

The Queen-empress Vs. Kuppu

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SooperKanoon Citation : sooperkanoon.com/778937

Court : Chennai

Decided On : Aug-15-1884

Reported in : (1883)ILR7Mad560

Judge : Kernan and ;Muttusami Ayyar, JJ.

Appellant : The Queen-empress

Respondent : Kuppu

Judgement :

Kernan and Muttusami Ayyar, JJ.

1. The facts are stated by the referring officer. The offence for which the Joint Magistrate purported to give sanction under Section 195 was perjury committed before the Second-class Magistrate who did not give, nor was b.e applied to for, sanction, though, he stated, he disbelieved the witness.

2. The Joint Magistrate on reading the calendar and apparently without reading the evidence or forming an opinion from it whether the witness had committed perjury and without any application for the purpose purported to give sanction to prosecute the witness.

3. The Joint Magistrate when he granted sanction was not sitting as a Court to hear the case in any stage of it, nor was any application before him.

4. Sanction should not be given by any Court without first examining the evidence. The object of giving the power to sanction is to secure, as far as possible, that no man shall be prosecuted unless the Court hearing the case or a superior Court is satisfied that it is a proper case to put the party on his trial. The Joint Magistrate not having read the evidence was not in the position which the law contemplates to be satisfied that the party had committed perjury. No opportunity was given to the party to be heard on this very important matter, and the order was made behind his back.

5. The Joint Magistrate in perusing the calendar under Section 435 was acting merely within its provisions, which are to satisfy himself 'as to the correctness of any finding, sentence, or order, &c.;, as to the regularity of the proceeding of the Second-class Magistrate.' The Joint Magistrate was not then acting in a judicial proceeding, section 4 (d). The sanction purported to be given was, under the circumstances, illegal.

6. The Joint Magistrate did not act under Section 476 as the matter was not brought before him in any judicial proceeding, section 4 (d). Even if he was acting under that section, he should have sent the case for inquiry before a First-class Magistrate.

7. The Joint Magistrate did not himself make any complaint. The order for sanction must be set aside.