

**Emperor Vs. Umed Raja**

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**SooperKanoon Citation :** [sooperkanoon.com/328666](http://sooperkanoon.com/328666)

**Court :** Mumbai

**Decided On :** Mar-01-1914

**Reported in :** (1914)16BOMLR259

**Judge :** Heaton and ;Shah, JJ.

**Appeal No. :** Criminal Application for Revision No. 1 of 1914

**Appellant :** Emperor

**Respondent :** Umed Raja

**Judgement :**

Heaton J.

1. It appears that two accused persons, who have been tried by the Second Class Magistrate of Hansot, asked that Magistrate during the course of the trial to make two witnesses, who had given evidence in the case, into co-accused persons with them. The Magistrate declined to do so whereupon they (the accused persons) appealed or applied to the District Magistrate.

2. To begin with, I do not know of any power given to a District Magistrate by the Code of the Criminal Procedure which would enable him to interfere in the matter (by way of appeal or revision). However, he did interfere and this is the order he made:--' If the case was sent up by the police (it does not seem that it was) they should be directed to send up a complaint against the, two witnesses also.' I pause

here, because I see no objection to this part of the order if it was made by the District Magistrate acting as a police officer. But I do see an objection to it if it was made by him as a Magistrate. The order then goes on : ' If it was taken up on complaint, the Magistrate should cause a complaint to be laid against the two witnesses, preferably by the present complainant, and if he refuses, by any clerk.' This order, if it means anything, means that the Magistrate trying a case is directed by a superior Court, whatever his own view of the case may be, to make a complaint against a witness in the case he is trying or to order some -clerk to do the same thing. I do not understand on what power conferred on him as a Magistrate the District Magistrate was then relying, nor do I understand the reasonableness of such an order. On general principles, unless there be something very unusual, a Magistrate trying a case should be left to try it in his own way, and should not be interfered with during the course of the trial. If it transpires in the course of the case that criminal proceedings ought to be taken against any who have given evidence, those proceedings ought ordinarily to await the conclusion of the case, and certainly they ought to be instituted ordinarily by the order of, or an application to, the Magistrate, who has. tried the case and who is conversant with all the circumstances. The Emperor order, which the District Magistrate has made, seems to me to offend against those principles. Moreover, it is, as I have already indicated, an order which he has no authority whatever to make under any provision of the Code of Criminal Procedure.

3. Therefore, I think, it should be set aside.

**Shah, J.**

4. I entirely concur.

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