

[APPELLATE CRIMINAL JURISDICTION.]

1872.
May 1.

REG. V. PAPIDIO MUTHDO.

Full-Power Magistrate—Reference of case by Magistrate F. P. to Subordinate Magistrate.

A Full-Power Magistrate has no authority to refer for disposal to a Subordinate Magistrate a complaint made originally to such Full-Power Magistrate.

THE prisoner was tried and convicted by the second class Subordinate Magistrate of Walore, in the District of Surat, of the offence of mischief, under Section 426 of the Penal Code, and was, on the 3rd May 1870, sentenced to pay a fine of Rs. 4, or in default, to suffer simple imprisonment for 7 days.

The Magistrate of the District of Surat (T. C. Hope), considering the proceedings of the Sub-Magistrate illegal, referred them, under Sec. 434 of the Code of Criminal Procedure for the consideration and orders of the High Court. He observed—

“It would appear that Mr. F. Birkbeck, a Magistrate F. P., received the petition, and without, in the first instance administering solemn affirmation to the presenter, referred it to the Chief Constable of Walore, desiring him to make a preliminary inquiry, and to commit the case to a Subordinate Magistrate, should an offence appear to have been committed. I consider the conviction and sentence illegal, because Mr. Birkbeck had no authority to refer the petition to a Subordinate Magistrate for disposal.”

The proceedings were considered in Court by Lloyd and Melvill, JJ.

PER CURIAM:—The Court concurs with the District Magistrate that the reference by the F. P. Magistrate to a Subordinate Magistrate was illegal, and orders that the conviction and sentence passed upon Pápidio Muthdo be reversed, and the fine, if paid, be restored.

Conviction and sentence reversed.

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NOTE.—A similar decision was arrived at in the case of *Reg v. Fakirappa bin Ningappa*, decided on the 17th September 1869, by Warden and Lloyd, JJ.

The facts were these: The prisoner was convicted by the 1st Class Sub-Magistrate of Raneebednore, in the District of Dharwar, of disobedience to the order of a public servant and was, under Sec. 188 of the penal Code, sentenced to pay a fine of Rs. 5 with the alternative of undergoing simple imprisonment for 7 days. Fakiráppá paid the fine. The case was first sent up by the Fouzdar of Kurujghee to Mr. Middleton, Magistrate F. P., who, however, was not a Magistrate in charge of a District, or of a Division of a District. Instead of trying the case himself, Mr. Middleton referred it to the 1st Class Sub-Magistrate who, accordingly, tried it. On the report of the District Magistrate (E. P. Robertson) that the Magistrate F. P. was not competent to make the reference to the Sub-Magistrate under the provisions of Section 273 of the Criminal Procedure Code, the High Court sent for the proceedings for a review and passed the following order:—

PER CURIM:—The Court, concurring with the District Magistrate, annuls the conviction and sentence, as the Magistrate F. P., Mr. Middleton, had no power to refer the case to the 1st Class Sub-Magistrate for trial, and directs that the fine, if paid, be refunded.

Conviction and sentence reversed.