

Emperor Vs. Bhimappa Ulvappa

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Court : Mumbai

Decided On : Aug-12-1915

Reported in : AIR1915Bom268; (1915)17BOMLR895

Judge : Shah and Hayward, JJ.

Appeal No. : Criminal Reference No. 47 of 1915

Appellant : Emperor

Respondent : Bhimappa Ulvappa

Judgement :

Shah, J.

1. In this case notices were issued to the District Magistrate and the appellant, but there is no appearance. The facts which have given rise to this reference are briefly these:

The accused was tried on a charge under Section 379 of the Indian Penal Code by a Second Class Magistrate. The Magistrate convicted the accused; but being of opinion that it was a case, to which the provisions of Section 562 of the Criminal Procedure Code might be applied, under the proviso to that section he submitted the proceedings to a Magistrate of the First Class on the 22nd February 1915. The First Class Magistrate then, acting under Section 380 of the Code, passed an

order on the 4th March 1915 convicting the accused and sentencing him to rigorous imprisonment for one month and a fine of Rs. 25. The accused appealed to the Court of Session against this order of the First Class Magistrate. The learned Additional Sessions Judge, before whom the appeal came on for hearing, however, held that the appeal would not lie to his Court, but to the District Magistrate under Section 407, Criminal Procedure Code, as he was of opinion that originally there was in this case a conviction by the Second Class Magistrate, and that that was the conviction from which an appeal could be and ought to be preferred. When the matter came by way of appeal before the Sub-Divisional Magistrate he was of opinion that the appeal really lay to the Court of Session, and accordingly submitted the papers to the District Magistrate in order that a reference may be made, if necessary, to this Court. The District Magistrate has now made a reference to this Court, and we have to consider the question, whether in this case an appeal lies to the District Magistrate from the Second Class Magistrate's order of conviction or whether it lies to the Court of Session from the conviction and sentence passed by the First Class Magistrate under Section 380 of the Code.

2. It seems to me to be clear under the provisions of Section 380 that when a case is submitted to a Magistrate of the First Class or a Sub-Divisional Magistrate as provided by Section 562, that Magistrate may, thereupon, pass such sentence or make such order as he might have passed or made if the case had originally been heard by him. It follows, therefore, that for the purposes of appeal ultimately the conviction recorded is a conviction by the First Class Magistrate or the Sub-Divisional Magistrate and the sentence passed also is unquestionably a sentence passed by that Magistrate. Under Section 408, therefore, the appeal lies to the Court of Session in this case, as the order of conviction and sentence complained of and to be complained of is passed by a First Class Magistrate under Section 380.

3. The view taken by the Additional Sessions Judge involves a curious anomaly. According to him there would be an appeal from a conviction by a Second Class Magistrate to the District Magistrate, at a time, when there would be no sentence to appeal from and when the proceedings might be pending before a First Class

Magistrate, under Section 380 of the Criminal Procedure Code with powers to consider the propriety of that very conviction. Further there would be either no appeal from the sentence or an appeal to the Court of Session when an appealable sentence is passed by a First Class Magistrate under Section 380 of the Code. I do not see any indication in the Code to justify such a dissociation of conviction from sentence in one and the same case. I do not think that the scheme of the Code favours any such view, nor can I think that the proper interpretation of Sections 380 and 562 leads to any such result.

4. We hold that the appeal in this case lay to the Court of Session. We accordingly set aside the order made by the Additional Sessions Judge on the 4th of May 1915 and direct that the appeal be heard and disposed of by the Court of Session according to law.

Hayward, J.

5. I concur that just as a sentence by a First Class Magistrate under Section 349 of the Criminal Procedure Code is appealable to the Sessions Court, so a sentence by a First Class Magistrate under Section 380 must also be held to be appealable to the Sessions Court. I think this must be so held, because the First Class Magistrate is given power not only to pass sentence but to make such order as he might have passed or made if the case had originally been heard by him, and if he thinks further inquiry or additional evidence on any point necessary, he may make such inquiry as specifically prescribed by Section 380. His proceedings appear, therefore, to me to be practically a trial. The only difficulty in the way of this conclusion is that specific reference is made to Section 349, but no reference is made to Section 380 in the provision allowing appeals from the decisions of First Class Magistrates to the Sessions Court in Section 408 of the Criminal Procedure Code. But after giving the matter my best consideration, it seems to me that the proceedings of the First Class Magistrate practically amount to a trial, and that, therefore, his decision must be held to be appealable within the meaning of Section 408 of the Criminal Procedure Code.