

BAPU
v.
BAPU.
WHITE, C.J.
SANKARAN
NAIR, ABDUR
RAHIM,
AYLING AND
SADASIVA
AYYAR, JJ.

This case coming on for hearing in pursuance of the above order, and upon hearing the arguments of the pleaders aforementioned, the following OPINION of the Court was delivered by WHITE, C.J.—We are not prepared to dissent from the conclusion arrived at by a Full Bench of this Court in *Muthusawmi Mudali v. Veeni Chetti*(1).

We think, however, the power conferred upon this Court by section 195 (6) of the Code of Criminal Procedure is not a part of the appellate and revisional jurisdiction of this Court conferred by Chapters 31 and 32 of the Code of Criminal Procedure. It is a special power conferred by section 195 (6). It follows, therefore, that when the Judges are equally divided the case is governed by section 36 of the Letters Patent and not by section 429 or section 439 of the Code of Criminal Procedure.

Our answer to the first question referred to us is in the affirmative. Our answer to the second question is that, in the case stated, the provision described in section 36 of the Letters Patent is to be followed.*

N.R.

APPELLATE CRIMINAL—FULL BENCH.

Before Sir Charles Arnold White, Chief Justice, Mr. Justice Miller and Mr. Justice Oldfield.

1913.
March 26.

BAPU *alias* KRISHNAYEN (PETITIONER), APPELLANT,

BAPU *alias* AUDIMULAM PILLAI (COUNTER-PETITIONER),
RESPONDENT.†

Criminal Procedure Code (Act V of 1898), sec. 195—Sanction, granting of, under, to be made on legal evidence—Section 195 (b), High Court hearing an appeal under—Judges divided equally in opinion—Whether an appeal lies under article 15 of the Letters Patent.

A Magistrate received a complaint of criminal breach of trust, examined the complainant on oath under section 200, Criminal Procedure Code, but suspecting

(1) (1907) I.L.R., 30 Mad., 382 (F.B.).

[Compare the note of the reporter at the end of the report of *In re An Attorney* (1914) I.L.R., 41 Cal., 734 at p. 743.]

† Letters Patent Appeal No. 48 of 1912.

the complaint to be false referred it under section 202, Criminal Procedure Code, to a Police Inspector for investigation and on receiving the report of the Inspector to the effect that the case was entirely false dismissed the complaint under section 203, Criminal Procedure Code. On an application being made for sanction to prosecute the complainant for preferring a false complaint, the Magistrate asked the complainant to show cause why sanction should not be given but as no witnesses were examined by him to show the truth of his complaint, the Magistrate granted sanction.

Held, affirming the decision of SUNDARA AYYAR, J., that the above materials did not constitute legal evidence for the Magistrate to grant the sanction and that hence the sanction given should be set aside.

Quære: Whether an appeal under section 15 of the Letters Patent lies against an order of a Division Bench of the High Court when one of the Judges differs from his colleague on hearing an application under section 195 (b), Criminal Procedure Code, to revoke a sanction granted by a lower Court.

APPEAL under article 15 of the Letters Patent against the judgment of SUNDARA AYYAR, J., in *Bapu v. Bapu*(1), whose judgment prevailed according to the decision of the Full Bench—see page 768 supra.

The facts of the case appear from the ORDER OF REFERENCE to FULL BENCH—vide page 751 supra.

C. S. Venkatachariyar for the appellant.

The Honourable Mr. *L. A. Govindaraghava Ayyar* and *K. Jagannadha Ayyar* for the respondent.

M. D. Devadoss for the *Public Prosecutor* for the Crown.

The following order of the Court was delivered by

WHITE, C.J.—On the materials before us we are not prepared to say there was legal evidence before the Second class Magistrate on which the order should be made; we therefore dismiss the appeal.

WHITE, C.J.,
MILLER AND
OLDFIELD,
JJ.

It is not necessary to consider the preliminary objection that no appeal lies.

N.R.

(1) (1916) I.L.R., 39 Mad., 750 (F.B.).