

(1879) 03 AHC CK 0003

Allahabad High Court

Case No: None

In Re: Gur Dayal

Vs

APPELLANT

RESPONDENT

Date of Decision: March 27, 1879

Citation: (1880) ILR (All) 216

Hon'ble Judges: Robert Stuart, C.J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

In the present case Gur Dayal, the applicant to us in revision, had been charged and tried before the Joint Magistrate of the First Class u/s 411 of the Indian Penal Code and Section 505 of the Criminal Procedure Code as an alleged receiver of stolen property. The evidence against him consisted chiefly of statements made by four dallals, residents of Allahabad, but these were considered so suspicious and untrustworthy that the Magistrate dismissed the case. Gur Dayal then applied to the Sessions Judge u/s 468 of the Criminal Procedure Code for permission to prosecute the dallals for giving false evidence under Sections 193 and 211 of the Indian Penal Code, and such sanction the Judge gave by an order dated the 15th August 1878. Subsequently, on a decision by a Division Bench of the High Court of Bombay, Melvill and Pinhey, JJ., being brought to his notice, by which it was ruled that the Magistrate of the District, and not the Sessions Judge, had the power to give the sanction contemplated by Section 468 of the Criminal Procedure Code, he recalled his order and cancelled the sanction he had given; and, in my opinion, he clearly had power to do this.

2. The same question arises in this Court in a revision ease before Mr. Justice Oldfield, who has referred the matter to a Full Bench, and we are notification argument at the Bar, to decide the question.

3. I generally concur in the ruling of the High Court of Bombay. To my mind it is unnecessary to make a nice examination of the Criminal Procedure Code for the purpose of ascertaining the relative position and powers of the different judicial officers in particular cases and in particular circumstances, for it is clear to me that the present case must be disposed of by the construction to be put upon Section 468 read with Section 37* of the Criminal Procedure Code; and with reference to the latter section I do not appreciate the distinction which was taken at the hearing between the Magistrate as an executive and the Magistrate as a judicial officer. No doubt Section 468 contemplates a purely judicial proceeding, but that view of the matter is, in my opinion, not only not inconsistent with Section 37, but that section helps us to interpret Section 468, by providing as it does that all Magistrates shall be subordinate to the Magistrate of the District. The word "subordinate" it will be observed is not in any way limited or qualified, but applies to the jurisdiction of the Magistrate of the District in all its plenitude, and with reference to all that officer's duties and powers, judicial as well as executive. Indeed Section 37 would have been of little value if it had to be read as only applying to the executive functions of Magistrates. This view of the section is made still more clear by the express provision that neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Judge except to the extent and in the manner provided by the Act, and the power to sanction a prosecution for perjury committed before a Magistrate of any of the three classes is clearly not within such an exception. In fact it appears to me that for the purpose of applying Section 468 to such a case as that now before us, the term "Magistrate" in Section 37 and that of "Court" in Section 468 are convertible and have the same meaning; and--although I do not attach so much importance and force to interpretation clauses in Acts of the Legislature as is sometimes claimed for them, holding that they should not be read merely by themselves, but that they may be controlled and limited by other express provisions of the same law, and as a consequence, that if inconsistent with and repugnant to such other provisions they may be disregarded--yet they frequently are very useful, and in the present case we ought not to ignore the definition of "Criminal Court" in Section 4⁺ of the Criminal Procedure Code, which considered in connection with the two other sections of the same Code I have remarked on, viz., Sections 468 and 37, places the true view of the question now to be decided beyond any reasonable doubt.

4. My answer therefore to the question referred to us is that the Sessions Judge had no power to sanction the prosecution of Hira Lal and others, but that such sanction should have been sought at the hands of the Magistrate of the District.

Pearson, J.

