

ingly. That the judgment-debtor had some saleable interest in the property sold is then clear, and in that case the District Munsif had no jurisdiction to make an order under s. 315 for refund of the purchase-money or any part thereof.

No appeal lay against the order passed by the District Munsif; and following the decisions of this Court in *Sivarama v. Kumbi*(1) and Civil Revision Petition 294 of 1885,(2) we deal with the case in revision and set aside the order of the District Munsif, dated 3rd October 1885, with costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Parker.

GULAM MUHAMMAD SHARIF-ÚD-DAULAH, *in re.**

1886.
January 8.

Criminal Procedure Code, s. 197--Sanction to prosecute Judge for words uttered on the bench.

Where a Judge was charged with using defamatory language to a witness during the trial of a suit:

Held that, under s. 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate without sanction.

THE facts of this case are set out in the judgment of the Court (Parker, J.)

The Acting Advocate-General (Mr. Shephard) for petitioner.

PARKER, J.—This is an application to direct the Presidency Magistrate of Black Town to entertain the complaint of petitioner against Mr. Ponnusami Pillai, 3rd Judge of the Madras Court of Small Causes, charging him with defamation and insult under ss. 500 and 504 of the Indian Penal Code. The Presidency Magistrate has refused to entertain the complaint in the absence of the sanction of Government or the High Court under s. 197 of the Criminal Procedure Code.

The petitioner was a witness before the Small Cause Judge in a case tried before him, and the expressions complained of are alleged to have been used by the Judge in addressing the witness in the course of the trial. It is contended by the Advocate-

(1) I.L.R., 8 Mad., 99.

(2) Not reported.

* Criminal Miscellaneous Petition 105 of 1885.

In re
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SHARIF-UDD-
DAULAH.

General that the expressions were not used by the Judge as a public servant, and, therefore, that no sanction under s. 197 of the Code of Criminal Procedure is necessary, and *Imperatrix v. Lakshman Sakharam Faman Hari and Balaji Krishna* (1) was referred to shew that the acts for which sanction to prosecute is required are only acts which would have no special signification except as done by a public servant. It is argued that the words complained of would be equally offensive if used by any one whether a public servant or not. The ruling quoted was one, given on s. 466 of the old Code (X of 1872), which, though the wording is different, is substantially the same as s. 197 of the present Code.

Reference was also made to the ruling of the Calcutta High Court that the corresponding section in the former Code related only to offences specified in chapter IX of the Penal Code, to which, however, the Bombay High Court has not assented, holding that the section at least applied equally to such offences as are specified in ss. 217—223, which are in chapter XI. These cases are alluded to in Prinsep's Criminal Procedure, 7th edition, page 126. The Bombay High Court agreed, however, in the principle that s. 197 related only to acts and omissions which were offences when committed by a public servant.

If defamatory language were used by a Judge to a person out of Court—when not sitting or actually officiating as a Judge—it seems quite clear that no sanction under s. 197 of the Code of Criminal Procedure would be required; but the case, as it seems to me, would be different if the same words were used by the Judge in the course of the trial of a suit. He is then acting in his official capacity and it seems impossible that the words used by him in the course of the trial can be uttered in his private capacity. The words uttered are then uttered as Judge and not as a private individual, and if any criminal offence has been committed in the uttering of them, the offence has been committed as a Judge.

That this is so is clear from the judgment of the Court of Exchequer in *Scott v. Stansfield*. (2) I must hold that the Presidency Magistrate had no jurisdiction to entertain the complaint without sanction and dismiss this application.

Solicitors for petitioner—*Branson & Branson*.

(1) I.L.R., 2 Bom., 481.

(2) L.R., 3 Ex., 220.