

**Azharul Hasan Vs. Mazhar Hasan**

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**SooperKanoon Citation :** [sooperkanoon.com/476321](http://sooperkanoon.com/476321)

**Court :** Allahabad

**Decided On :** Mar-01-1909

**Reported in :** 2Ind.Cas.467

**Judge :** George Knox, J.

**Appellant :** Azharul Hasan

**Respondent :** Mazhar Hasan

**Judgement :**

**George Knox, J.**

1. This is an application for revision of an order of the Sessions Judge of Allahabad whereby on the 5th of October 1908, here voked the sanction given to prosecute one Mazhar Hasan under Section 211 read with Section 109 of the Indian Penal Code. The application is under Section 439 of the Code of Criminal Procedure, and in accordance with the decision in Emperor v. Shish Mahal (1908) A.W.N. 102. I have no option but to entertain and decide it. The learned Counsel who appears for the petitioner argued earnestly that this Court ought not to stop the sanction for prosecution seeing that the matter has been fully considered by a Deputy Magistrate who has come to the conclusion that although the person who lodged the complaint was one Ali Ausat--the person really entitled to be termed complainant is his master, the man Mazhar Hasan, who is the opposite party to this petition. I find it difficult to understand how the learned Deputy Magistrate ever

brought himself to taking the important step of sanctioning a prosecution against Mazhar Hasan. I have not been shown or even asked to look at any evidence before the Magistrate which, alleges that at any particular place or given time' Mazhar Hasan did by act or omission, conspiracy or instigation, cause Ali Ausat to file this complaint. A suspicion may easily arise in any one's breast that he must have been the instigator, but it would be a very dangerous step for the Court to take that merely because some one might have suspicion that Mazhar Hasan had instigated this false complaint, the Court upon that mere possibility of suspicion should allow a complaint to be brought against him. Were a private person to institute a complaint upon a bare suspicion and afterwards find himself unable to elevate that suspicion on to the foundation of a prima facie case, that private person would very rightly find himself called to task for making a false complaint. I do not see why a Court should be authorised to do with impunity what a private person would be punished for doing. The very fact that a prosecution or a case for damages may not arise, should make the Court the more careful before it grants sanction upon mere suspicion, and yet that is what the learned Deputy Magistrate has done in the present case. If the Deputy-Magistrate had considered more carefully Clause 4 of Section 195 than he appears to have done, I feel sure that he would have been saved from falling into the present error. It was impossible for the Deputy Magistrate upon what he had before him to specify the place in which and the occasion on which the alleged abetment was committed. The learned Counsel for the petitioner felt the difficulty of this and asked for a week's adjournment in order that he might place before the Court material upon which this Court might itself be able to remedy these omissions. The very fact that a sanction need not name the accused person, but shall so far as practicable specify when and where the offence was committed, satisfies me that no Court should give sanction except upon evidence before it of such matters. The learned Sessions Judge has perhaps expressed himself somewhat differently to what he intended to do, If he had said that before sanction for prosecution of such an offence can be given and before Mazhar Hasan can be complained against for having abetted the offence mentioned in Section 211 read with Section 109 of the Indian Penal Code, it must be shown by some evidence that there is a prima facie case against him, I should be in full accord with him. I think this was what he intended to say. In any case I

hold that there is before me upon the record nothing from which a sanction can be properly given and decline to interfere.

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