5. Magistrates and Sessions Judges are, included in the term "Criminal Courts" defined in Section 4 of the Procedure Code. It is impossible to suppose that the Sessions Judge mentioned in Section 37 does not mean the Sessions Court, or that

what is said, about the subordinate Magistrates refers to them not as Criminal Courts, but only when engaged otherwise than in judicial proceedings. The Procedure Code regulates the procedure of Courts of Criminal judicature. Section 468 must, in my opinion, be read and interpreted with reference to Section 37; and thus it appears that the Court of a subordinate Magistrate is subordinate to the Court of the Magistrate of the District in the matter to which Section 468 relates, unless the Procedure Code has provided that in that matter subordinate Magistrates shall be subordinate to the Sessions Judge. No such provision has been made. My answer to the question referred to the Full Bench is therefore in the negative.

Spankie, J.

6. We are asked by the Judge making the reference whether the Sessions Judge has power, u/s 468 of Act X of 1872, to sanction a prosecution, under Sections 211 and 193 of the Indian Penal Code, in the particular case giving rise to the reference.

7. An Assistant Magistrate of the First Class refused permission to an acquitted person to prosecute the complainant against him under the sections cited above. The party desirous to proceed criminally against the original complainant applied to the Sessions Judge for sanction to do so. The Sessions Judge gave permission, but subsequently recalled it, holding that "when sanction to prosecute has been refused by a Magistrate subordinate to a Magistrate of the First Class, an application to prosecute may be made to the Magistrate of the District, but cannot be made to the Sessions Judge."

8. Under the terms of Section 468 of the Criminal Procedure Code the sanction of the Court, Civil or Criminal, before or against which the offence was committed or "of some other Court to which such Court is subordinate," is necessary. A "Criminal Court" means and includes every Judge or Magistrate, or body of Judges or Magistrates, inquiring into or trying any criminal case or engaged in any judicial proceeding--Section 4 of Act X of 1872;--and there are four grades of Criminal Courts in British India, viz., (i) The Court of the Magistrate of the Third Class; (ii) The Court of the Magistrate of the Second Class; (iii) The Court of the Magistrate of the First Class; (iv) The Court of Session;--Section 5^{*} of Act X of 1872. In every District, however, there must be a Magistrate of the First Class appointed by the Local Government who is called the Magistrate of the District, and he is to exercise throughout his district, all the powers of a Magistrate,--Section 35⁺ of Act X of 1872. Besides the Magistrate of the District the Local Government may appoint as many other persons as it thinks fit to be Magistrates of the First, Second, or Third Class in the District,--Section 37 of Act X of 1872. Thus all these Magistrates so appointed, when inquiring into or trying any criminal case or engaged in any judicial proceeding, are presiding over a Criminal Court. But all these Magistrates are made subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates are made subordinate to the Sessions Judge, except to the extent and in the manner provided by the Act,--Section 87 of Act X 1872. It is

contended that Section 37 of the Act refers only to the subordination of Magistrates to the District Magistrate in their executive capacity, that such subordination is not of a judicial character, and that a Magistrate of the First Class is not subordinate to the Court of the Magistrate of the District, but to the Court to which appeals from the decisions of the Magistrates of the First Class ordinarily lie, namely, the Court of Session. But Section 87 makes no provision subordinating Magistrates to the District Magistrates solely in their executive capacity, though it does limit the subordination both of the District Magistrate and Subordinate Magistrates to the Sessions Judge to the extent and in the manner provided by the Act. When we consider what is the extent of the subordination to the Sessions Judge provided by the Act, it appears chiefly to be limited to cases committed for trial to the Sessions Court, to cases coming regularly before the Sessions Judge in appeal, and to those instances in which, u/s 295* of Act X of 1872, he may at all times call for and examine the record of any Court subordinate to himself as a Court for the purpose of satisfying himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such subordinate Court. In some other respects, however, hereafter to be mentioned, the Magistrates are subordinate to the Sessions Judge. It is, however, worthy of notice that a Magistrate of the District has the same power by Section 295 as the Court of Session has over the Courts of the subordinate Magistrates. "Any Court of Session or Magistrate of the District may call for and examine the record of any Court subordinate to such Court or Magistrate for the purpose, etc, etc., etc." Here there is a distinct recognition of the subordination of Courts of Magistrates to the Magistrate of the District for a judicial purpose, that of ascertaining whether there are any grounds for revision, and for the purposes of this particular section every Magistrate in a Sessions Division is to be deemed subordinate to the Sessions Judge of the Division. This is an illustration of the subordination of the Magistrate of the District and of Subordinate Magistrates to the Sessions Judge as provided by the Act. I have used the words "judicial purpose," that of ascertaining whether there are any grounds for revision, because u/s 296 both Sessions. Judge and District Magistrate are called upon to exercise their judgment, and if they think that the judgment sent for u/s 295 is contrary to law, or that the punishment is too severe, or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court. By the second clause, in Sessions cases, if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial. This illustrates the manner in which the Sessions Court or District Magistrate is to deal with the Subordinate Magistrate. So again by Section 298 as amended by Section 31 of Act XI of 1874, the Court of Session may direct the Magistrate of the District by himself, or any Magistrate subordinate to him, or the Magistrate of the District may direct any subordinate to make further inquiry into any complaint which has been dismissed u/s 147. Here the extent of subordination is clearly laid down, and it will be observed that, when the

