

[*Mahamaya Dasya v. Nitya Hari Das Bairagi* (1)]. The District Munsif must therefore receive the plaint and deal with it according to law.

SUBBA-
ROYADU
v.
GANGA YYA.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Moore.

RUNGA AYYAR

v.

EMPEROR.*

1906
November 10.

Criminal Procedure Code—Act V of 1896, s. 476—Power to direct proceedings conferred on Court and not on Magistrate trying—Dismissal of complaint without adjudication no bar to proceedings under.

The power to direct a prosecution under section 476 of the Code of Criminal Procedure is conferred on the Court and not on the individual Magistrate who tried the case. Such power is not ousted by the dismissal, without adjudication, of a complaint by the party in respect of the same offence under a sanction previously given by the Court.

THE petitioner was a witness for the prosecution in Criminal Case No. 81 of 1903 on the file of the First-class Magistrate of the Calicut Division. The case was tried by the Deputy Magistrate then in charge, who discharged the accused and granted sanction for the prosecution of the petitioner and others for perjury. The accused who obtained the order granting sanction presented an unstamped complaint which was dismissed.

The Head Assistant Magistrate, who succeeded in charge of the Division, directed the prosecution of the petitioner and others under section 476 of the Code of Criminal Procedure.

(1) I.L.R., 23 Calc., 425.

* Criminal Revision Case No. 372 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of F. Noyce, Esq., Assistant First-class Magistrate in charge of Calicut Division, in the matter of Miscellaneous Case No. 4 of 1904 according sanction for the prosecution of the petitioner in Criminal Case No. 81 of 1903 on the file of his Court.

RUNGA
AYYAR
v.
EMPEROR.

Against the order of the Head Assistant Magistrate, the petitioner presented this revision petition.

V. Krishnaswami Ayyar and M. R. Sankara Ayyar for the petitioner.

The Public Prosecutor *Mr. E. B. Powell* opposed the petition.

ORDER.—We are clearly of opinion that the Court of the Assistant First-class Magistrate in charge of Calicut Division had jurisdiction under section 476 of the Criminal Procedure Code to direct the prosecution, though the Magistrate who made the order under section 476 was not the same Magistrate who tried the case. The power is given to the Court, not to the individual Magistrate. Nor does the fact that the complaint was rejected as not properly stamped in any way bar the jurisdiction of the Court. There was no adjudication on the matter. It was not even necessary for the Court to have read the complaint before rejecting it as not properly stamped.

As the Court of the Assistant First-class Magistrate in charge of Calicut Division had jurisdiction, we have no power to interfere with his order. We may say that we entirely agree with his opinion that it is to be regretted that the Court did not originally deal with the matter under section 476 of the Criminal Procedure Code instead of merely giving sanction to prosecute. We dismiss the petition.