

In Re: Edulji Limjibhai

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Court : Mumbai

Decided On : Oct-08-1917

Reported in : AIR1917Bom60; (1917)19BOMLR910; 43Ind.Cas.328

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 272 of 1917

Appellant : In Re: Edulji Limjibhai

Judgement :

Heaton, J.

1. This is a case in which the District Magistrate, in the exercise of his revisional powers under Section 437 of the Code of Criminal Procedure, has directed further inquiry into the case of two accused persons who were discharged by the Second Class Magistrate. I am not surprised to find that in this case the District Magistrate did order further inquiry, because to me the judgment of the Second Class Magistrate is very unconvincing. But the case itself seems to be one of no great importance. There was a dispute between the accused on one side and the complainant and possibly people behind him on the other. It was a dispute which apparently touches the rights to land and is therefore likely to continue, though it is to be hoped that it will not continue in the form of either party assaulting the other. In this case there was, it is true an allegation that the accused intended to steal some cotton. That, however, seems to be based on very flimsy material and for

practical purposes the case seems to have developed into one of simple hurt and even then no serious harm was done.

2. I think, therefore, that the case is one in which it is not desirable now to order further inquiry. But there is one point where it seems to me the trying Magistrate has gone-very wrong. He finishes his judgment by saying: 'The case is one of wilful perjury and fabrication of false evidence principally so far as the complainant and Eemtulla are concerned. Sanction to prosecute them will therefore be given if either of the accused should proceed against them.' That seems to me to be one of the very worst methods by which a Magistrate can use the provisions of Section 195 of the Criminal Procedure Code. If he thinks there has been deliberate perjury he can himself direct the prosecution of those whom he believed to be offenders. If a party comes to him and asks for sanction he can deal with that application and give or withhold sanction. But I think the thing he ought not to do is to hold out to a party to a case that if he comes for sanction, the sanction will be given. To do that is to put a premium on blackmailing.

3. Subject to the comments I have made I think this rule. ought to be made absolute.

Shah, J.

4. I agree.

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