Magistrate of the District acts under this section, his authority extends to a Magistrate of the First Class. Those parts the Code which deal with commitments to a Court of Session and to appeals sufficiently show to what extent the Courts of the Magistrates are subordinate to the Sessions Judge in respect of the case which come before him as a Court of Session or Judge of Appeals, and do not require further consideration. But the Act provides for the subordination of the Magistrates to the Sessions Judge in some other cases, as for instance the Sessions Judge can in any case, whether there be an appeal on conviction or not, direct that an accused person may be admitted to bail, or that the bail required by a Magistrate be reduced--Section 390 of Act X of 1872. He can also order or refuse a commission for the examination of a witness in cases under trial by a Magistrate--Section 330 of Act X of 1872, On the other hand Section 328 appears to give the Magistrate of the District considerable power over all Magistrates subordinate to him, even to the extent of ordering a new trial where a conviction has passed upon evidence not wholly recorded by the Magistrate before whom the conviction was had, if he is of opinion that the accused person had been materially prejudiced thereby--Section 328 of Act X of 1872. Under this section a Court of Appeal, and the District Magistrate, both are superior Courts to those of the Magistrate. The District Magistrate may also hear an appeal against the order of a Magistrate of the First Class requiring security for good behaviour--Section 267 of Act X of 1872.

9. It will be thus seen that the Magistrates of the First Class are to some extent judicially subordinate to the Magistrate of the District, as also to the Sessions Judge. But it is nowhere laid down that the Magistrate of the First Class is to be subordinate to the Magistrate of the District only so far as is provided by the Act, whereas neither the Magistrate of the District, nor the Subordinate Magistrate, are subordinate to the Sessions Judge" except to the extent and manner provided by the Act,"--Section 37. It would seem therefore that the words "all such Magistrates shall be subordinate to the Magistrate of the District" do not point exclusively to Magistrates in their executive, but also apply to them in their judicial character, except so far as the Act makes them subordinate to the Sessions Judge. It has been contended that the test as to the nature of the subordination of a Magistrate of the First Class to the Sessions Judge or Magistrate of the District lies in the answer to the following question: To whom does an appeal lie from the Magistrate's decision? But this is, as we have seen, not the conclusive test. The true test is to be found in the words "except to the extent and manner provided by the Act." It is not provided in Section 468 that application is to be made to the Court of Session or to the High Court, but the words used are "except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate." Nor has the Act provided in this section, or anywhere else, that in respect of an application of the nature contemplated by Section 468 the Magistrate's Court is subordinate to that of the Sessions Judge, and therefore his interference would appear to be barred under the proviso in Section 37 of the Act.

