

**In Re: Anupram Kirparam**

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**Court :** Mumbai

**Decided On :** Dec-14-1910

**Reported in :** (1911)13BOMLR27

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

**Appeal No. :** Criminal Application for Revision No. 340 of 1910

**Appellant :** In Re: Anupram Kirparam

**Judgement :**

**Batchelor, J.**

1. This is a petition to set aside an order made by the District Magistrate of Surat who, by the order under notice, reversed the Sub-divisional Magistrate's order discharging the accused. The District Magistrate was of opinion that the discharge should be set aside and further enquiry should be undertaken.

2. The ground upon which a Rule was issued by us was the petitioner's allegation that though the opponent's counsel had been fully heard against him, his own counsel had been stopped by the District Magistrate in the course of the enquiry, and, that notwithstanding, the District Magistrate thereafter without any further notice to the petitioner or his legal adviser held against him and directed further enquiry. Upon this point there is some slight divergence between the District Magistrate's report and the affidavits filed on behalf of the petitioner as to what the

real state of the facts is; but it seems to us that both sides give so nearly the same version that our own course of action is free from doubt. According to the petitioner what happened was that after his counsel had addressed the Court for a short time he was stopped by the District Magistrate who stated that he saw then no necessity for counsel to argue further, but that he would read up all the papers and if he found any points which told against the petitioner he would hear the petitioner's counsel further, fixing a day for that purpose : that, that notwithstanding, after a lapse of three months and nine days, the District Magistrate, without further notice for arguments, delivered judgment deciding against the petitioner. The District Magistrate's own account of what happened is, in his own language, this : 'So far as I recollect after having heard counsel for the petitioner on all the points which I thought important I did express the opinion that there was no necessity for him to address me on some of the remaining points, and I also said that if there were other points as to which I should like to hear arguments I would fix a day for the purpose.'

3. The difference between these two versions is, as we have said, slight and though we fully accept the learned Magistrate's account of what happened, we think it impossible to resist the conclusion that his action ran such grave risk of prejudicing the petitioner that his order ought not now to be upheld. We think that in a matter of this kind the Court ought not to countenance any very nice distinctions, but that when once it is satisfied that the District Magistrate stopped petitioner's counsel with a promise to hear him further, if necessary, it ought to hold that that amounted to an undertaking that the decision would not go against the petitioner without affording him further opportunity for presenting his case to the Magistrate. There may of course be cases where it is clear that counsel was stopped only because on the points already argued the Court has sufficient materials for a decision against him, so that his success upon other points would not avail his client; but this is not, we think, a case of that description.

4. Upon this ground and this ground only we must set aside the District Magistrate's order.

5. That being done the question remains as to what should be the next step. It is unfortunate that this criminal prosecution should have been pending for such a protracted period; but the opponent is by law entitled to move a higher Court in revision, and we think that this Court is the best tribunal to entertain his application. We, therefore, set aside the District Magistrate's order under notice and transfer to ourselves the application for revising the Sub-divisional Magistrate's order of discharge.

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