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Procedure Code has not made express provision, but it is highly desirable that such order should make it clear that the Magistrate's order discharging an accused person is based on grounds which cannot be sustained. In the case before me all that the Sessions Judge has stated in his order is that the Magistrate should proceed under chapter XXI of the Criminal Procedure Code which relates to trial of warrant cases. It affords no material to a court of revision for determining the important question whether the Magistrate was justified in dismissing the complaint.

For the reasons stated above I set aside the order of the learned Sessions Judge and send back the case to him with a direction to dispose of the complainant's application for revision after affording sufficient opportunity to the accused to show cause why the Magistrate's order dismissing the complaint should not be set aside and a fresh inquiry ordered.

### MISCELLANEOUS CRIMINAL

*Before Mr. Justice Iqbal Ahmad*

EMPEROR v. MATHURA\*

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October, 4

*Criminal Procedure Code, section 339(3)—Approver resiling from his previous statement and making a contradictory statement—Prosecution for perjury—Sanction of High Court—Discretion of court—Considerations guiding the exercise of such discretion.*

The fact that the legislature has, in section 339(3) of the Criminal Procedure Code, prohibited the prosecution of an approver, who has resiled from his previous incriminatory statement and made a directly contradictory statement, for perjury without the previous sanction of the High Court demonstrates that the mere fact that the two statements are contradictory can not in every case be a warrant for directing the prosecution of the approver. The discretion vested in the High Court by section 339(3) must be exercised with extreme caution, and the cardinal question for consideration by the Court is whether the confession and the incriminating statement made

\*Criminal Miscellaneous No. 526 of 1933.

by the approver were or were not true. If the circumstances point to the conclusion that the confession and the incriminating statement were not true, the irresistible inference must be that those statements were put into the mouth of the approver by some one, by inducement or by threat, and in such a case it would be opposed to public policy to prosecute and punish the approver for perjury when as a matter of fact he did not voluntarily make the incriminating statement. On the other hand, if it appears that the confession and the incriminating statement represented the true state of facts, and the approver in collusion with the accused resiled from it, his subsequent statement must be false and in such a case it is desirable and expedient to order his prosecution for perjury.

The parties were not represented.

IQBAL AHMAD, J.:—The learned Second Additional Sessions Judge of Cawnpore has made this reference by a letter dated the 6th of September, 1933, asking this Court to sanction the prosecution of Mathura under section 339(3) of the Criminal Procedure Code. As I have come to the conclusion that the reference ought not to be accepted and that the prosecution of Mathura should not be ordered, I need not consider the question whether the application for sanction to prosecute Mathura should have been made by motion on behalf of the Crown in open court, and not by a letter of reference which has been submitted by the Sessions Judge in the present case.

One Mata Din, resident of village Keotra, was murdered on the 21st of May, 1933. On the morning of the 22nd of May his corpse was found in the *khalyan* of one Chunna. This threshing-floor of Chunna is at a distance of about 800 paces from the cucumber field of Mata Din which is situate on the banks of the Jumna and which is at a distance of about half a mile from the abadi of village Keotra.

A report of the incident was made in the police station on the 22nd of May. Pandit Inder Kumar, the station officer, reached village Keotra the same day at about 6 p.m. He recorded the statements of some witnesses and suspected Mathura and five other persons as being

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the persons responsible for the murder of Mata Din. It is said that the five persons named above could not be found on the 22nd of May. They were all, however, arrested on the 23rd of May and their houses were searched. Nothing incriminating was found in the house of any person except Kali Charan. Kali Charan handed over to the sub-inspector a *gandasa* and a *dhoti*. The Chemical Examiner found blood-stains on both and the Imperial Serologist found that the *gandasa* was stained with human blood.

Mathura is alleged to have been arrested on the 10th of June. He was produced before a Magistrate on the 11th of June with a view to his statement being recorded under section 164 of the Criminal Procedure Code. The Magistrate did not record his statement on that date and sent him to the jail lock-up. On the 12th of June Mathura's confession was recorded. All the five persons named above and Mathura were sent up by the police. Mathura was, however, offered pardon by the committing Magistrate and was examined as an approver by him. The Magistrate committed the five persons to the court of session. In that court Mathura was examined as a witness for the prosecution, and he resiled from his previous statements and stated that he made the confession and the statement in the court of the committing Magistrate at the instance of the police. As Mathura admitted that the previous statements made by him were false the learned Judge has made the present reference for sanction to prosecute Mathura under section 193 of the Indian Penal Code.

The learned Judge acquitted all the five persons named above. He rightly observed that as against four of them there was no evidence worth the name and as against Kali Charan there was not sufficient legal evidence. The motive for the murder alleged by the prosecution did not appear convincing to the learned Judge and I share his view.

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It is obvious that if an approver resiles from a previous statement made by him incriminating himself and certain other persons, and makes a statement directly contradictory to the one previously made by him, one of his two statements must be false, and, as such, he must necessarily be guilty of giving false evidence. But the fact that the legislature has prohibited the prosecution of an approver for the offence of giving false evidence without the sanction of the High Court demonstrates that the mere fact that the two statements are contradictory cannot in every case be a warrant for directing the prosecution of the approver. The discretion vested in this Court by section 339(3) of the Criminal Procedure Code to sanction the prosecution of an approver for the offence of giving false evidence must, in my judgment, be exercised with extreme caution. It appears to me that when this Court is asked to exercise the powers vested in this Court by the enactment referred to above, the cardinal question for consideration is whether the confession and the incriminating statement made by the approver were or were not true. If the circumstances point to the conclusion that the confession and the incriminating statement were not true, the irresistible inference must be that those statements were put into the mouth of the approver by some one by inducement or by threat, and in such a case it would be opposed to public policy to prosecute and to punish an approver for the offence of giving false evidence when as a matter of fact he did not voluntarily make the incriminating statement. On the other hand, if it appears that the confession and the incriminating statement represented the true state of facts, and the approver in collusion with the accused resiled from the statement previously made by him, his subsequent statement must be false and in such a case it is not only desirable but expedient to order his prosecution for giving false evidence. The exercise of the discretion must depend on the answer to the question whether the confession was or was not voluntary, and

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all the circumstances must be carefully considered in order to arrive at a conclusion on the point. In the consideration of this question the fact, that on the promise of pardon being tendered to him it is very easy to persuade an illiterate villager to make a confession, should not be lost sight of.

In the case before me I am not satisfied that the confession and the statement made by Mathura in the court of the committing Magistrate were true and were voluntarily made. On the other hand, I consider that the case for the prosecution was not true and that the evidence for the prosecution was fabricated.

It is unnecessary to enter into a detailed examination of the evidence, but I may briefly note the reasons that have led me to arrive at the above conclusion.

[The judgment then discussed the evidence in detail.]

For the reasons given above I refuse to accept the reference. Mathura must be released forthwith unless he is wanted in connection with some other case. Let the record be returned.