The Magistrate of the First Class, it is urged, has the same powers as the Magistrate of the District has, and therefore the latter acting as a Criminal Court within the terms of Section 4 is not a Criminal Court superior to that of the former, who therefore cannot be said to be subordinate to it in the sense required by Section 468. But the Magistrate of the District is specially appointed as such by the Government, and he exercises throughout his District all the powers of a Magistrate--Section 35 of Act X of 1872--and he does so although the District may have been divided into divisions--Section 40^{*} of Act X of 1872. A Magistrate of the First or Second Class may be placed in charge of a Division of a District, and the officer so appointed exercises the powers conferred upon him under the Act, or under any law for the time being in force, "subject to the control of the Magistrate of the District"--Section 46 of Act X of 1872. The Government may also delegate its own powers of placing these Magistrates in Divisions of a District to the Magistrate of the District again, every Magistrate in a Division of a District is subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District--Section 41⁺ of Act X of 1872--so that throughout his District the subordination of all Magistrates to the Magistrate of the District is clearly provided for both in his executive and judicial character, except when the Magistrates are made by the Act subordinate to the Sessions Court. Whenever then the Magistrate of the District is engaged in any judicial proceeding, although he may not have larger powers in respect to the trial of offences and to passing sentences on persons convicted of them than a Magistrate of the First Class has, his Court is a Criminal Court to which the Courts of the Magistrates, except where they are made subordinate to the Sessions Judge, under the proviso of Section 37, are subordinate. Some doubt was expressed whether the entertainment of an application u/s 468 could be regarded as part of a judicial proceeding. But a judicial proceeding as defined in Section 4 includes any proceeding in the course of which evidence is or may be taken, and it cannot be denied that any Court to whom "a complaint" (in the words of Section 468) of an offence against public justice is made, would be at liberty, if it pleased, to examine the complainant, and even take evidence if it thought that there was any necessity to do so, in order to enable the Court to determine whether or not sanction should be given. There can therefore be no doubt that any Magistrate or Sessions Judge engaged in determining whether the complaint under the section should be entertained would be acting as a Criminal Court. Again, the application made for sanction is "the complaint." The sanction may be expressed in general terms, and, authority once given, the complaint may be entertained. That is so seems certain from the explanation attached to Section 470, that in cases under this chapter the report or application of the public servant or Court shall be deemed sufficient complaint. If so, then the application by a private individual for sanction is a sufficient complaint u/s 468 and Section 469 of the Code, for he appears in Court personally or by pleader, and subjects himself to examination.

10. In conclusion, I would say, in reply to the question, that the Sessions Judge had not power, u/s 468, to sanction the prosecution of Hira Lal and others, demanded by Gur Dayal for offences punishable under Sections 211 and 193 of the Indian Penal Code.

Oldfield, J.

11. The question is whether the Court of a Magistrate of the First Class is a Criminal Court subordinate to the Court of Session, within the meaning of Section 468 of the Criminal Procedure Code, so as to enable the Sessions Court to give sanction to entertain a complaint of an offence against public justice committed before or against the Magistrate's Court. By Section 37 of the Code Magistrates are not subordinate to the Sessions Judge except to the extent and in the manner provided by the Criminal Procedure Code, and it is argued that, with reference to this section, the Magistrate's Court cannot be held to be subordinate to the Sessions Court for the purposes of s. 468, there being no provision making the Magistrate subordinate for the purposes of that section.

12. But it is to be noticed that the word used in Section 468 is not Magistrate but Criminal Court, the sanction is required of the Court to which the Criminal Court is subordinate before which the offence is committed, not of the Sessions Judge to whom the Magistrate is subordinate. The argument proceeds on the supposition that the term Magistrate in Section 37 and Criminal Court in Section 468 are used indiscriminately, but Section 4 of the Code contains a special definition of the term Criminal Court. It is something more than Magistrate. "Criminal Court" means and includes every Judge or Magistrate, or body of Judges or Magistrates, inquiring into or trying any criminal case or engaged in any judicial proceeding. When we find a special definition of the term Criminal Court, I think it is putting a strained meaning on the term Magistrate in Section 37 to say that it extends so as to include Criminal Courts. A Criminal Court may mean and include a Magistrate, but the term Magistrate will not necessarily mean and include a Criminal Court. If Section 37 had been dealing with the Subordination of Criminal Courts, it is reasonable to suppose that the words Criminal Courts would have been used instead of Magistrate. The distinction is one which the Code itself draws, and is important, for while Section 37 limits the subordination of Magistrates to Sessions Judges, there is nothing in the Code to the effect that the Court of the Magistrate of the First Class is not subordinate to the Court of the Sessions Judge, but on the contrary its subordination as a Criminal Court, that is, where a Magistrate is acting judicially, seems contemplated and enforced by the provisions of the Code, for instance, by the appellate jurisdiction of the Sessions Court over Magistrates' Courts, and more particularly by the powers conferred on the Court of Session over the Courts of Magistrates by Sections 295 and 296. This establishment of a power of supervision and revision seems to me in itself to constitute a subordination, within the meaning of Section 468. Section 37 may be dealing with the subordination of Magistrates

