SAXTON *v.* ANDI *et al.*

1895.
November 28.

P. C., Mátalé, 9,860.

Appealable order—Criminal Procedure Code, ss. 414, 426—Order made by Police Court under Ordinance No. 6 of 1891—Appeal to enhance punishment—Power of Supreme Court to enhance in appeal sentence passed.

Per WITHERS, J.—No appeal lies from an order of the Police Court to have a greater punishment inflicted than the Magistrate has passed. And the Supreme Court has no power in appeal to enhance such punishment.

THE facts connected with this appeal are set forth in the judgment of the Supreme Court.

Templer, A. S.-G., for appellant.

28th November, 1895. WITHERS, J.—

In this case the Magistrate has convicted two persons, one of the offence of giving false evidence under section 180 of the Ceylon Penal Code, and the other of aiding and abetting him in that offence.

No previous conviction having been proved against either of the accused, the Magistrate thought it a proper case to deal with under the provisions of the Ordinance No. 6 of 1891, and instead of sentencing either of the accused at once to punishment, he has directed them to be released on their entering into a recognizance to appear and receive sentence when called upon at any time during the period of six months, and in the meantime to keep the peace and be of good behaviour.

The prosecutor has appealed from the order of the Magistrate on the ground that the judicial discretion has not been properly exercised.

Mr. Templer, Acting Solicitor-General, who appeared to support the appeal, thought it proper to ask for my opinion, whether this is an appealable order. The object of the appeal is to have the sentence enhanced, and the question is, whether any one can appeal from an order of the Police Court to have a greater punishment inflicted than the Magistrate has thought proper to impose.

My present opinion is that such an appeal does not lie. The 414th section of the Criminal Procedure Code no doubt uses words which might be construed to include the alteration of a lesser sentence to a longer one. But that is not the view which I am at present prepared to take of it. I think I have said before, and

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sitting alone I am prepared to repeat it, that if the Legislature had intended that this Court should have jurisdiction to pass a greater sentence than that passed in the Court below, that power would have been given in the clearest possible terms. The Indian Code of 1872, section 280, used these words :—"The Appeal Court, after "perusing the proceedings of the lower Court, and after hearing the "appellant.....may alter or reverse the finding and sentence "or order of such Court, and may, if it see reason to do so, enhance "any punishment that has been awarded."

There the power is given in clear and express terms, and such terms I find wanting in our Procedure Code.

I must not omit to take notice of section 426 of the Criminal Procedure Code, which enacts that the Supreme Court in revision may call for a case for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed thereon, but the Supreme Court in revision may only pass such sentence or order which it might have made had the case been brought before it in due course of appeal instead of by way of revision.

Hence, if I brought this order up in revision, I do not see how I can interfere with the sentence so as to enhance it, even if I thought fit to do so, on which I offer no opinion. For these reasons I dismiss the appeal.