

In Re: Gafur Daud Saheb

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Court : Mumbai

Decided On : Oct-10-1924

Reported in : AIR1925Bom151; (1924)26BOMLR1235; 85Ind.Cas.64

Judge : Marten and ;Fawcett, JJ.

Appeal No. : Criminal Appeal No. 393 of 1924

Appellant : In Re: Gafur Daud Saheb

Judgement :

Marten, J.

1. In this appeal the learned Sessions Judge appears to have made a slip in granting sanction to prosecute the appellants for perjury under the old procedure and in overlooking the circumstance that under Section 476 of the Criminal Procedure Code a different procedure ought now to be followed. The amended Criminal Procedure Code came into force on September 1, 1923. The above sanction was given long afterwards, viz, on June 30, 1924. It would further appear that even the first application for sanction was not made until September 10, 1923. So the provisions of Section 6 of the General Clauses Act, to which my learned brother has drawn the attention of counsel, could in no way apply.

2. We have been referred by counsel to Baldeo Misser v. Deputy Inspector-General of Police, C.I.D., Bengal I.L.R. (1924) Cal. 652, where precisely the same

point arose and where it was held that, having regard to the amending Act, the sanction purported to be there given was illegal and that no Court could take any cognizance of it, It does not appear that there the above section of the General Clauses Act was referred to, and it appears to have been conceded that the Magistrate had no jurisdiction to make the order which he did in that particular case.

3. The order we make is that we quash the direction granting sanction to prosecute the appellants, and direct the withdrawal of the complaint, which we understand has been presented in accordance with the sanction which the learned Sessions Judge purported to give. Speaking for myself, I prefer to adopt the course which Mr. Justice Greaves took in Baldeo Misser's case and to say nothing as to any alternative course which may be still open to the learned Sessions Judge with reference to this alleged perjury.

Fawcett, J.

4. I concur.

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