

settled. I have accordingly decided to accede to the request of the petitioners and to refer the matter accordingly."

1895

NEDARAM

THAKUR

v.

JOONAB.

No one appeared on either side.

The judgment of the High Court (GHOSE and HILL, JJ.) was as follows:—

It appears to us that the view taken by the Madras Court in *Pitchei v. Aukappa* (1) and *Kottalanda v. Muthaya* (2) is correct, and that it was therefore not competent to the Magistrate to try the case under Chapter XXII of the Criminal Procedure Code. But we do not think it is a case in which we ought to interfere, as the defendants have had an adequate trial, and the Cattle Trespass Act (I of 1871) does not prescribe any particular procedure.

S. C. B.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

QUEEN-EMPRESS v. JAHANDI. *

1895

September 6.

Criminal Procedure Code (Act X of 1882), section 438—Power of the District Magistrate to refer to the High Court a case in which the Sessions Court has, under section 123, refused to confirm his order under section 118 of the Code.

Section 438 of the Criminal Procedure Code does not authorize the District Magistrate to refer to the High Court a case in which the Sessions Court has, under section 123 of the Code, refused to confirm his order under section 118. If the District Magistrate, as the officer responsible for the peace of his District, is dissatisfied with any such order, his proper course is to ask the Public Prosecutor to move the High Court for the revision of the same.

THIS was a reference by the District Magistrate, Rungpore, under section 438 of the Criminal Procedure Code.

The facts appear sufficiently from the following letter of reference:—

"This was a proceeding under section 110 of the Criminal Procedure Code, tried personally by me under section 118 of the Criminal Procedure Code. I ordered Jahandi to give a bond of Rs. 500 and a surety of Rs. 500 for his good behaviour for a period of three years, as being found to be an habitual thief. Jahandi was unable to give the required security, and I therefore forwarded the proceedings to the Sessions Judge for orders under section 123 of

* Criminal Reference No. 229 of 1895, made by J. H. Lea, Esq., District Magistrate of Rungpore, dated the 26th August 1895.

(1) I. L. R., 9 Mad., 102.

(2) I. L. R., 9 Mad., 374.

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the Criminal Procedure Code. The Sessions Judge refused to confirm my order and discharged Jahandi.

"I therefore request the High Court to be good enough to look into the case and pass what orders it thinks fit.

"This is a case of a discharge and not of an acquittal, and therefore the Public Prosecutor cannot present an appeal on behalf of the local Government under section 417 of the Criminal Procedure Code. I have, therefore, on the advice of the Legal Remembrancer, referred this case directly to the High Court."

No one appeared on either side.

The judgment of the High Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

We do not think that section 438 of the Criminal Procedure Code authorizes the District Magistrate to refer to this Court a case in which the Sessions Court has, under section 123, refused to confirm his order under section 118, and has discharged the person called upon to furnish security. Section 123 makes the order of the Magistrate, in a case like this, subject to confirmation or reversal by the Sessions Court, and it would be contrary to every principle to allow the District Magistrate to report against an order of the Sessions Court to which he is subordinate.

If the Magistrate, as the officer responsible for the peace of his District, is dissatisfied with any such order, his proper course, we need hardly point out, is to ask the Public Prosecutor to move this Court for the revision of the same.

We decline to take any action upon this reference, and direct that the case be returned to the Magistrate with a copy of this order.

S. C. B.

Before Mr. Justice Ghose and Mr. Justice Hill.

QUEEN-EMPRESS v. KARAMDI. ^o

1895
 October 29.

Criminal Procedure Code (Act X of 1882), section 438—Power of the District Magistrate to question the propriety of a finding and sentence by the Sessions Judge.

^o Criminal Miscellaneous No. 54 of 1895, containing a letter No. 2566J., dated the 8th of October 1895, from the District Magistrate of Mymensingh, referring for orders the judgment of the Sessions Judge, dated the 7th of June 1895.