

1917.

 EMPEROR
 v.
 BANDU
 EBRAHIM.

believe that accused No. 1 knew the state of affairs in accused No. 2's brothel. He knew that Vithibai would be subjected to the conditions of life there prevailing. I do not doubt that he did all that was on his part necessary to detain Vithibai in the brothel so long as he himself was there and I do not doubt that he left in the assurance that she would be, as indeed she was, detained there after he had left. On those facts I think that he took so essential and material a part in the confining of this girl that he is guilty of this offence as a principal.

I agree with my learned colleague that this is not one of those peculiarly atrocious cases which sometimes arise under the Indian Penal Code and I agree that the sentence of twelve months' imprisonment for each of these appellants is in the circumstances quite as heavy a sentence as justice and law in this case require.

Sentences reduced.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Shah.

*In re RAMRAO N. BELLARY.**

1917.

 September
 11.

Criminal Procedure Code (Act V of 1898), section 195—Sanction to prosecute—Abetment of perjury before a Committing Magistrate—Application for sanction made to the Committing Magistrate—Transfer of the Magistrate pending inquiry—The Magistrate succeeded by another Magistrate who had no power to commit—Sanction proceedings sent to District Magistrate—Grant of sanction by District Magistrate.

It was alleged that the applicant, who was a pleader, had, during the course of an inquiry before a Committing Magistrate, abetted perjury. An application for sanction to prosecute the applicant was, therefore, made to the

* Criminal Application for Revision No. 271 of 1917.

1917.

Magistrate. While the proceedings for sanction were pending before him, the Magistrate was transferred and was succeeded by another Magistrate who had only second class powers and had no power to commit. The outgoing Magistrate accordingly submitted the sanction proceedings to the District Magistrate who conducted the inquiry and granted the sanction. The applicant applied to the High Court contending that the District Magistrate had no jurisdiction to grant the sanction :—

Held, that the District Magistrate had jurisdiction to grant the sanction, inasmuch as he was clearly one of the officers on whom devolved the disposal of committal of cases.

THIS was an application under the criminal revisional jurisdiction against an order passed by E. Clements; District Judge of Dharwar, upholding an order passed by E. G. Turner, District Magistrate of Dharwar.

The applicant was a pleader who was engaged to defend certain accused persons in a murder case, commitment inquiry into which was proceeding before G. K. Kumble, First Class Magistrate of Rannebennur. It was alleged that the applicant had, during those proceedings suborned some witnesses for the prosecution who had already made their statements under section 164 of the Criminal Procedure Code. The case against the accused was committed to the Court of Session : the witnesses alleged to have been tampered with were not examined.

An application was made before Mr. Kumble to grant sanction to prosecute the pleader. Before the examination of witnesses in support of the applicant was over, the Magistrate Mr. Kumble was transferred and was succeeded by Mr. Pathan, a Second Class Magistrate who had no committal powers. Accordingly, Mr. Kumble submitted the sanction proceedings to the District Magistrate for such action as he deemed necessary.

The District Magistrate took the case on his own file, went on with the inquiry and granted the sanction. The order was upheld by the Sessions Judge on appeal.

1917.

RAMRAO N.
BELLARY,
In. re.

The applicant applied to the High Court contending that the District Magistrate had no jurisdiction to grant the sanction.

Weldon, with *V. V. Bhadkamkar* and *H. B. Gumaste*, for the applicant.

S. S. Patkar, Government Pleader, for the Crown.

HEATON, J.:—The applicant in this matter has asked us to set aside the sanction given by the District Magistrate of Dharwar to prosecute him for abetting the giving of false evidence. On the merits of the case we say nothing. But a question has been raised as to whether the District Magistrate had jurisdiction to make this order, a question the answer to which it is not so easy to give.

What happened is this. The First Class Magistrate of Ranebennur enquired into a case of murder and committed it to the Court of Session, and it is in relation to the proceedings of this First Class Magistrate's Court that the alleged offence was committed. Before the alleged offence of abetting the giving of false evidence can be enquired into by a Magistrate there must be a sanction either of the Court in which were pending the proceedings in relation to which the alleged offence was committed or of some Court to which that Court is subordinate. The Court before which the proceedings were pending when the offence, if any, was committed, was the Court of the First Class Magistrate. But some time after the murder case had been disposed of by the Court of Session and after a question arose as to whether sanction should be granted and before that question was settled, the First Class Magistrate was transferred, and it seems he was succeeded in office by a Magistrate who had only Second Class Magistrate's powers and had not power to commit

to the Court of Session. It seems to me that the incoming Magistrate had no power to grant sanction in this case for these reasons.

We are dealing with a Court and not with an officer. The Court of the Magistrate of Ranebennur who had power to commit cases to the Court of Session was not a Court of which the incoming Magistrate could take charge. For that reason the incoming Magistrate could not, in my opinion, succeed to any jurisdiction relative to a case which had been committed to the Court of Session. This difficulty seems to have been anticipated by the outgoing Magistrate who before he left, sent the papers to the District Magistrate. The latter took the matter on to his own file, issued the necessary notices, held an enquiry and gave the sanction.

It is argued that this sanction was without jurisdiction. It seems to me that it was not without jurisdiction for this reason : There was somewhere a successor to the outgoing Magistrate in the Court which, as regards the Ranebennur Taluka, had power to commit cases to the Court of Session, and that successor to this Court wherever he might be, would, in my opinion, be the Judge of the "such Court" referred to in sub-clause (b), clause 1 of section 195 of the Criminal Procedure Code."

I have already explained that this Court would not be the Court of the incoming Magistrate. It would be either the Court of the Sub-Divisional Magistrate or the Court of the District Magistrate. For either of them would have the power of committing to the Court of Session cases occurring in the Ranebennur Taluka, and as either of them would have that power, it seems to me that either of these Courts would be the "such Court" referred to and could grant the sanction.

1917.

RAMRAO N.
BELLARY,
In re.

1917.

RAMMO N.
BELIARY,
In re.

It may be said that in the ordinary course of events cases in the Ranebennur Taluka which had to be committed to the Court of Session would go to the Sub-Divisional Magistrate and not to the District Magistrate. That no doubt is true. In the ordinary course of events they would go to the Sub-Divisional Magistrate. Nevertheless, the District Magistrate had jurisdiction. Any such case might be sent to his Court and he could call for and himself deal with any such case, and as it happened, his was the Court to which these papers came and he was the Magistrate who dealt with the matter. I myself am unable to see that it can properly be said that he was without jurisdiction to grant the sanction. I am not at all sure but that the jurisdiction could also be upheld as being based on a transfer of the case to his own Court made by the District Magistrate in accordance with the powers he possesses under section 528, but I prefer definitely to base my conclusion on the other ground. This is that the District Magistrate was clearly at least one of the officers on whom devolved the disposal of committal cases in the Ranebennur Taluka. So he was an officer who had jurisdiction to give sanction in this particular case.

As I have said, we say nothing on the merits, and as the only point of law of any substance has been decided against the applicant, we must discharge this rule.

SHAH, J. :—I am of the same opinion.

Rule discharged.

R. R.