

Ganesh Pershad Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/463803

Court : Allahabad

Decided On : Dec-06-1911

Reported in : 13Ind.Cas.283

Judge : Tudball, J.

Appellant : Ganesh Pershad

Respondent : Emperor

Judgement :
ORDER

Tudball, J.

1. This is an application in revision under Section 115 of the Code of Civil Procedure and arises out of the following circumstances:

A civil suit was heard in the Court of the District Judge of Mirzapur in the course of which Ram Daur Lal, Patwari, gave evidence.

2. After the decision of the case the District Magistrate applied to the District Judge for sanction to prosecute Ram Daur Lal for the offences of forgery and perjury. The District Judge refused sanction in respect of the forgery on the ground that it was unnecessary and refused sanction in the matter of the alleged perjury on the ground that the words used did not amount to perjury. When applying for sanction,

the District Magistrate forwarded to the District Judge the record of a Departmental inquiry made by one of his subordinates. The record of that Departmental inquiry, judging from the Judge's order in the present case, went to show that Ram Daur Lal and one Ganesh Prosad had fabricated false evidence or had attempted to do so by introducing into the Tahsil record room the Patwari's diary for 1314, also it goes to show that these persons either committed forgery or entered into a conspiracy to do so by signing the name of the superior Ranungo in the diary. The District Judge on perusal of this record and after refusing the sanction, for which the District Magistrate had applied, issued notice to these two persons to show cause why he should not place them on trial for the above-mentioned offences. After hearing what they had to say, he directed their prosecution and hence the present application in revision.

3. The first objection, and a very material one, to the action taken by the District Judge, is that he had not before him any evidence whatsoever in respect of the commission of the alleged offence, there is no basis for his order and that he has, therefore, acted with material irregularity. It is urged that the record of the Departmental inquiry is not evidence at all. It is clear (but the Judge has ordered the prosecution in respect of matters which occurred in the Tahsil and not in his Court and in respect of which there was no evidence whatsoever before him. It may be assumed that the matter was brought to his notice in the course of a judicial inquiry but it seems to be materially irregular to order a prosecution for such offences without having before it at least some material in the shape of evidence which goes to show that there is reason to believe that the offences have been committed. The District Judge has made no inquiry himself. He has acted on what is not evidence that is on the basis of a record at which he ought never to have looked it not being evidence in the matter of the sanction applied for by the District Magistrate. On the ground of what I deem to be material irregularity, if not illegality, I admit the application and set aside the order of the District Judge. I make no order as to costs.