

1886

POONIT  
SINGH  
v.  
MADHO  
BHOT.

could be charged only with having made one false statement. He was therefore erroneously tried for two distinct offences under s. 182. We therefore set aside the conviction and sentence in the second case, *viz.*, the case which was initiated on the complaint of Sheikh Abdulla. The conviction and sentence passed by the Magistrate in the case which was instituted on the complaint of Madho Bhot, gomastah of Baboo Chunder Coomar, will stand.

K. C. M.

*Conviction quashed in part.**Before Mr. Justice Prinsep and Mr. Justice Beverley.*

IN THE MATTER OF THE PETITION OF YACOOB.

YACOOB v. ADAMSON.\*

1886

*August 4.*

*Presidency Magistrate—Summary trial—Conviction in non-appealable case—High Court as a Court of Revision—Code of Criminal Procedure, ss 370, 437.*

In every case which is not appealable to the High Court, a Presidency Magistrate should state his reasons for convicting the prisoner, so that the High Court may judge as to whether there were sufficient materials before the Magistrate to support the conviction.

In a case where the accused was convicted of theft and sentenced to six months' rigorous imprisonment, the notes of the evidence taken by the Magistrate did not afford sufficient materials upon which the prisoner could be legally convicted, and the Magistrate had omitted to record his reasons for the conviction under s. 370, cl. (i) of the Code of Criminal Procedure.

*Held*, by the High Court as a Court of Revision, that the conviction and sentence must be set aside, notwithstanding the provisions of s. 437 of the Code of Criminal Procedure.

IN this case the accused Sheikh Yacooob applied to the High Court by petition, under the provisions of s. 439 of the Code of Criminal Procedure, praying that a finding and sentence passed by the Presidency Magistrate in a case wherein the petitioner was charged with the theft of certain Government Currency Notes should be set aside on the ground that there was no evidence on the record to support the conviction. The Chief Magistrate's judgment was as follows :—

\* Criminal Revision Case No. 305 of 1886, against the order passed by Mr. F. J. Marsden, Chief Presidency Magistrate, Calcutta, dated the 8th July 1886.

“In this case Captain Adamson missed a note for Rs. 100 and some Rs. 10 notes from his cabin to which apparently accused No. 1, Yacob, had access and in fact was in charge of. Nothing was heard of the property for about a fortnight, when a Rs. 100 note seems to have been changed by the second accused Rahim Bux who told the witness Adels that he got the note from accused No. 1. The number of the note for Rs. 100 has not been satisfactorily traced, and that being so, I am of opinion that the second accused must be acquitted. As to Yacob I have no doubt whatever that it was he who committed the theft, and the order is that he does undergo six months’ rigorous imprisonment.”

1886

---

 YACOB  
 ”  
 ADAMSON.

Mr. *H. E. Mendies* for the petitioner.

Mr. *W. C. Bonnerjee* for the Crown.

The judgment of the Court (PRINSEP and BEVERLEY, JJ.) was as follows :—

Captain Adamson, commander of the *Queen of Scots*, lost some currency notes from the pocket of his trousers which were in his cabin. He says that he fetched the petitioner before us, who was the steward of the ship, and some others, and sent for the Police. The matter however proceeded no further at that time as no sufficient evidence was obtained. The petitioner then left his service, but a fortnight afterwards, in consequence of the changing of some notes, suspicion fell upon him, and he was placed with another man before the Presidency Magistrate on trial for the same theft. In the result the Presidency Magistrate held that the stolen notes had not been satisfactorily traced, and he consequently acquitted the other person. But with regard to the petitioner, the steward, the Presidency Magistrate stated that he had “no doubt whatever that it was he who had committed the theft, and the order is that he do undergo six months’ rigorous imprisonment.” There is nothing in the notes of the evidence taken by the Magistrate on this trial on which, so far as we can see, the petitioner could have been legally convicted; or which carries the case against him one step further than when it was first investigated by the Police. The order passed is not appealable, but the matter has come before us as a Court of revision on an application made

1886  
 YACCOB  
 v.  
 ADAMSON.

by the petitioner who is under sentence. The Code of Criminal Procedure does not provide for the manner in which evidence should be recorded by a Presidency Magistrate in a case in which the sentence or order is not appealable, but it enacts (s. 370) that instead of recording a judgment in the manner provided for other Courts, a Presidency Magistrate shall record certain particulars, amongst which clause (i) declares that he shall record a brief statement of the reasons for the conviction. In the case before us, we have no evidence at all on which the petitioner could have been convicted, and the Magistrate, in convicting him, has omitted to record any statement of the reasons for the conviction. Reference may be made to s. 537, which declares that no finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on revision on account of any error, omission or irregularity in the judgment unless such error, omission or irregularity has occasioned a failure of justice. In the present case it is impossible to say what the result of this error, omission or irregularity on the part of the Presidency Magistrate may or may not have been. As the case now stands before us, there is absolutely no evidence against the petitioner, and there is no statement of any valid reasons on which the conviction could be supported. If a conviction such as this were to be maintained the powers of this Court as a Court of Revision could never be exercised. We cannot suppose that this was intended by the Legislature. The case of *Empress v. Punjab Singh* (1). was a case analogous to that now before us, the matter under revision there being an order passed on a summary trial in which the Magistrate had failed to comply with clause (h), s. 263, which required him to "record a brief statement of the reasons of the conviction."

In that case it was held that the Magistrate should state those reasons in such a manner that this Court on revision may judge whether there were sufficient materials before him to support the conviction. Following that case we are of opinion that the conviction and sentence must be set aside.

P. O'K.

*Conviction set aside.*

(1). I. L. R., 6 Calc., 579.