

**In Re: Petition of Damma**

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**SooperKanoon Citation :** [sooperkanoon.com/456533](http://sooperkanoon.com/456533)

**Court :** Allahabad

**Decided On :** May-04-1907

**Reported in :** (1907)ILR29All563

**Judge :** Banerji, J.

**Appellant :** In Re: Petition of Damma

**Judgement :**

**Banerji, J.**

1. This is an application for the revision of an order passed by Babu Surajbhan Prasad, Magistrate of the first class of Fatehpur. The learned Assistant Government Advocate raises a preliminary objection that the application is not maintainable under the Code of Criminal Procedure. The facts were these: Proceedings were instituted against the applicant Damma under Section 110 of the Code of Criminal Procedure. The Magistrate after holding an inquiry discharged Damma under Section 119 of the Code. At the same time he directed the record of the case to be laid before the District Magistrate with the request that Damma, who was the head-man of the village, might be removed from that office, and that the District Magistrate might, if necessary, direct the police to watch the movements of Damma. Mr. Malcomson who appears for the applicant informs me that it is this order relating to the dismissal of Damma from the office of head-man and to his conduct being watched by the police that he complains of. I may

mention that upon the papers being laid before the District Magistrate he made an order dismissing Damma from the office of head-man and directing the police to watch and note the acts of Damma and make a report, if necessary, to him. It is clear that the order is an executive order passed by the District Magistrate in his executive and not in his judicial capacity. When the subordinate Magistrate who heard the case under Section 110 of the Code of Criminal Procedure ordered the discharge of Damma, that case came to an end. In directing the papers of the case to be laid before the District Magistrate with a certain recommendation he did so, not in his capacity of a Criminal Court, but as a subordinate of the District Magistrate, with a view that the District Magistrate might, if he thought fit, take action against the head-man of the village. The rules framed by the Local Government under Section 45(3) of the Code of Criminal Procedure authorize a District Magistrate to appoint and dismiss a head-man. The order of the District Magistrate dismissing the applicant is an executive order, and so is the order directing the police to watch his conduct. This latter order was apparently passed by the District Magistrate as the executive head of the police. I am unable to hold that the order made by the District Magistrate can be regarded as proceedings of an inferior Criminal Court within the meaning of Section 435 of the Code of Criminal Procedure. The portion of the order of the Subordinate Magistrate of which the applicant complains was, as pointed out above, clearly not a judicial order. The application to this Court for revision of that order and of the order of the District Magistrate is not therefore maintainable. I accordingly dismiss it.