

**In Re: Mowjee Liladhar**

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**Court :** Mumbai

**Decided On :** Dec-19-1905

**Reported in :** (1906)8BOMLR32

**Judge :** Russell and ;Aston, JJ.

**Appeal No. :** Criminal application for Revision No. 136 of 1905

**Appellant :** In Re: Mowjee Liladhar

**Judgement :**

**Aston, J.**

1. In case No. 371/S. of 1905, in the Court of the Second Presidency Magistrate, Mowji Liladhar charged Tullocksey Thackersey with criminal breach of trust in respect of hundis alleged to have been given to him by complainant Mowji as master of Tullocksey, and charged Likhawdas with abetment of the said alleged offence.

2. The Second Presidency Magistrate who tried the case came to the conclusion that the charges were false and made out of malice and were supported by Mowji and a witness Murarji by perjury.

3. The Second Presidency Magistrate sanctioned the prosecution of Mowji for offences under Sections 211 and 195, Indian Penal Code and of Murarji under

Section 195, Indian Penal Code the perjury alleged being their evidence in the case. to the effect that Tullocksey was employed as a Moonim (in this new business or in the firm) on a salary of Rs. 600 a year. Besides according sanction as above the Second Presidency Magistrate ordered Mowji and Murarji to be sent to the Court of the Fourth Presidency Magistrate for trial on the aforesaid charges and ordered them to give bail for their attendance in the said Court of the Fourth Presidency Magistrate.

4. The present petitioners Mowji and Murarji did attend the Fourth Presidency Magistrate's Court and were released on bail by the Fourth Presidency Magistrate.

5. The present application is to revoke the sanction given by the Second Presidency Magistrate for the prosecution of the petitioners Mowji and Murarji.

6. It was contended by Mr. Branson that the sanction recorded by the Second Presidency Magistrate is illegal, because it does not specify the person who is allowed to prosecute the petitioners: and the cases of Durga Das v. Queen Empress ILR (1900) Cal. 820 and Jogendra Nath Mooherjee v. Sarat Chandra Banerjee ILR (1905) Cal. 356 were cited in support of the contention that a sanction under Section 195 of the Criminal Procedure Code, (Act V of) 1898, must name the person to whom sanction to prosecute is accorded and can only be used by a complainant specified. But with due deference we think it sufficient to point out that the sanction contemplated by Section 195 of the Criminal Procedure Code is not a sanction to any particular person to prosecute but a sanction to the Criminal Courts concerned to take cognizance of certain offences specified in that section of which the Criminal Courts cannot take cognizance except with the previous sanction or on the complaint of the authority described in that section.

7. The sanction contemplated in Section 195, of the Criminal Procedure Code, whilst it is in force restores to the Criminal Courts a jurisdiction of which the same section deprives them in respect of specified offences and need not even name the accused person. We have not to decide whether the order of the Second Presidency Magistrate requiring the petitioners to give bail for their attendance before another Presidency Magistrate was regular, as it was quite competent to the Fourth Presidency Magistrate to hold the petitioners to bail after they attended

before him. The only question which has now to be decided is whether there is sufficient ground for revoking the sanction for the prosecution of the petitioners.

8. Upon consideration of the evidence recorded at the trial of Tullocksey and Likhawdas and having heard Counsel for the petitioners we see no ground for holding that the said prosecution has been sanctioned on insufficient grounds or that there is not a prima facie case which ought to be investigated in a criminal Court.

9. The application to revoke the sanction for the prosecution of the petitioners is dismissed accordingly. It is not necessary to decide whether the sending of the petitioner to the Fourth Presidency Magistrate with the sanction aforesaid was not equivalent to a complaint.

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