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especially reprehensible character, seeing that parties there are almost wholly dependent upon pleaders for the protection of their interests. It may be that the most powerful check against malpractices of this kind would lie in a healthy public opinion in the profession itself, and it may perhaps stimulate the formation or the development of such an opinion to reflect that the honourable profession of pleaders has no worse enemies than those among its own members who are capable of stooping to dishonest or discreditable practices. Our order is that Deshpande's certificate be suspended for a period of two years and that Kanmadi's certificate be suspended for a period of one year.

Order accordingly.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Rao.

In re NANCHAND SHIVCHAND.*

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November 13.

Criminal Procedure Code (Act V of 1898), section 195—Indian Penal Code (Act XLV of 1860), sections 193, 511—Court—District Judge hearing election petition under section 22 of the Bombay District Municipalities Act (Bom. Act III of 1901) is a Court—False evidence before the District Judge—Sanction for prosecution.

A District Judge hearing an election petition under the provisions of section 22 of the Bombay District Municipalities Act (Bombay Act III of 1901) is a "Court" within the meaning of section 195, clause (*b*) of the Criminal Procedure Code, 1898. No prosecution for attempting to fabricate false evidence (sections 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by section 195 of the Criminal Procedure Code, 1898.

Raghoobuns Sahoy v. *Kokil Singh* (1), followed.

* Criminal Application for Revision No. 317 of 1912.

(1) (1890) 17 Cal. 872.

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THIS was an application for setting aside criminal proceedings pending before H. B. Clayton, Sub-Divisional Magistrate, Eastern District, Poona.

The applicant was an unsuccessful candidate at the Municipal election held at Sirur. He contested the validity of his opponent's election and filed an application for the purpose under the provisions of section 22 of the Bombay District Municipalities Act (Bombay Act III of 1901), before the District Judge of Poona. The application was inquired into and dismissed.

The opponent thereupon launched criminal proceedings against the applicant, in the Court of the Sub-Divisional Magistrate, Eastern District, Poona, under sections 193 and 511 of the Indian Penal Code, alleging that the applicant "attempted to fabricate false evidence against the complainant to the effect that the complainant offered to give bribes and threatened people in the matter of the election of the Sirur Municipality in March 1911, for the purpose of using the same in a judicial proceeding." No sanction was obtained to the institution of the criminal proceedings.

The applicant applied to High Court for setting aside the proceedings on the ground that they could not go on in the absence of sanction.

Raikes, with *J. R. Gharpure*, for the applicant.

T. R. Desai, for the opponent.

L. A. Shah, acting Government Pleader, for the Crown.

The following cases were referred to in arguments: *Raghoobuns Sahoy* v. *Kokil Singh*[1]; *Balaji Sakharam Gurav* v. *Merwanji Nowroji Antia*[2].

BATCHELOR, J.:—In this case there is pending against the present petitioner a prosecution which imputes to

(1) (1890) 17 Cal. 872. (2) (1895) P. J. p. 544.

the petitioner the offence of attempting to fabricate false evidence against the complainant to the effect that the complainant offered to give bribes and threatened people in the matter of the election of the Sirur Municipality for the purpose of using such false evidence in a judicial proceeding, that is to say, in the proceeding which took place before the District Judge, acting under section 22 of the Bombay District Municipal Act of 1901. The prosecution is pending in the Sub-Divisional Magistrate's Court. The question which arises on this petition is whether such a prosecution is competent without previous sanction having been obtained under section 195 of the Criminal Procedure Code. Admittedly the offence alleged against the petitioner falls under section 193 of the Indian Penal Code, and that is one of the sections which are mentioned in clause (*b*) of section 195 of the Criminal Procedure Code as requiring the previous sanction of the Court where the alleged offence is committed in, or in relation to any proceeding in any Court. There is no doubt in this case that the offence as alleged was committed in or in relation to the proceeding before the District Judge acting under section 22 of the Municipal Act; and the only question which now falls to be determined is whether the District Judge when so acting is or is not a Court within the meaning of clause (*b*) of section 195 of the Criminal Procedure Code. If he is to be regarded as a Court then admittedly this prosecution is bad, being without the sanction required by law. The word "Court" is not defined in the Criminal Procedure Code itself; but in sub-section 2 of section 195, it is provided that "in clauses (*b*) and (*c*) of sub-section 1, the term 'Court' means a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877." The learned Government Pleader for the opponents has called our

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attention to the case of *Balaji Sakharam Gurav* v. *Merwanji Nowroji Antia*[1] where it was held that a District Judge acting under a section corresponding with that now before us, is not a "Court" within the meaning of section 622 of the old Code of Civil Procedure. This, however, as it seems to us, does not carry the matter very far, for the only point which then engaged the attention of the Bench was whether the District Judge when acting under the Municipal Statute was a Civil Court amenable to the revisionary jurisdiction of this Court. The fact that that question had to be answered in the negative seems to us to throw but little light upon the different question whether the District Judge in such circumstances is or is not a Court for the purposes of section 195 of the Criminal Procedure Code. Upon this point we think that guidance is afforded to us by the decision in *Raghoobuns Sahoy* v. *Kokil Singh*[2] where the learned Judges say that the word "Court" in the Criminal Procedure Code certainly has a wider meaning than the words "Court of Justice," as defined in the Penal Code. "Having regard", they say, "to the obvious purpose for which section 195 was enacted, we think that the widest possible meaning should be given to the word 'Court' as occurring in that section." We agree with this interpretation of the section, for it appears to us that the reason of the thing is in favour of that view. In other words we think that the same reasons which necessitate the precautions imposed on a prosecution in respect of offences committed in regard to an ordinary Civil or Criminal Court equally require that those precautions be observed where the alleged offences have occurred in connection with proceedings held by the District Judge acting under the Municipal Act. It may be observed also that the word "Court" as defined in section 3 of the

[1] (1895) P. J. p. 544.

[2] (1890) 17 Cal. 872.

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Evidence Act is wide enough to include a District Judge acting as described. In that capacity the District Judge is by the Statute empowered to receive evidence on oath, to hold inquiry into the matters in controversy, to summon and enforce the attendance of witnesses, and finally to decide the matters in dispute, making such award of costs as to him may seem right. It is true that in sub-section 2 of section 22 the District Judge is described as empowered to act as if he were a Civil Court and it may be suggested that these words negative the theory that he is in law a Civil Court. That, however, does not negative the view that he may be a Court, and that he should be a Court, whether Civil or other, is all that is required under section 195 of the Criminal Procedure Code. Following the Calcutta decision which we have cited we think that he should be so regarded.

Upon these grounds we are of opinion that this prosecution is unsustainable, inasmuch as it has not received that sanction which the law imperatively requires. The rule, therefore, must be made absolute and the proceedings hitherto held before the Sub-Divisional Magistrate must be set aside.

Rule made absolute.

R. R.

APPELLATE CRIMINAL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

EMPEROR *v.* RANCHHOD BAWLA.[*]

1912

November 14.

Criminal Procedure Code (Act V of 1898), sections 248, 258, 345—Warrant case—Non-compoundable offence—Complainant withdrawing from prosecution—Order of acquittal—Practice and procedure.

In a warrant case in respect of a non-compoundable offence, it is not competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal.

[*] Criminal Appeal No. 374 of 1912.