

**Damarcha Vs. Emperor**

**Damarcha Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/476772](http://sooperkanoon.com/476772)

**Court :** Allahabad

**Decided On :** Mar-05-1921

**Reported in :** AIR1921All148; 62Ind.Cas.192

**Judge :** Stuart, J.

**Appellant :** Damarcha

**Respondent :** Emperor

**Judgement :**

**Stuart, J.**

1. Damarcha was prosecuted by the Police on the allegation that he had committed an offense punishable under Sections 325 and 326 of the Indian Penal Code. These being offenses triable by a First Class Magistrate as warrant cases, the procedure adopted was that laid down under Chapter XXI, Act V of 1898. Under the provisions of Section 255 the accused does not require to cross-examine the witnesses for the prosecution until the charge has been framed. The Trying Magistrate came to the conclusion after hearing the evidence that a prima facie case was made out under Section 307 of the Indian Penal Code. That offence is triable not by a Magistrate but by the Court of Session. He, therefore, converted the proceedings into an enquiry into a case triable by the Court of Session. Chapter XVIII of Act V of 1898 then applied. Under the provisions of that Chapter the accused must cross-examine as each witness is called or not cross-

examine at all. Because the accused had not cross-examined, the Magistrate took the view that he had no right to have the witnesses recalled for cross-examination. The Magistrate has submitted a candid explanation in which he states that this was his view. In the particular circumstances of this case the accused has been prejudiced. If from the very beginning he had known that he must cross-examine at once because the procedure was under Chapter XVIII, he would have no grievance, but he did not know that fact until the charge was framed. In the circumstances the proceedings must be quashed. I return the record to the District Magistrate of Caw pore with the direction that Damarcha be put upon his trial before a Magistrate other than Mr. Lynch on a charge under Section 307, in order that an enquiry may be made into the case under the provisions of Chapter XVIII, Act V of 1898.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**