

## APPELLATE CRIMINAL.

*Before Mr. Justice Krishnan and Mr. Justice Wallace.*

PALLIKUDATHAN ALIAS SAMUDI GOUNDAN  
(PETITIONER), PETITIONER,\*

1923,  
August 7.

v.

BUDDA GOUNDAN (1ST COUNTER-PETITIONER), RESPONDENT.

*Code of Criminal Procedure (Act V of 1898)—Section 195 (1)—Previous sanction of public servant concerned or some public servant to whom he is subordinate—False information to Village Magistrate—Section 182, Indian Penal Code—sanction by Sub-Magistrate—Jurisdiction—Village Magistrate, whether subordinate to Sub-Magistrate.*

A Village Magistrate is not subordinate to a Sub-Magistrate within the meaning of section 195 (1) of the Code of Criminal Procedure and therefore a Sub-Magistrate is not the proper authority to accord sanction for the prosecution, for an offence under section 182 of the Indian Penal Code, of a person who gave false information to a Village Magistrate.

*The Queen v. Periannan*, (1882) I.L.R., 4 Mad., 241, not followed.

*Venkatasami v. Narasimhayya*, (1908) 4 M.L.T., 214, referred to.

PETITION praying that in the circumstances stated therein the High Court will be pleased to set aside the order, dated the 30th September 1922, of U. RAMA RAO, District Magistrate, Salem, in Criminal Miscellaneous Case No. 64 of 1922 revoking the sanction granted by M. A. KUTTALINGAM PILLAI, the Stationary Second-class Magistrate of Harur, in Miscellaneous Case No. 5 of 1922 for the prosecution of the respondent.

Petitioner applied to the Stationary Sub-Magistrate of Harur for sanction to prosecute the counter-petitioner for offences under sections 193 and 211 of the

\* Criminal Miscellaneous Petition No. 105 of 1923.

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Indian Penal Code, alleging that he had launched against him a false complaint of house-breaking and theft in a building, and gave false evidence to secure his conviction for offences under sections 457 and 380 of the Indian Penal Code, and that the complaint was thrown out as being a false one. The case before the Sub-Magistrate was the result of a report made to the Village Magistrate by the counter-petitioner.

The Sub-Magistrate held that the report to the Village Magistrate amounted to false information given to a public servant with a view to induce him to exercise his lawful powers to the injury or annoyance of some person and that it therefore constituted an offence under section 182 of the Indian Penal Code. He also held that the counter-petitioner gave false evidence in a judicial proceeding in support of his false complaint and that therefore there was a *prima facie* case against him under section 193 of the Indian Penal Code. He accordingly gave the petitioner sanction to prosecute the counter-petitioner for offences under sections 182 and 193 of the Indian Penal Code. On an application for revocation of the sanction the District Magistrate of Salem held that the order in respect of an offence under section 182 had been made without jurisdiction as the sanction should be that of the public servant concerned or some public servant to whom he was subordinate and that the Village Magistrate was not subordinate to the Stationary Sub-Magistrate. In respect of the alleged offence under section 193, he held that no *prima facie* case was made out and he accordingly revoked the sanction. The petitioner applied to the High Court to set aside this order.

*K. V. Sesha Ayyangar* for the petitioner.

*T. M. Krishnaswami Ayyar* for the respondent.

The Court delivered the following

JUDGMENT.

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This is an application to this Court for the grant of sanction to prosecute the counter-petitioner under sections 182 and 193, Indian Penal Code. Originally the application was made to the Sub-Magistrate under sections 193 and 211, Indian Penal Code, but the Sub-Magistrate finding that no charge was made against the counter-petitioner by the petitioner converted the application into one under section 182, Indian Penal Code, and proceeded to grant sanction under that section and section 193 for giving false evidence before him. On appeal to the District Magistrate the order granting sanction under both the sections of the Indian Penal Code was revoked. The petitioner comes here and claims that we should give that sanction now.

Taking section 182 first it is quite clear that the Sub-Magistrate had no authority whatever to grant any sanction in this matter because he was not the public servant to whom the information concerned was given. It was given to the Village Magistrate. It is contended before us that the Sub-Magistrate should be taken as a superior authority to the Village Magistrate under section 195, Criminal Procedure Code, and the ruling in *The Queen v. Periannan*(1) is relied on for the purpose; but we are unable to concur with that ruling. It was not followed by this Court in the case in *Venkatasami v. Narasimhayya*(2). The learned pleader for the petitioner was not able to explain how the Village Magistrate could be taken to be subject to the authority of the Sub-Magistrate as a public servant.

It was also argued that we cannot go into the question ourselves because the District Magistrate who

(1) (1882) I.L.R., 4 Mad., 241.

(2) (1908) 4 M.L.T., 214.

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revoked the sanction did so in his capacity as the executive head of the district and that he is not subject, in his capacity as such public servant, to our control. But it is unnecessary to decide this point, for we think that no sanction could properly have been given by the Sub-Magistrate and the revocation of that sanction under section 182, Indian Penal Code, is therefore right. The application so far as it refers to section 193 should have been made to the Sessions Judge and not to us because that sanction was granted by the Sub-Magistrate as a Court and the appeal lay under section 195 to the District Magistrate and from his order the application should have been made to the Sessions Judge. Such an application not having been made, we decline to interfere in the matter. If so advised the petitioner may make his application to the Sessions Judge.

The petition is therefore dismissed.

D. A. R.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Odgers and Mr. Justice Wallace.*

BACHULA PEDA SOMADU AND OTHERS (ACCUSED)

APPELLANTS,

v.

KING-EMPEROR. \*

*Code of Criminal Procedure (Act V of 1898)— Statements made before committing Magistrate, partly resiled from in Sessions Court—sec. 238, its scope and applicability—Nature of corroboration required.*

In a case and counter case of rioting, witnesses for the prosecution in each case were mostly the accused in the other.

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\* Criminal Appeals No. 39 and 40 of 1923.