

opinion that the conviction recorded in this case against Báí Diváli cannot be upheld.

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v.
BA'Í DIVÁLI.

“The question for decision appears to me to be, whether the procedure above described constitutes a ‘prosecution commenced’ by the Collector, according to the requirements of Sec. 52 of Act X. of 1862, or not; or, in other words, whether the Collector is bound, like other individuals, to make a complaint in person, or through a pleader or agent.

“I am of opinion that the Collector is bound to proceed by formal complaint laid either by himself or through a pleader or agent. As, however, this ruling is against the established practice of this district, and as it would occasion some inconvenience to the Collector’s department, I think it advisable that a direct decision should be passed on this point by their Lordships the Judges of the High Court.”

PER CURIAM (COUCH C.J., and NEWTON, J.):—The Court annuls the conviction, because no complaint, as required by Sec. 66 of the Code of Criminal Procedure, was made before the trying Magistrate, either by the Collector or any person duly authorised in his behalf. A memorandum under the signature of the Collector cannot be accepted in the place of a complaint so as to authorise the issuing of a summons.

Conviction reversed.

REG. V. GA'NOJI bin PA'NDJI.

June 25.

False Evidence—Contradictory Statements—Alternative Charge—Ind.

Pen. Code, Sec. 193.

Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false.

THE accused was, on the 7th of April 1868, convicted, under Sec. 193 of the Indian Penal Code, of intentionally giving false evidence in a stage of a judicial proceeding, and was sentenced by A. Bosanquet, Acting Session Judge of the Konkan at Tháná, to suffer rigorous imprisonment for two years.

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The accused denied, before the Munsif of Mahád, having executed a bond on which a suit had been filed against him. He afterwards deposed, before the same Munsif, that he had executed the bond, and he adhered to the latter statement. He was charged on his first statement made before the Munsif, which on the trial was proved to have been false.

The accused having appealed to the High Court, the case came on for hearing this day, before COUCH, C.J., and NEWTON, J.

Shántárám Nárájan, for the prisoner, relied upon the case of *In re Noor Khan Mojum Khan*, mentioned in a note to Sec. 193 of the Indian Penal Code in West's Acts and Regulations, where it is laid down that two contradictory statements will not support a conviction of perjury* (1st April 1863).

Dhirajlál Mathwradás for the prosecution.

COUCH, C.J. :—I regret that Mr. West's note is imperfect, and gives an erroneous impression of the decision of the late Chief Justice. In that case there was no alternative charge, nor was there evidence to show that the statement on which the accused was charged was false. In this case, though there is no alternative charge, there is evidence to show which statement is false, and, therefore, the question does not arise. The second statement made by the accused was true, and, seeing that he then stated the truth, we mitigate the sentence to one year's rigorous imprisonment. Where a party states the truth first, and then tells a falsehood, the punishment given to him should generally be a severe one.

* NOTE.—*Vide* 6 Calc. W. R. Cr. R. 65 ; 8 *Ibid.* 79 ; 9 *Ibid.* 52 ; and 4 Mad. H. C. Rep. 51. *Quære* whether Mr. West's remarks in his introductory note to Act II. of 1855, with reference to the case of Noorkhan Mojum Khan, can be supported.—ED.