(1909) 09 BOM CK 0003

Bombay High Court

Case No: None

Safurabai		APPELLANT
	Vs	
Abdullabhai Readymoney		RESPONDENT

Date of Decision: Sept. 28, 1909

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 195

Citation: 4 Ind. Cas. 273(1)

Hon'ble Judges: Beaman, J

Bench: Single Bench

Judgement

Beaman, J.

In resisting this application for sanction, two points were raised upon which I think it desirable to make my own view clear. Relying upon some dicta in the books I was told that the principle upon which Judges gave sanction was that they must not only be sure that the offence had been committed, but that it was likely that the accused; would be convicted. The cases, to which I was. referred in support of this principle, are old Calcutta cases and without meaning the least disrespect to the learned Judges responsible for them, I am unable to accept such a principle. I find absolutely no warrant for it in the statute law; it appears to me radically unsound in theory, and likely to prove mischievous in practice. If the principle is sound and universally recognized,then every Judge who sanctions the prosecution of a person u/s 195, Criminal Procedure Code, informs the Court, usually a subordinate Court, which has to try the case that in the opinion of the sanctioning Judge, not only is the prisoner guilty, but that he ought to be convicted. Such an application of the principle clearly stated is shocking. It is not only, in my opinion, inconsistent with the plain intention of the legislature but is opposed to the fundamental principle of all English criminal justice. Once attach this implication to sanctions and the Magistrate who has to try the charge will start, proceedings, not presuming that the prisoner is innocent till he is proved to be guilty, but assured that the Judge who has permitted the trial has

already found him guilty. The true rule is that before granting sanction the Judge should be satisfied that there is a reasonable prima facie case, fit to be tried. And as such applications are made to the Judge before whom the alleged offence has been committed, he is usually in a position to say with some confidence, merely upon the contents of the application, whether sanction ought or ought not to be given. This too, follows from the simple fact, too often overlooked in argument, that giving sanction to prosecute does not involve any trial of the issue, nor necessarily forming any definite opinion one way or the other upon the prisoner''s guilt, but is restricted to removing a bar to this question being formally tried in another place.

2. Very similar considerations govern the second point. Applications for sanction are commonly supported by affidavits. The rules of the High Court allow counsel, with the permission of the Court, to cross-examine upon affidavits. It was pressed upon me that counsel should not be refused this privilege merely because the matter happened to be of a criminal and not of a civil nature. This appeal, on the face of it plausible, overlooks a distinction so plain, indeed so obvious, that I should hardly have thought it would be necessary to point it out. An affidavit made in support of an application for sanction to prosecute by one who may be the principle witness, perhaps the only witness against the prisoner at the subsequent, trial, is on a different footing altogether from an affidavit made in support of some motion or rule to obtain civil relief. The latter is addressed to the very question which the Judge himself has to decide; the former is addressed directly, it is true, to such a question but indirectly and ultimately to the matter which will have to be enquired into and tried by another Court. If in support of an application for sanction to prosecute, the affidavits disclose materials sufficient, if unexplained and uncontradicted, to raise a prima facie case against the accused person, that is all that is needed. at that stage. Going further, calling the makers of the affidavits, examining them in this Court allowing them to be cross-examined, in effect holding the whole trial here, would be substituting the sanctioning Judge''s for the Magistrate''s Court. If all that could and ought properly to, be done by the Judge granting sanction, then what would be the use of sending the case to a Magistrate at all? The Judge so far from confining himself to his duty of determining whether or not he ought to remove a bar to the trial of the prisoner before a competent Magistrate would be actually trying the prisoner himself. If at the conclusion of that trial he gave sanction it would be tantamount to having found the prisoner guilty, and the Magistrate would have to deal with the same evidence weighted with the expressed opinion of a Judge of the Superior Court. No objection of the kind can apply to affidavits in civil matters, which the Judge has to dispose of himself. That is why, I think that on principle and as a general rule no cross-examination should be allowed on affidavits in support of an application for sanction to prosecute.

3. Having now, I hope, shown that these popular and current ideas and arguments are erroneous and unsound, I come to the main question whether in all the circumstances I should allow Abdulla Readymoney to be prosecuted on the charges

stated in the application for sanction. That must always be a matter of discretion. A Court will not invariably and as a matter of course give sanction to prosecute to a private individual even where there is a prima facie case of, at any rate, technical perjury Other considerations have to be weighed. Speaking generally I am reluctant to give sanctions to prosecute which may be used as engines of oppression, intended to stifle an appeal. I do not say that that is the case here. But where there is an appeal pending such applications by the party against whom the appeal is preferred must be open to that kind of suspicion. And the case is peculiar in many ways, so peculiar that I did for special reasons allow the witness Ismail Nur Mahommed to be called and examined. His evidence whether true or false could be of no use whatever now to the prosecution; thus the application is materially weakened on what appeared to be the strongest charge. I do not say that even so the prosecution might not succeed assuming that a Magistrate Would believe Abdulla and that the bailiff really did give the evidence which the applicant says she hopes he would give. Moreover, there are the other charges which, whether trivial or not, might well be thought to be perjury if they were established; I do not attach much importance to the argument that the points are trifling and immaterial, or that if sanction were granted in this case it Would have to be granted in every case against 6ne or the other party to a civil suit. Because, although on the surface these alleged contradictions do not appear very serious, it might be shown that in relation to the scheme of the defendant''s case, as it developed, this is not in fact so. I have given the whole matter very careful consideration and my conclusion is that having regard to certain wide principles of policy, I should not grant this sanction. It was said in the argument that in delivering judgment I had taken a very strong line against the defendant Readymoney, as strong alien as could be taken. I think that is so The case is under appeal. If the Court of appeal should agree with my view then, I think, that would be punishment enough for Readymoney. If the Court of appeal should differ from my view I cannot help feeling that it would look a little vindictive at this Stage to grant a sanction to prosecute the defendant, especially on the application of a private person, party to both the suit and the appeal. I could indeed wish that all applications of the kind should be made by the Public Prosecutor who could be depended upon not to lend himself to any improper use of this power.

4. I reject this application.