMADDI LAHORY *

Criminal Procedure Code (Act VXX of 1861), s 273—Jurisdiction of Deputy Magistrate, s. 219—Indian Penal Code (Act XLV. of 1860), s. 174—Non-attendance in obedience to an order from a Public Servant.

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In consequence of the default of appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate, to try the accused under section 174 of the Penal Code. *Held*, the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the Magistrate, or on the Report of a Police Officer." *Held*, also, that notwithstanding section 219 of Act XXV. of 1861, the accused might have been proceeded against under section 174 of the Penal Code.

The facts of this case were as follows :—

ONE, Tajumaddi Lahory, who was defendant in a case under trial by the Deputy Magistrate of Burisal, forfeited bail by reason of default of appearance. The surety was compelled to pay the penalty mentioned in the recognizance, and the Deputy Magistrate applied for and received the permission of the District Magistrate to try Tajumaddi Lahory under section 174 of the Indian Penal Code, for non-attendance in

* Reference under section 434 of the Criminal Procedure Code, by the Officiating Sessions Judge of Backergunge.

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obedience to an order from a public servant. The Deputy Magistrate found him guilty, and sentenced him to one month's simple imprisonment.

The Sessions Judge of Backergunge referred the case to the High Court, under section 434 of Act XXV. of 1861. The Sessions Judge considered the proceedings of the Deputy Magistrate (who was not in charge of a division of a District), illegal for two reasons :

“*Firstly.*—That the Deputy Magistrate acted without jurisdiction, the case not having been referred to him by the Magistrate on complaint preferred directly to the Magistrate, or on the Report of a Police Officer. (1)

“*Secondly.*—That as section 219 of the Criminal Procedure Code provided a specific punishment for default of appearance of the person executing a personal recognizance, *viz.*, forfeiture of the bail-bond, any additional punishment for the same offence was apparently not contemplated.”

The opinion of the Court was delivered by

PHEAR, J.—We think that the first objection made by the Sessions Judge, in his reference, to the conviction of the Deputy Magistrate, is good. We think that the Deputy Magistrate had no jurisdiction to entertain and decide the case for the reasons which the Sessions Judge has given in his reference. We think, however, that the second objection put forward by the Sessions Judge is not tenable. In our opinion, there is nothing to prevent the accused person himself from being proceeded against under section 174 of the Indian Penal Code, notwithstanding that his surety had been already made to pay in consequence of the default of appearance of the accused person ; but, as the first objection is good, the conviction must be quashed, the sentence set aside, and the prisoner, if still in custody, must be discharged.

(1) See section 273 of Act XXV of 1861.