

In Re: Dagdoo Bapu

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Court : Mumbai

Decided On : Jun-15-1921

Reported in : (1922)ILR46Bom120

Judge : Pratt and ;Fawcett, JJ.

Appellant : In Re: Dagdoo Bapu

Judgement :

1. This is a reference made by the Second Presidency Magistrate of Bombay requesting revision of an order made by him on the 26th November 1920, granting a pardon to an accused Dagdoo Bapu under Section 337, Criminal Procedure Code.
2. The offence under inquiry was an offence of murder and the accused was placed before the Magistrate on a charge of that offence on the 7th September 1920. But as the prosecution case was that another accused, Dhondoo Sumbhoo, who had absconded, was the principal offender the pardon was tendered. The principal offender has not been arrested, and it appears there is no prospect of his arrest or trial.
3. The prosecution desire the discharge of Dagdoo Bapu as otherwise he would be detained for an indefinite period in the custody as an approver.
4. The Magistrate suggests that the pardon was invalid, as it was not tendered for the purpose of an inquiry but for the purpose of securing evidence under Section

512, Criminal Procedure Code. There is no substance in this distinction. The offence of murder was under inquiry and in order to secure the approver's evidence as to this offence a pardon was tendered, and the proceeding under Section 512 was only ancillary to that inquiry. There is, therefore, no ground for revision of the Magistrate's order under Section 337.

5. We would point out, however, that there is no occasion for revision of the order. The tender of a pardon does not prevent the prosecution from proceeding against an approver as an accused person. If the prosecution is so revived it is for the approver to plead the pardon as a defence: see *Emperor v. Kothia* (1906) 30 Bom. 611 and *Emperor v. Sabar Akunji* (1914) 42 Cal. 756. It is open to the prosecution to proceed against the approver Dagdoo on the ground that he has not performed the condition of the pardon in that he gave false evidence under Section 512, Criminal-Procedure Code.

6. Or on the other hand, if the prosecution do not desire to proceed further with the case against the principal offender, Dhondoo, the Magistrate has power to discharge the approver from custody. Sub-section 3 of Section 337, Criminal Procedure Code, implies that there is a trial in progress and its object is to secure the evidence of the approver for such trial. If there is no such trial and no likelihood of such a trial, then *cessante racione lex ipsa cessat*.

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