

**Motilal Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/479041](http://sooperkanoon.com/479041)

**Court :** Allahabad

**Decided On :** Nov-26-1934

**Reported in :** AIR1935All267

**Appellant :** Motilal

**Respondent :** Emperor

**Judgement :**

ORDER

**Bennet, J.**

1. This is an application in revision by one Mod Lal who has been fined Rs. 50 under Section 179, Penal Code. The sole ground in revision taken is that no offence under that section was committed. The order of the Magistrate shows that Moti Lal accused was produced as a witness in a criminal case, King-Emperor v. Usman, etc. That case had been committed to the Court of Session by another Magistrate in December 1933. Moti Lal was complainant in that case. But on 17 hearings between 21st September, and 6th December 1933, he refused to answer questions as a witness because he alleged he was suffering from, pain in his stomach. On two dates he was examined by a doctor who found that he was all right. The case therefore was committed to Sessions without the statement of Moti Lal the complainant, being recorded. On 26th February 1934, the Magistrate sent for Moti Lal who was produced before him and he desired to take the statement of

Moti Lal under Section 219, Criminal P.C. That section empowers a Magistrate if he thinks fit to summon and examine supplementary witnesses after the commitment and before the commencement of the trial. An oath was administered to Moti Lal and he refused to answer questions put to him on the ground that he had pain in his stomach. The Magistrate saw Moti Lal smiling when he said this and Moti Lal remained in Court for 1 1/2 hours and talked freely about other things. On this evidence the Magistrate took proceedings against Moti Lal under Section 480, Criminal P.C., and came to the conclusion that he was guilty of refusing to answer questions touching a subject on which he was bound to state the truth and therefore the Magistrate convicted him under Section 179, Penal Code, and fined him Rs. 50.

2. Learned Counsel relies on an old ruling of a Bench of the Bombay High Court of the year 1889 reported in *In re Ganesh Narayan Sathe* (1889) 13 Bom. 600. In that case one Ganesh Narain had made a complaint charging certain persons with purchasing judicial offices. The case was remanded for inquiry under Section 202, Criminal P.C. The complainant asked permission to withdraw from the prosecution alleging that he had no personal knowledge of the facts stated in his complaint. The Magistrate examined the complainant at great length as to the motives which had induced him to file the complaint and as to the names of the persons, at whose instigation he was acting. The complainant refused to answer those questions. The Magistrate ordered him to be imprisoned for seven days and dismissed the complaint. The Bombay High Court which had already ordered further inquiry in the case then sent for the record apparently with a view to seeing what further proceedings should be taken in the case, and they decided that further action was not necessary, on p. 628. On pp. 603 and 604, it is stated:

In order to ascertain who were the real complainants, the Magistrate interrogated the complainant, and, on his refusing to answer, he directed his imprisonment. Such questions however were irrelevant to the real issue-whether there was a prima facie case made out of an offence. Even assuming that the Magistrate thought the questions relevant, it is very doubtful whether he could force a complainant, voluntarily preferring a complaint to answer. A complainant can hardly be held a witness punishable for refusal to answer under either Section 485

or Section 179, Penal Code, or the Criminal P.C., respectively. I find no case which includes a complainant in those penal proceedings.

3. This is the statement of one learned Judge. The other learned Judge took a different view and on p. 625 he stated:

The complainant would be bound when examined as a witness to answer all relevant questions.

4. It is to be noted that the first learned Judge on p. 604, did not definitely say that the complainant would not be bound to answer relevant questions merely because he was a complainant and not a witness. The proposition which learned Counsel desires to draw from this ruling that in no case will a complainant be punishable under section 179, Penal Code, is clearly not supported by the ruling. All that the ruling lays down is in the opinion of one learned Judge that where irrelevant questions were asked he should not have been punished under Section 179, Penal Code. In the present case the Court desired to examine the complainant as a witness for the prosecution of persons who had already been committed to Sessions on his own COITN plaint. Such an examination would have been relevant and the Magistrate had a discretion to require the complainant as a witness under Section 219, Criminal P.C. I consider therefore that the conviction under Section 179, Penal Code, was correct. The revision is therefore dismissed.