

In Re: Gopal Siddeshwar Deshpande

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SooperKanoon Citation : sooperkanoon.com/327445

Court : Mumbai

Decided On : Jan-16-1908

Reported in : (1908)10BOMLR95

Judge : Chandavarkar and ;Knight, JJ.

Appeal No. : Criminal Application for Revision No. 297 of 1907

Appellant : In Re: Gopal Siddeshwar Deshpande

Judgement :

Chandavarkar, J.

1. This is an application for revision by this Court of the order of the District Judge of Belgaum granting sanction to the Public Prosecutor under Section 195 of the Criminal Procedure Code for the prosecution of the petitioner for offences punishable under Sections 463, 466 and 471, Indian Penal Code, or such other sections as may be applicable.

2. The sanction was accorded by the District Judge under the following circumstances. An application was made by the Public Prosecutor to the Subordinate Judge of Gotak in the first instance for, sanction, because the offence, in respect of which it was applied for, was alleged to have been committed in the course of a suit in his Court. On the day and at the hour fixed for the hearing of that application the Public Prosecutor having failed to appear, the Subordinate

Judge dismissed the application as for default. The Public Prosecutor appeared shortly after the dismissal and explained the circumstances under which he had been prevented from appearing in time to support the application. But the Subordinate Judge held that he had no power to review his order, because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it. So far the Subordinate Judge was right; but, on the other hand, it is equally the case that there is no provision in the Criminal Procedure Code which warranted the Subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for dismissal. The Subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court.

3. After the Subordinate Judge has declined to review his order upon the ground mentioned above, the Public Prosecutor applied to the District Court and the District Court has accordingly accorded sanction. Now, the objection to that is, first, that the District Court has not gone into the details of the application, and, secondly, to give that Court jurisdiction under Section 195, Clause (c), there ought to have been a sanction given or refused by the Subordinate Judge. Here there was no sanction given or refused by the Subordinate Judge. The only jurisdiction which the District Judge had under the circumstances was to revise the order of the Subordinate Judge dismissing the application as for default.

4. We think, therefore, that for the reasons we have given, both the order of the District Judge and that of the Subordinate Judge ought to be set aside and the application made to the Subordinate Judge ought to be sent back to him with a direction that he should dispose of it according to law.