

imperatrix Vs. Padmanabh Pai

imperatrix Vs. Padmanabh Pai

SooperKanoon Citation : sooperkanoon.com/333065

Court : Mumbai

Decided On : Oct-04-1877

Reported in : (1878)ILR2Bom384

Judge : Melvill and ;Pinhey, JJ.

Appellant : imperatrix

Respondent : Padmanabh Pai

Judgement :

Melvill, J.

1. Section 468 of the Code of Criminal Procedure requires that the sanction to a prosecution should be given by 'the Court before or against Which the offence was committed, or of some other Court to which such Court is subordinate.'

2. The decision of the Sessions Court proceeded upon the ground that although, in certain executive matters, all Magistrates are subordinate to the Magistrate of the District, yet that such subordination is not of a judicial character, and that, as a Court, a Magistrate of the First Class is not subordinate to the Court of the Magistrate of the District, but to the Court to which appeals from the decisions of a Magistrate of the First Class ordinarily lie, i.e., to the Court of Session.

3. There is no doubt a good deal to be said in favour of the view adopted by the Sessions Judge. Section 5 of the Criminal Procedure Code divides the Criminal Courts in British India into four grades only, and one of these is the Court of the Magistrate of the First Class. The Court of the Magistrate of the District is only the Court of a Magistrate of the First Class, and *prima facie* the Courts of other Magistrates of the First Class would be co-ordinate with, and not subordinate to, another Court of the same grade. We have little doubt that when Sections 468 and 469 of the present Code were first enacted in Act XXV of 1861 (sections 169 and 170), it was intended that the sanction contemplated should be given by the Court before which the offence was committed or by the Appellate Court, or the High Court.. And it is probable that when Section 23G was added to the old Code, and afterwards when Section 37 of the present Code was enacted, it was not intended to introduce any change in the law upon this point. But these sections most distinctly provide that all Magistrates, of whatever class, shall be subordinate to the Magistrate of the District and on a careful consideration of Section 37 of the present Code and a comparison of its provisions with those of other sections, we are unable to come to the conclusion that such subordination was intended to be of a merely executive, and not of a judicial, character. On the contrary, there are many sections of the Code which clearly provide for the judicial subordination of the Court of a Magistrate of the First Class to the Magistrate of the District. For example the Magistrate of the District may in certain cases set aside a conviction. by a Magistrate of the First Class (section 328); he may order a committal for trial in sessions cases, if he thinks that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Magistrate of the First Class (section 296); and in certain cases he. may even hear an appeal against the order of such Magistrate (section 867). In all these instances the Magistrate of the District is acting judicially and as a Criminal Court within the definition of that 'term in Section 4. In these instances, at all events, the Court of the Magistrate of the First Class is subordinate to the Court of the Magistrate of the District: and we can find no sufficient reason for saying that the same subordination does not exist for the purposes of Section 468. We think that the sanction of the Magistrate of the District in this case must be regarded as a legal and sufficient sanction, and that the order of the Sessions Court must, therefore,

be set aside and the appeal of Padmanabh must be heard and disposed of by that Court on the merits.

4. We should certainly have preferred to hold that, for the purposes of Sections 468 and 469, a Magistrate of the First Class is subordinate, not to the Magistrate of the District, but to the Court of Session. It is very essential that the Court of Session either when sitting in appeal, or when trying a case committed to it by a Magistrate of the First Class, should have the power to sanction a prosecution for the offence of false evidence or of forgery, committed in the Court of the Magistrate. It is not necessary for us now to decide whether the Court of Session has or has not such power. But in the absence of any express provision to that effect in the Code, it is impossible not to see that it would be difficult to hold that the Court of Session has such power, in the face of the words of Section 37-- 'neither the Magistrate of the District, nor the Subordinate Magistrates shall be subordinate to the Session Judge, except to the extent and in the manner provided by this Act.' We think it well to suggest this difficulty, in order that the Legislature may remove it, should it see fit to do so, when the Code of Criminal Procedure is again revised.

5. It may also be observed that, although chapter IV of the Code professes to give an exhaustive list of all the powers which may be exercised by the Magistrates, no mention is made of any power of the District Magistrate to sanction a prosecution under Sections 468 and 469. Padmanabh's pleader has argued from this that the Magistrate of the District has no such power in the case of offences committed before a Magistrate of the First Class. But the argument is deprived of weight by the circumstance that the list in question equally omits all mention of the District Magistrate's power (which is unquestioned), to sanction prosecutions in respect of offences committed before Magistrates of the lower grades. The list in question is useless, unless exhaustive: and it is for the Legislature to consider whether the omission here noticed ought not to be supplied.