

In Re: Manjnath Shivnath

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Court : Mumbai

Decided On : Oct-07-1908

Reported in : (1908)10BOMLR1053

Judge : Chandavarkar and ;Heaton, JJ.

Appeal No. : Criminal Revision No. 237 of 1908

Appellant : In Re: Manjnath Shivnath

Judgement :

Chandavarkar, J.

1. We are opinion that the sanction which was granted on the 22nd of April 1907 by the Subordinate Judge became operative from the date of the order granting it and the Magistrate before whom the complaint had been filed previously could from that date take cognisance of the offence. This view is not inconsistent with the decision in Queen Empress v. Morton and Moorteza Ali (1884) 1. L.R. 9 Bom. 288. There it has been held that a sanction must be obtained before a Criminal Court can take cognizance of the complaint. To the same effect is the law enunciated in Reg. v. Parashram-Keshav (1870) 7 B.H.C. 61 by Melvill J. in interpreting Section 167 of the Criminal Procedure Code of 1861. These decisions mean no more than this, that where a complaint having been filed and a sanction subsequently obtained, any action taken by Magistrate before the grant of the sanction, is illegal but that does not prevent the Magistrate from taking cognizance

of the complaint after the sanction has been obtained. We think that the sanction obtained in this case is still alive.

2. But it was also argued that the petitioner had not put in the order of the Subordinate Judge granting the sanction. No doubt that was an irregularity. The order ought to have been put in. But that irregularity was cured by the Sessions Judge communicating to the Magistrate the fact that sanction had been granted and that there had been an appeal to his Court from that sanction and that therefore the Magisterial proceedings ought to be stayed.

3. We therefore make the rule absolute. The Magistrate's order is set aside and he is directed to take cognizance of and proceed with the complaint according to law.

Heaton, J.

1. I agree to the rule being made absolute. It seems to me that it is perfectly clear that the Magistrate received the complaint, but that he was not inclined to take cognisance of the offence without the sanction of a Court. That sanction was subsequently obtained, and from that moment, it seems to me, that the Magistrate had power to take cognisance of the offence. Ultimately he did so. It does not seem to me that the delay that occurred between his being empowered to take cognisance and his actively proceeding to take cognisance has anything whatever to do with the period of six months which is mentioned in Clause 6 of Section 195 of the Criminal Procedure Code.

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