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DULA,
In re.

private party is entitled to come to this Court and ask it to enhance a sentence passed by a subordinate Court. A District Magistrate or a Sessions Judge or the Government Pleader may draw our attention to a sentence with a view to its being enhanced. We may also of our own motion send for the record and take action with a like object. But it is not for a private complainant to take any such action. If he considers a sentence unduly lenient he should draw the attention of Government to the fact. We think it should be definitely ruled as a matter of practice that no such application by a complainant to enhance a sentence should be entertained. The Rule is discharged.

Rule discharged.

R. R.

CRIMINAL REVISION.

*Before Sir Norman Macleod, Kt., Chief Justice, and
Mr. Justice Shah.*

IN RE NINGAPPA RAYAPPA GHOTADKI*.

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January 16.

Criminal Procedure Code (Act V of 1898), sections 195, 203—Indian Penal Code (Act XLV of 1860), sections 182, 211—Complaint, dismissal of—Complainant not examined—Sanction to prosecute complainant for false charge—High Court—Revision—Dismissal of complaint can be revised by High Court in sanction proceedings.

Where a complaint for a criminal offence is dismissed by the Magistrate without examining the complainant as required by section 203 of the Criminal Procedure Code, it is not permissible to the Magistrate to sanction the prosecution of the complainant under sections 182 and 211 of the Indian Penal Code.

On an application to revise a sanction to prosecute, the High Court can go into the question whether the order dismissing the complaint was rightly made.

APPLICATION under Criminal Revisional Jurisdiction against an order passed by Mr. C. H. Blathwayat, District Magistrate of Belgaum, upheld by Mr. C. E. Palmer, Sessions Judge of Belgaum.

* Criminal Revisional Application No. 224 of 1923.

The applicant filed a complaint of criminal breach of trust. The Magistrate referred the complaint to the Police for investigation ; and acting on their report, dismissed it without even examining the complainant (applicant).

The Magistrate then called upon the applicant to show cause why he should not be prosecuted for an offence under section 182 or section 211 of the Indian Penal Code. He heard the applicant and granted sanction to prosecute him.

This order was, on appeal, upheld by the Sessions Judge.

The applicant applied to the High Court.

Nilkanth Atmaram, for the applicant.

P. B. Shingne, Acting Government Pleader, for the Crown.

MACLEOD, C. J. :—We think the Rule must be made absolute. The sanction was given to prosecute the petitioner under section 211 or section 182, Indian Penal Code, the facts being that the petitioner had made a complaint charging one L. V. O'Brien with criminal breach of trust. The Magistrate without examining the complainant, as he was bound to do under section 203, Criminal Procedure Code, dismissed the complaint. Then he called upon the present petitioner to show cause why he should not be prosecuted for an offence under section 211 or section 182 of the Indian Penal Code. If the complaint was not dismissed according to law, then the complainant could not be convicted of bringing a false charge. The only question on which I had any doubt was whether on this application in revision for setting aside the order granting sanction, we could hold that the order dismissing the complaint was wrongly made. Undoubtedly if the complainant had appeared before us and

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asked us to set aside the order of the Magistrate dismissing his complaint, and to direct the learned Magistrate to hear the complaint according to law, we should have made such an order. That was decided *In the matter of the petition of Ganesh Narayan Sathe*⁽¹⁾. If we refuse to accede to the petitioner's request that we should express an opinion on the validity or otherwise of the Magistrate's order, that question will have to be decided by the Magistrate who tries the charge under section 211, and it is clear that he would have to come to the conclusion that the dismissal of the complaint was not according to law. It seems, therefore, that that being the obvious result if we refuse to interfere with the order of sanction to prosecute the petitioner under section 211, it is preferable that we should decide the matter ourselves and hold that the complaint was wrongly dismissed, and that would be a good ground for refusing to give sanction to prosecute the complainant.

SHAH, J.:—I agree that the sanction should be revoked. In the present case there has been no legal disposal of the complaint. The order dismissing it under section 203, Criminal Procedure Code, is clearly wrong as the complainant was not examined at all; and the complainant has in no sense acquiesced in that order. Where there has been no legal disposal of the complaint, it seems to me that no sanction to prosecute the complainant on the footing that it is a false complaint should be granted. Under the circumstances of the case I am of opinion that the sanction should not have been granted.

Rule made absolute.

R. R.

⁽¹⁾ (1889) 13 Bom. 590.