

**In Re: Khanderao Yeshwant**

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**SooperKanoon Citation :** [sooperkanoon.com/329231](http://sooperkanoon.com/329231)

**Court :** Mumbai

**Decided On :** Mar-21-1912

**Reported in :** (1912)14BOMLR362

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

**Appeal No. :** Criminal Application for Revision No. 1 of 1912

**Appellant :** In Re: Khanderao Yeshwant

**Judgement :**

**Batchelor, J.**

1. The petitioner here is a Policeman who, on the 20th February 1911, was at a village named Dhanchi occupied in work about the census. On that day in that village a panchnama was made in regard to an offence said to have been committed by a certain Talukdar under the Arms Act. The investigation into this alleged offence was not made by the petitioner but by the village constable Shamserkhan, who sent up the case to the Sub-Inspector by whom in turn it was committed to a Magistrate.

2. In the course of trying this alleged offence of the Talukdar's the learned Magistrate found that certain recitals in the panchnama were false. The Talukdar was discharged, the Magistrate being of opinion that the charge imputed to him was false. In that view he issued notice to the village constable , Shamserkhan to

show cause why sanction for his prosecution should not be granted under Section 195 of the Criminal Procedure Code. After hearing Shamserkhan the Magistrate issued notice also against the present petitioner, and ultimately on the 8th of September 1911 the Magistrate made an order directing the petitioner's prosecution under Section 211, Indian Penal Code. The petitioner applied for a certified copy of that order but the Magistrate refused it on the ground that the order formed part of an official correspondence between himself and the District Police.

3. Thus rebuffed by the Magistrate the petitioner applied to the Sessions Court and there the learned Judge has taken this view, that the order which the Magistrate made was really, whether the Magistrate knew it or not, an order for sanction under Section 195, Criminal Procedure Code. But the learned Judge was of opinion that no such sanction was necessary in the' circumstances of this case, and upon that ground he rejected the petitioner's application.

4. It seems to me that there can be no doubt that the order made by the Magistrate is an order for sanction under Section 195 of the Criminal Procedure Code. The order has been read to us, and though it is couched in Gujarati, the English word 'sanction' is used to describe it. The false charge in connection with which the sanction is given is also set out. And the order seems to me to contain all that is necessary under Section 195. Next I am of opinion that in the circumstances of this case the petitioner could not be prosecuted without a preliminary sanction being granted against him. It is, no doubt, the fact that the petitioner himself did not appear before the Magistrate who was trying the case against the Talukdar. But as I understand Section 195 the test for the necessity of the grant of sanction is not the character of the offender but the character of the offence. Sanction is necessary under the section when an offence punishable under Section 211, Indian Penal Code, is committed in or in relation to any proceeding in any Court. Now the offence imputed to the petitioner here was the instigation of the false charge against the Talukdar, the charge which, in the ordinary course of form of a trial. It may be that the instigation was committed before the proceeding in Court was begun but none the less, I am of opinion, that the instigation was an act committed in relation to the proceeding held by the Magistrate against the

Talukdar.

5. In that view of the case the order made by the learned Sessions Judge must be set aside and the petition must be remanded to him to pass such order as he deems fit in the light of this judgment.

**Heaton, J.**

6. I concur.

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