

In Re: BudiuddIn Sarfuddin

In Re: BudiuddIn Sarfuddin

SooperKanoon Citation : sooperkanoon.com/350186

Court : Mumbai

Decided On : Jun-28-1922

Reported in : (1923)ILR47Bom102

Judge : Lallubhai Shah, Kt., A.C.J. and ;Crump, J.

Appellant : In Re: BudiuddIn Sarfuddin

Judgement :

Lallubhai Shah, Kt., A.C.J.

1. In this case the original Order which is said to have been disobeyed, was made by the First Class Magistrate, Mr. Date. It appears that the present petitioner made an application to the District Magistrate for sanction under Section 195, Criminal Procedure Code, as an authority to which Mr. Date would be subordinate. The District Magistrate was of opinion that Mr. Date made his order as a First Class Magistrate, and that the Court to which he would be subordinate in that capacity would be the Sessions Court to which appeals from his decisions as a First Class Magistrate would ordinarily lie. On that ground the District Magistrate refused to entertain the application. We are not concerned with the application which the complainant subsequently made to the Sessions Court, nor with the result of that application. The present application is against the order of the District Magistrate ; and it is urged on his behalf that Mr. Date must be taken to have made his order as a public servant within the meaning of Clause (a), Sub-section (1) of Section 195, Criminal Procedure Code, and that, though he was a First Class Magistrate,

as a public servant he must be taken to be subordinate to the District Magistrate, though as a Court he may not be subordinate to the Court of the District Magistrate within the meaning of Section 195. On the construction of the section, I do not feel any difficulty in disallowing this contention ; but the point has been decided by the Madras High Court in the case of Arunachalam Pillai v. Ponnusami Pillai (1918) 42 Mad. 64 and it is needless to deal with it at any length. I accept the view taken in that case and hold that under Clause (a), Sub-section (1) of Section 195, if a public servant making the order is a Court, in respect of that order, the Court to which that Court would be subordinate would be the Court to which appeals would ordinarily lie, that is, in the present case, the Sessions: Court and not the District Magistrate. I am of opinion that the order of the District Magistrate is right,

2. I would discharge the rule.

Crump, J.

3. I concur.