

**(1930) 01 BOM CK 0033****Bombay High Court****Case No:** None

Shanmukh Basapa Dhamanji

APPELLANT

Vs

Emperor

RESPONDENT

**Date of Decision:** Jan. 30, 1930**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 367

**Citation:** AIR 1930 Bom 163 : 125 Ind. Cas. 710**Hon'ble Judges:** Mirza, J; Boormfield, J**Bench:** Division Bench**Judgement**

Boormfield, J.

This is a reference by the Sessions Judge of Belgaum recommending that an order passed by the District Magistrate of Belgaum, dismissing an appeal, should be set aside on the ground that the order is not in accordance with Section 367 of the Criminal Procedure Code.

2. It appears that one Shanmukh and five other persona have been convicted by the Bench Court of Belgaum of offences punishable under Sections 323 and 426 of the Indian Penal Code. They appealed and the District Magistrate issued notice and heard both parties. Having done so he passed the following order:

The lower Court's order contains a full statement of facts and there is nothing for me to describe. The lower Court's appreciation of evidence in the case appears to me to be correct. The appellants' Pleaders' arguments were not convincing against the appellants' guilt.

I do not, therefore, see any reason to interfere in the lower Court's judgment. Appeal dismissed.

3. It is manifest and is not disputed that as the appeal was not summarily dismissed the District Magistrate was required to record a judgment, which judgment should

have satisfied the requirements of Section 387. Numerous authorities have been quoted by the Sessions Judge in support of his view that failure to comply with the requirements is a material irregularity which vitiates the decision. The learned Government Pleader, who has opposed the reference, has attempted to distinguish these cases on the ground that the District Magistrate before passing his order made notes of arguments of Pleaders. He suggests that the points for determination in the case can be gathered from these notes of the arguments and that they may fairly be read together with the order as constituting when combined a proper judgment. We are unable to agree with this view. We have read the notes of the arguments and it appears to us that the District Magistrate has merely jotted down a few rough and disconnected notes of certain points which were passed before him. It cannot, be said that these notes contain even the points for determination in the case, much less the reasons for the decision arrived at by the District Magistrate. Our attention has been drawn to one case, Patilbuva Raojibala Gavli and Others Vs. Emperor, in which it was held that an irregularity in the mode of drawing up a judgment, that is to say, the particular irregularity which, was noticed in that case, might be cured by Section 537. The whole of the judgment which was then under consideration does not appear to be contained in the report, but from those passages which have been quoted it would appear that it went much further to satisfy the requirements of Section 367 of the Criminal Procedure Code than the order with which we are concerned in. the present case. We think it desirable to point out that the head-note in this case is misleading. The head-note is: Section 537, Criminal Procedure Code, covers any irregularity in the mode in which a Magistrate has drawn up a judgment.

4. It is quite clear, however, that there is no such finding. Fawcett, J., who delivered, the judgment of the Court, merely held that the case before the Court was one in which there was some irregularity in the way, in which the Magistrate had drawn up his judgment, and that the irregularity there present could legitimately be brought within the provisions of Section 537. In the present case the irregularity appears to us to be of a more serious nature. We think also that the referring letter of the Sessions Judge ought to weigh with us in the matter. He has stated in his letter that if, upon a perusal of the lower Court's judgment, he had been fully satisfied that no failure of justice had in fact occurred, he might not have troubled the High Court with this reference. In the circumstances we cannot say that the irregularity complained of in the present case is a mere technicality. We think we have no alternative but to set aside the order of the District Magistrate under reference and to direct that the appeal be re-heard and judgment recorded in accordance with law. Mirza, J.

5. I agree. The language of Section 367 of the Criminal procedure Code is peremptory on the point that the Judgment "shall contain the points for determination, the (sic) thereon and the reasons for the decision. The order with

which we are there concerned fails to comply with these, requisitions. The irregularity amounts opinion, to as illegality and (sic) the order.