courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(1912) 11 BOM CK 0016

Bombay High Court

Case No: Criminal Application for Revision No. 317 of 1912

In Re: Nanchand Shivchand — APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 13, 1912

Acts Referred:

- Bombay District Municipal Act, 1901 - Section 22
- Criminal Procedure Code, 1898 (CrPC) - Section 195

Citation: (1913) 15 BOMLR 45

Hon'ble Judges: Rao, J; Batchelor, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Batchelor, J.

In this case there is pending against the present petitioner a prosecution which imputes to the petitioner the offence of attempting to fabricate false evidence against the complainant to the effect that the complainant offered to give bribes and threatened people in the matter of the election of the Sirur Municipality for the purpose of using such false evidence in a judicial-proceeding, that is to say, in the proceeding which took place before the District Judge, acting u/s 22 of the Bombay District Municipal Act of 1901. The prosecution is pending in the Sub-Divisional Magistrate''s Court. The question which arises on this petition is whether such a prosecution is competent without previous sanction having been obtained u/s 195 of the Criminal Procedure Code. Admittedly the offence alleged against the petitioner falls u/s 193 of the Indian Penal Code, and that is one of the sections which are mentioned in Clause (1) of Section 195 of the Criminal Procedure Code as requiring the previous sanction of the Court where the alleged offence is committed in or in relation to any proceeding in any Court. There is no doubt in this case that the offence as alleged was committed in or in relation to the proceeding before the District Judge acting u/s 22 of the Municipal Act; and the only question which

now falls to be determined is whether the District Judge when so acting is or is not a Court within the meaning of Clause (b) of Section 195 of the Criminal Procedure Code. If he is to be regarded as a Court then admittedly this prosecution is bad, being without the sanction required by law. The word " Court" is not defined in the Criminal Procedure Code itself ; but in Sub-section 2 of Section 195, it is provided that in cls. (b) and (c) of Sub-section (1), the term " Court" means a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act of 1877." The learned Government Pleader for the opponents has called our attention to the case of Balaji Sakharam Gurav v. Merwanji Nowroji-Antia (1895) P.J. 544 where it was held that a District Judge acting under a section, corresponding with that now before us, is not a " Court" within the meaning of Section 622 of the old Code of Civil Procedure,, This, however, as it seems to us, does not carry the matter very far, for the only point which then engaged the attention of the Bench was whether the District Judge when acting under the Municipal Statute was a Civil Court-amenable to the revisionary jurisdiction of this Court. The fact that that question had to answered in the negative seems to us to throw but little light upon the different question whether the District-Judge-in such circumstances is or is not a Court for the purposes of Section 195 of the Criminal Procedure Code. Upon this point we think that guidance is afforded to us by the decision in Raghoobuns Sahoy v. Kokil Singh ILR (1890) Cal. 872 where the learned Judges say that the word " Court" in the Criminal Procedure Code certainly has a wider meaning than the words " Court of Justice," as defined in the Penal Code. " Having regard", they say, " to the obvious purpose for which Section 195 was enacted, we think that the widest possible meaning should be given to the word "Court" as occurring in that section". We agree with this interpretation of the section, for-it appears to us that the reason of the thing is in favour of-that view. In other words we think that the same reasons which necessitate the precautions imposed on a prosecution in respect of offences committed in regard to an ordinary Civil or Criminal Court equally require that those precautions be observed where the alleged offences have occurred in connection with proceedings held by the District Judge acting under the Municipal Act. It may be observed also that the word " Court" as defined in Section 3 of the Evidence Act is wide enough to include a District Judge acting as described. In that capacity the District Judge is by the Statute empowered to receive evidence on oath, to hold inquiry into the matters in controversy, to summon and enforce the attendance of witnesses, and finally to decide the matters in dispute, making such award of costs as to him may seem right. It is true that in Sub-section 2 of Section 22 the District Judge is described as empowered to act as if he were a Civil Court, and it may be suggested that these words negative the theory that he is in law a Civil Court. That, however, does not negative the view that he may be a Court, and that he should be a Court, whether Civil or other, is all that is required u/s 195 of the Criminal Procedure Code. Following the Calcutta decision which we have cited we think that he should be so regarded.

2. Upon these grounds we are of opinion that this prosecution is unsustainable, inasmuch as it has not received that sanction which the law imperatively requires. The rule,

therefore, must be made absolute and the proceedings hitherto held before the sub-divisional Magistrate must be set aside.