

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

VENKATESA AYYANGAR, PETITIONER.*

1902.
July 21.

*Criminal Procedure Code—Act V of 1898 s. 195—Grant of sanction to prosecute—
Failure to decide that a prima facie case has been made out—Legality of
sanction*

Application was made to a Second-class Magistrate for sanction to prosecute a person on a charge of abetment of giving false evidence in a judicial proceeding. The Magistrate held an enquiry and examined three witnesses, and then refused to accord sanction. Application was then made to the Sub-Divisional Magistrate, who granted sanction. In doing so, he did not hold that a *prima facie* case had been made out, or that there was a probability of securing a conviction. He expressed the view that it was essential that the truth of the matter should be threshed out and, for that reason, sanctioned the prosecution as that appeared to be the only course by which it could be decided whether or no the very serious offence charged had been committed:

Held, that this was no ground for granting sanction, or for setting aside the order of the Second-class Magistrate refusing sanction.

PETITION to revise an order according sanction to prosecute. Application was made to the Second-class Magistrate of Tiruvadamardur for sanction to prosecute the petitioner on a charge of abetment of giving false evidence in a judicial proceeding. After holding an enquiry and examining three witnesses, the Magistrate refused to grant sanction. Application was then made to the Sub-Divisional Magistrate of Kumbakonam, who, by an order dated 4th April 1902, granted sanction. He said (after referring to the charge and to the proceedings before the Second-class Magistrate and to the arguments addressed to him): "I consider it is essential that the truth of the matter should be threshed out and, for that reason, I sanction the prosecution of the counter-petitioner as this appears to be the only course by which it can be decided whether or no this very serious offence was committed."

Against that order, petitioner presented this Criminal Revision petition.

B. Sadagopachariar for petitioner.

* Criminal Revision Petition No. 141 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of Lionel Vibert, Sub-Divisional Magistrate of Kumbakonam, dated 4th April 1902, in Criminal Miscellaneous Petition No. 1 of 1902.

VENKATESA
ATYANGAR.

JUDGMENT.--The petitioner is accused of abetment of giving false evidence in a judicial proceeding before the Second-class Magistrate of Tiruvadamarudur. An application was made to the Magistrate for sanction, under section 195 of the Criminal Procedure Code, to prosecute the petitioner. The Magistrate held an enquiry in connection with such application and after examining three witnesses refused to give sanction. Against this order of refusal an application was made, under section 195 of the Criminal Procedure Code, to the Sub-Divisional Magistrate of Kumbakonary to set aside the order refusing sanction and to grant sanction. This application was granted; application is now made by the petitioner to this Court, under section 439 of the Criminal Procedure Code, for revising the order of the Sub-Divisional Magistrate and revoking the sanction accorded by him. The Sub-Divisional Magistrate does not say that there is any *prima facie* case made out against the petitioner, or that there is any probability of securing a conviction if he be prosecuted. He simply says that he "considers it essential that the truth of the matter should be threshed out and that for that reason" he "sanctions the prosecution of" the petitioner "as this appears to be the only course by which it can be decided whether or no this very serious offence was committed." This is clearly no ground whatever for exercising the powers vested in Courts to grant sanction for prosecution (*vide* judgment in Criminal Revision Case No. 244 of 1902(1)) and the Sub-Divisional Magistrate was not warranted in law in setting aside on such grounds the order of the Second-class Magistrate refusing to accord sanction, and I accordingly set it aside and quash the sanction accorded by the Sub-Divisional Magistrate.

(1) *Vide* page 118 *supra*.
