

APPELLATE CRIMINAL.

Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.

EMPEROR

v.

MADIGA NALLAVADU *

1908
November
18.

Criminal Procedure Code—Act V of 1898, s. 339, cl. 3—How sanction of High Court under section obtainable.

The sanction of High Court under section 339 (3) of the Code of Criminal Procedure can be obtained only by motion on behalf of the Crown.

Queen Empress v. Manik Chandra Sarkar, (1897) (I L.R., 24 Calc., 492), followed.

PETITION under section 339, clause 3 of the Code of Criminal Procedure, by M. Ghose, Sessions Judge of Cuddapah, for sanction of the High Court to prosecute an approver.

The facts are sufficiently stated in the letter of Sessions Judge which is as follows:—

In Sessions Case No. 42, three accused were tried on a charge of murder under section 302, Indian Penal Code, having been committed for trial by the Sub-Magistrate, Madanapalli. One of the witnesses for the prosecution was one Madiga Nallavadu who was made an approver having been accorded a conditional pardon by the District Magistrate under section 337, Criminal Procedure Code.

2. In his deposition before this Court the approver, Nallavadu, stated that only the second accused beat the deceased, whereas, before the Committing Magistrate he said that both the second and third accused beat her, and when asked if he made such a statement in the lower Court, he denied having said so. In thus denying he had given false evidence and I accorded sanction for his prosecution under section 193, Indian Penal Code, but the Head-quarters Deputy Magistrate, Cuddapah, to whom the approver was sent considers the sanction of High Court necessary.

3. Section 339 (3), Criminal Procedure Code, requires the sanction of the High Court only when the prosecution relates to any

* Criminal Miscellaneous Petition No. 236 of 1908.

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false averment contained in the statement made by the approver relative to the offence under inquiry. Pardon was granted to the approver on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence, and, if in narrating the circumstances he utters a falsehood, the sanction of the High Court would certainly be necessary for his prosecution. In the present case, however, his prosecution has been sanctioned not on the ground that he failed to satisfy the conditions under which the pardon was granted or that he made a false averment in narrating the circumstances of the offence but on quite an independent ground, viz., that he denied having made a statement which he actually did make as is shown by the record of his deposition in the lower Court. Such a case does not in my opinion come under the purview of section 339, clause 3 of the Criminal Procedure Code. But as the Deputy Magistrate considers my sanction insufficient I have the honour to solicit the sanction of the High Court for prosecuting the approver under section 193 Indian Penal Code.

4. The approver's deposition in this and the lower Court and a copy of the judgment in the case are herewith submitted for perusal.

The Acting Public Prosecutor in support of the reference.

ORDER.—If the sanction of the High Court is desired under section 339 (3), there should be a motion on behalf of the Crown—vide *Queen-Empress v. Manick Chandra Sarkar* (1). We therefore decline to do anything on the Sessions Judge's letter. The records will be returned.

(1) (1897) I.L.R., 24 Cal., 492.