personally and executively, and not with Criminal Courts. I do not think we need consider it in interpreting Section 468, which deals with the subordination of Criminal Courts, but be this as it may, as I have already remarked, it seems to me that the intention and effect of Sections 295 and 296 are to constitute the subordination to the Sessions Court of the Magistrates' Courts; which thereby become subordinate Criminal Courts within the meaning of that term in Section 468. I think we have in Section 419 an indication of what is intended to constitute subordination of Criminal Courts. That section is dealing with orders passed by Criminal Courts for disposal of property and runs: "Any Court of Appeal, Reference, or Revision, may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter or annul it." The use here of the words subordinate Court seems to show that Courts over which Courts of Appeal, Reference, and Revision are appointed, are subordinate to the latter in the meaning of the term as used in the Code. This subordination will not of course enable the Sessions Court to exercise any powers over the Magistrate's Court other than those allowed by the Code. The learned Judges who decided *Imperatrix v. Padmanabh Pai* ILR Bom. 384, and who have taken a contrary view to the one I have expressed, seem to consider that the Legislature intended that the sanction contemplated should be given by the Court before which the offence was committed or by the Appellate Court or the High Court, in fact that the Legislature intended to recognise a subordination of the Magistrates' Courts to the Sessions Court, within the meaning of Section 468, but they consider that, in face of the express provisions in Section 37 applied to Section 468, they cannot give effect to a possible intention of the Legislature. For my part, I think that the law as it stands and the intention of the Legislature are not irreconcilable.

13. My answer to the reference is that the Sessions Court has power u/s 468 to sanction the prosecution.

-----Foot Note-----

*[Subordinate Magistrates.

Section 37: The Local Government may appoint as many other persons besides the Magistrate of the District, as it thinks fit to be Magistrates of the first, second or third class in the District.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District, nor the subordinate Magistrates shall be subordinate to the Sessions Judge except to the extent and in the manner provided by this Act.

Proviso.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any

sentence which Magistrates of his class are not authorized to pass by section twenty.]

+ [Definitions.

Section 4: In this act the following words and expressions have the following meanings unless a different intention appears from the context:

Criminal Court.

"Criminal Court" means and includes every Judge or Magistrate or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.]

+ [Grades of Criminal

Section 5: Besides the High Courts, there shall be four grades of Criminal Courts in British India.

I.--The Court of the Magistrate of the 3rd class.

II.-- Do. do. do. 2nd class.

III.-- Do. do. do. 1st class.

IV.-- The Court of Session.]

*[Magistrate of the District.

Section 85: In every district there shall be a Magistrate of the First Class appointed by the Local Government, who shall be called the Magistrate of the District, and shall exercise throughout his district all the powers of a Magistrate.]

*[Power of Court of Session and Magistrate to call for record of Subordinate Courts.

Section 295: Any Court of Session, or Magistrate of the District may at all times call for and examine the record of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to legality of the proceedings of such subordinate Court. For the purposes of this section, every Magistrate in Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.]

*[Local Government may put Magistrate in charge of Division.

Delegation of power to Magistrate of District.

Section 40: The Local Government may place a Magistrate of the First or Second Class in charge of a Division of a District. Such Magistrate shall be called a Magistrate of the Division of a District and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District. The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.]

+ [Subordination of officers to magistrate of Division of District.

Section 41: Every Magistrate of District shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.]