

ORIGINAL CRIMINAL.

Before Sanderson C.J.

EMPEROR

v.

DONALDSON.*

1916

March 13.

Perjury—Power of High Court to direct prosecution when false evidence given before the Committing Magistrate in the mofussil—Nearest first class Magistrate—Presidency Magistrate—Criminal Procedure Code (Act V of 1898), s. 476—Practice.

Where a witness examined during the trial of a prisoner at the Original Criminal Sessions of the High Court has intentionally made false statements before the committing officer at B in the district of Alipore, the High Court has jurisdiction, under s. 476 of the Criminal Procedure Code, to send the case of the witness for inquiry or trial to the District Magistrate of Alipore as the nearest Magistrate of the first class.

Kedar Nath Kar v. King-Emperor (1), Emperor v. Tripura Shankar Sarkar (2) distinguished.

ONE David Donaldson, a European British subject, was employed as an assistant in the Anglo-India Jute Mill at Jagatdal, in the Barrackpore subdivision, under an agreement which expired in January 1916. In June or July 1915 he made the acquaintance of a Mrs. J. S. Drummond in Chandernagore, and an intimacy sprung up between them. She was in the habit of visiting him in his rooms at the mill till the matter attracted the attention of J. M. Graham, the manager of the mill. On the morning of the 5th of November Graham spoke to Donaldson of his relations with the woman, and informed him that, unless he severed his connection with her, his agreement would not be renewed.

* Original Criminal Jurisdiction.

(1) (1905) 3 C. L. J. 357.

(2) (1910) I. L. R. 37 Calc 618.

Donaldson promised to break off with her. On the same night Mrs. Drummond called at the mill with a bag containing a loaded revolver, which, it was said, she was in the habit of carrying. She went to Donaldson's room and awaited him. He came to his quarters at about 10 P.M. and she remained with him for about three hours. About an hour after he was found suffering from a bullet wound. He made a statement to the police at 6 A.M. which was regarded as the first information, and later to a Magistrate, incriminating Mrs. Drummond. She was thereupon charged with an attempt to murder him and with causing him grievous hurt. At the preliminary inquiry held by the subdivisional officer of Barrackpore, Donaldson was examined as a prosecution witness, and deposed as follows on the 20th December 1915.

At 10 P.M. I returned to my rooms. There I found her. I had a talk with her. I spoke of what had occurred between the manager and myself that morning I do not think that she directly asked me what action I meant to take. We talked the whole matter over. She was of course anxious to know my plans. I could give her no definite information. She did not wish me to sever connection with her. After about three hours she left me. She did not say where she was going nor did I know. *She took the pistol away with her. The pistol was not loaded before she left the room to my knowledge. When she left the room I think I was playing with the cartridges in my hand. I put them in the bottle after she had left. After she went, I went to sleep. I put on a sleeping suit after she left. I saw her next after I was shot. I saw the ends of her skirt disappearing round my bath-room door. Before I was shot I was asleep*

Mrs. Drummond was committed for trial to the High Court on charges of attempt to murder and grievous hurt under ss. 307 and 326 of the Penal Code. She was tried at the First Criminal Sessions before the learned Chief Justice and a jury, and Donaldson was examined as a witness for the prosecution. He now stated that he and Mrs. Drummond had agreed to commit suicide and that he had in consequence shot

1916
 EMPEROR
 v.
 DONALDSON.

1916
 EMPEROR
 v.
 DONALDSON.

himself in the bed-room whilst she was in his sitting room. He further deposed that the portions of his statements to the Committing Magistrate, set out above in italics, were false to his knowledge. Mrs. Drummond was ultimately found not guilty by the jury, on the 10th March in the proportion of 7 to 2, and their verdict was accepted by the learned Chief Justice who discharged the prisoner.

On Monday, the 12th instant, an application was made for sanction to prosecute Donaldson for giving false evidence under s. 193 of the Penal Code.

The Standing Counsel (Mr. B. C. Mitter) (instructed by *Mr. J. T. Hume*, Public Prosecutor). I apply for sanction under s. 195 (1) (b) of the Criminal Procedure Code, on behalf of the Legal Remembrancer, to prosecute Donaldson for perjury on contradictory statements, one of which must be false, following the procedure in *Emperor v. Tripura Shankar Sarkar* (1). One of the statements was made to the Committing Magistrate at Barrackpore and the other before this Court, and a question might arise as to the Court which ought to grant sanction. If the statement in the Magistrate's Court is false, sanction might be given by that Court or the High Court.

[SANDERSON C. J. referred to s. 476 of the Criminal Procedure Code.]

Section 476 would not apply having regard to the case of *Kedar Nath Kar v. King-Emperor* (2). Refers to *Aiyakannu Pillai v. Emperor* (3) and *In re An Attorney* (4). If the case was sent to the District Magistrate of Alipore, the accused might take an objection to his jurisdiction, and if any difficulty arose, an

(1) (1910) I. L. R. 37 Calc. 618. (3) (1908) I. L. R. 32 Mad. 49, 57.

(2) (1905) 3 C. L. J. 357.

(4) (1913) I. L. R. 41 Calc. 446.

application might be made to the Court in which the offence was committed.

1916
 ———
 EMPEROR
 v.
 DONALDSON.

SANDERSON C.J. I think this case is different, as regards the facts, from the cases which have been drawn to my attention. This is a case where the committal of the accused person, Mrs. Drummond, was by the Committing Magistrate sitting at Barrackpore within the district of Alipore and the case was committed to the sessions of the High Court. The case was tried by me sitting at the sessions, and the accused on Friday last was acquitted. During the course of the trial one of the witnesses, Mr. Donaldson, went back on the statements which he had made before the Committing Magistrate, and which were of a material character. When he was examined by the learned Standing Counsel, he admitted that several of the statements which he had made on oath to the Committing Magistrate were false to his knowledge. This matter was mentioned to me at the conclusion of the case, and was adjourned until this morning.

An application is now made before me on behalf of the Crown for sanction under section 195 of the Criminal Procedure Code to prosecute Mr. Donaldson for perjury. I think, however, the proper course to take is to send the case for inquiry to the nearest Magistrate of the first class, under section 476, and inasmuch as the case comes from the district of Alipore, and I am informed that the nearest Magistrate of the first class is in that district, it seems to me the natural thing is to send the case to him.

It does not seem to me that I am prevented from taking this course by the decisions which have been drawn to my attention, viz., *Kedar Nath Kar v. King-Emperor* (1) and *Emperor v. Tripura Shankar*

(1) (1905) 3 C. L. J. 357.

1916
EMPEROR
v.
DONALDSON.
SANDERSON
C.J.

Sarkar (1), because the facts of those cases were not the same as in this case.

For these reasons, the order I make is that I am of opinion that there is ground for inquiring into an offence referred to in section 195 of the Criminal Procedure Code, namely, an offence punishable under section 193 of the Indian Penal Code, which was brought under my notice in the course of the trial of Mrs. Drummond, and having made such preliminary inquiry as may be necessary, I send the case against Mr. Donaldson for inquiry or trial, as the case may be, to the nearest Magistrate of the first class. I will not send Mr. Donaldson in custody. I require him to give security for his appearance before such Magistrate to the satisfaction of the officer of this Court. He will have to appear before the Magistrate to-morrow, and, if he be not then ready to proceed, he will no doubt be afforded ample opportunity by the Magistrate to instruct a solicitor, or otherwise prepare for his defence.

I adjourn the application so far as section 195 of the Code of Criminal Procedure is concerned, and give liberty to apply, if necessary.

E. H. M.

(1) (1910) I. L. R. 37 Calc. 618.