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March 27.

## [APPELLATE CRIMINAL JURISDICTION.]

*Criminal Reference No. 20 of 1873.*

REG. v. LÁLÁ SHAMBHU.

*Jurisdiction.—Crim. Proc. Code, Secs. 123, 127, and 141.—Police Report—Power of third Class Magistrates to entertain charge on Police Report.*

A Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded to him by an officer in charge of a police station, under Section 123 of the Code of Criminal Procedure.

THIS was a reference made, under Section 296 of the Code of Criminal Procedure, by A. A. Borradaile, Magistrate of the District of Ahmedabad, for the orders of the High Court. The accused was tried and convicted of the offence of theft by the third class Magistrate of Morásá, Mr. Harilál Sompatram; but as he had proceeded with the case on a report from the Police, the District Magistrate considered that he had no jurisdiction.

The reference was heard by Melvill and Kemball, JJ.

PER CURIAM :—The question referred is whether a Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded by the Police under Section 123 of the Code of Criminal Procedure.

The Magistrate of the District is of opinion that the trial has been had without jurisdiction, because a Magistrate of the third class is not, and cannot be, invested with power to receive Police reports.

In this opinion the Court is unable to concur.

Section 20 of the Criminal Procedure Code, coupled with the schedule, gives a general jurisdiction to all Magistrates to try certain offences and pass certain sentences. Chapter X. empowers the Police to investigate certain offences and to bring the accused, with all the necessary evidence, before the Magistrate (Section 23). Section 190 and subsequent sections provide for the trial by the Magistrate of persons so brought before him.

So far, there is nothing to indicate that the power of a Magistrate of the third class to try prisoners brought before him under Section 123 is in any way limited.

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But it is argued that his power is limited for the following reasons:—Section 127 requires the Police to submit a report to the Magistrate, when forwarding an accused person under Section 123; and Section 23 makes no such provision for investing Magistrates of the third class with power to receive Police reports, as is made in the case of Magistrates of the first and second classes by Sections 25 and 27.

But in construing the terms “power to entertain complaints and receive Police reports” in Section 21 and the similar expressions in Sections 23, 25, and 27, the Court must observe that the addition of the words “Section 141” in brackets, shown that the Police reports referred to are only forms part of Part IV of the Code, which relates to proceedings to compel appearance, and a comparison of this section with those which precede and follow it seems clearly to indicate that the Police reports referred to are only those on which it may be necessary, or at least possible, to issue process. Thus Section 139 expressly excludes the consideration of cases in which the accused has been already arrested without warrant. Section 140 relates to the issue of a summons or warrant upon certain reports by the Police. Then follows Section 141 which authorizes certain Magistrates to entertain “a complaint of an offence whether preferred directly by the complainant, or on report of a Police officer.” These words clearly point to those reports, and those only, which operate as a complaint or on which process is to be issued as on a complaint.

The report specified in Section 127 is merely descriptive, and requires no action to be taken upon it by the Magistrate. The Court does not think that it can be taken to be one of the reports specified in Section 141. The provisions of the new Code appear to the Court clearly to indicate the intention

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of the Legislature and to make the view expressed in *Reg. v. Jafar Ali* ( 8 Bom. H. C. Rep. Cr. Ca. 113 ) no longer operative.

Any other construction of the Code than that which the Court now puts upon it would render Magistrates of the third class in this Presidency absolutely useless. The greater part of offences committed are investigated by the Police under Chapter X., and brought before the Magistrates under Section 123. It is quite intelligible that the Legislature may not have seen fit to entrust in experienced magistrates with the delicate duty of making the preliminary investigation precedent to inquiry in Court; but it is hardly to be believed that it was intended to debar any Magistrate from trying any case of petty theft or other similar offence which had been fully investigated and prepared by the Police.

The proceedings should be returned to the Magistrate, who should be informed that, in the opinion of the Court, the Magistrate, third class, had jurisdiction.

*Order accordingly.*