

APPELLATE CRIMINAL.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

THE EMPRESS v. IRAD ALLY, ACCUSED.*

1879
April 3.

Sanction to Prosecution under ss. 182 and 211 of the Penal Code—Power of Deputy Magistrate to question Sanction.

A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 of the Penal Code.

Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court.

THIS was a reference under s. 296 of the Criminal Procedure Code.

It appeared that one Irad Ally preferred a charge of theft against one Nasseebunnissa before the police. On an examination into the charge the police reported it to be false. Prior, however, to the delivery of the police report, Irad Ally repeated the accusation in a complaint before the Magistrate, who, without summoning the accused, made over the matter to the Sub-Deputy Magistrate for report; that officer was of opinion that the charge was false, and directed the police to enter it as such; but it appeared that he did not formally dismiss the case.

Nasseebunnissa then applied to the Magistrate for leave to prosecute Irad Ally under ss. 182 and 211 of the Penal Code for bringing a false charge; leave was granted by the Magistrate, who, after directing a summons to issue against the accused, sent the case to a Deputy Magistrate for trial.

The Deputy Magistrate discharged the accused on the following grounds, *viz.* :—

(1) That the sanction to the prosecution under ss. 182 and 211 was illegal, as there was no judicial investigation into the charge of theft originally made by the accused.

(2) That the Magistrate did not pass a formal order of dismissal on the petition of Irad Ally.

* Criminal Reference, No. 647 of 1879, from an order made by J. C. Price, Esq., Officiating Magistrate of Hojrah, dated the 24th of March 1879.

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(3) That the Sub-Deputy Magistrate did not hear all the witnesses produced by Irad Ally as he should have done before pronouncing his complaint to be a false one.

The Magistrate, objecting to the proceeding of the Deputy Magistrate, referred the case to the High Court.

No one appeared to argue the points.

The opinion of the High Court was delivered by

AINSLIE, J. (BROUGHTON, J., concurring).—We think the Deputy Magistrate was wrong to question the sanction given by the Magistrate. It was an order made by a superior Court, purporting to be made under a particular provision of law. Whether it was rightly or wrongly made was not for the subordinate Court to enquire into. The Deputy Magistrate was not sitting as a Court of appeal or revision to examine the mode in which the Magistrate of the district had dealt with the case in which he had sanctioned a prosecution under s. 211 of the Penal Code. He was bound to accept the sanction as valid, and leave the accused to question it before a competent Court, if so advised.

We cancel the order of the Deputy Magistrate, and direct him to try the accused on the charges before him.

Order cancelled.

APPELLATE CIVIL.

Before Mr. Justice Birch and Mr. Justice Mitter.

1879
 March 10.

UMBICKA CHURN GOOPTA (PLAINTIFF) v. MADHUB GHOSAL AND OTHERS (DEFENDANTS).*

Limitation—Formal Possession given to a Decree-holder—Effect of.

Formal possession given to a decree-holder by an officer of the Court in execution of his decree is sufficient to give him a fresh cause of action, and notwithstanding that he may never have obtained actual possession, he or

* Appeal from Appellate Decree, No. 1282 of 1878, against the decree of T. M. Kirkwood, Esq., Officiating Judge of Zilla West Burdwan, dated the 16th of April 1878, reversing the decree of Baboo Nilmony Dass, Munsif of Bankoora, dated the 12th of November 1877.