

The reference came on for hearing before a Division Bench (Parsons and Ranade, JJ.).

There was no appearance for either party.

PER CURIAM:—As pointed out by the District Magistrate, the sums that may be due under the contract in the present case do not come within any of the matters provided for by section 84 of the Bombay District Municipal Act. We, therefore, reverse the order of the Magistrate.

Order reversed.

1896.

IN RE
JAGU
SANTRAM.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE SAMSUDIN.**

1896.

Practice—Procedure—Complaint of offences under sections 182 and 500 of the Penal Code (Act XLV of 1860)—Necessary sanction not obtained—Withdrawal of complaint—Discharge of accused—Fresh complaint lodged on same charges—Effect of previous discharge of accused—Criminal Procedure Code (Act X of 1882), Secs. 248, 253 and 403.

August 6.

A complaint was lodged against the accused, charging him with offences under sections 182 and 500 of the Penal Code (Act XLV of 1860). The complainant's solicitor, finding that no sanction had been obtained as required by section 195 of the Criminal Procedure Code (Act X of 1882) for proceeding with the charge under section 182, applied to the Magistrate for leave to withdraw the complaint, which the Magistrate granted, adding to his order the words "accused is discharged."

The complainant having subsequently obtained the requisite sanction filed a fresh complaint on the same charges. It was objected on behalf of the accused that the accused had been acquitted under section 248 of the Criminal Procedure Code (Act X of 1882) and that further proceedings were now barred under section 403. The Magistrate allowed the objection and stopped the proceedings. On application to the High Court,

Held that the order of the Magistrate should be reversed and the complaint investigated. The order stopping the proceedings would be legal only if the accused had been acquitted by a Court of competent jurisdiction, which was not the case, as the Magistrate could not take cognizance of the charge under section

* Criminal Revision, No. 115 of 1896.

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182 of the Penal Code (Act XLV of 1860) without a sanction having been previously obtained.

As to the charge under section 500 of the Penal Code (Act XLV of 1860) the proper procedure in respect of it was that prescribed for warrant cases. The only legal order that could be made in such a case was an order of discharge under section 253 of the Criminal Procedure Code (Act X of 1882) and not of acquittal, and it was an order of discharge that was actually made.

APPLICATION for revision under section 439 of the Code of Criminal Procedure (Act X of 1882).

The applicant lodged a complaint against one Ibrahim Dadoo and others in the Court of the Fourth Presidency Magistrate, Khan Bahádur P. H. Dastur, charging the accused with giving false information to a public servant in order to cause him to use his lawful power to the injury of the complainant, and also with defamation, offences punishable under sections 182 and 500, respectively, of the Indian Penal Code (Act XLV of 1860).

On the 21st April, 1896, the complainant's solicitor, finding that the complainant had not obtained sanction to prosecute under section 182 of the Penal Code, as required by section 195 of the Criminal Procedure Code (Act X of 1882), applied to the Magistrate to be allowed to withdraw the complaint. Thereupon the Magistrate passed the following order:—"As there is no sanction, prosecution withdraws the charge. Accused is discharged."

The complainant having subsequently obtained the requisite sanction filed a fresh complaint against the accused on the same charges.

It was contended on behalf of the accused that as the complainant had withdrawn the case on the previous occasion, and the accused had been acquitted under section 248 of the Code of Criminal Procedure, the present proceedings were barred under section 403 of that Code.

The Magistrate allowed this objection, and on the 29th April, 1896, ordered the proceedings to be stopped.

The complainant thereupon moved the High Court, under its Revisional Jurisdiction, to set aside the Magistrate's order.

Daphtary and Ferreira for complainant.

M. K. Talikka (with *R. M. Paymaster*) for accused.

1896.

IN RE
SAMBUDIN.

PER CURIAM:—It appears in this case that a complaint was made to the Magistrate against the accused of offences under sections 182 and 500 of the Penal Code. On the 21st April, 1896, when the accused appeared before the Magistrate, the Magistrate passed the following order:—"As there is no sanction, prosecution withdraws the charge. Accused is discharged."

Sanction having been obtained, a fresh complaint was lodged against the accused of the same offences. The Magistrate on the 29th April ordered that proceedings be stopped, considering apparently that they could not be taken by reason of the provisions of section 403 of the Criminal Procedure Code.

This order would be legal only if the accused had been acquitted by a Court of competent jurisdiction. Clearly in this case they have not. In the first place, by reason of there being no sanction, the Court on the 21st April could not take cognizance of the offence under section 182, and could not, therefore, acquit the accused of that offence. The offence mentioned in section 500 of the Penal Code is not a summons case. The procedure, therefore, in the investigation of this complaint was that prescribed for warrant cases. Although the Magistrate says now that he passed the order under section 248 of the Criminal Procedure Code, the only legal order he could have passed was under section 253 of the Code (see *Rajnarain v. Lala Tamoli*¹); and the wording of the order shows that he did so pass it, for he did not acquit the accused but discharged them.

There having been thus no acquittal of the accused of the offences charged, the present complaint must be inquired into. We reverse the order of the Magistrate staying proceedings and direct him to investigate the complaint.

Order reversed.

(1) I. L. R., 11 Cal., 91.