

1869

Reg. v. Muhammad Khan valad Inam Khan.

AUG. 26.

*Sanction of Court to prosecute—Criminal Procedure Code
Sec. 169.*

Where the Magistrate, before whom a witness gives false evidence, himself commits such witness for trial, his sanction of the prosecution, under Sec. 169 of the Criminal procedure Code, will be implied.

The prisoner was tried on the 18th of May 1869. by A. L. Spens, Acting Session Judge of Canara, on a charge, under Sec. 193 of the Indian Penal Code of intentionally giving false evidence in a judicial proceeding, and, having been found guilty, was sentenced to two years' rigorous imprisonment.

No formal sanction (under Sec. 169 of the Criminal Procedure Code) for the prosecution was recorded; but the false evidence was given by the prisoner before the committing Magistrate in a case tried by him.

The Prisoner appealed to the High Court, and the appeal was heard by Warden and Lloyd, JJ.

Shantaram Narayan for the prisoner:—The prosecution is not legal. There is no authority for saying that, where the committing Magistrate is the person before whom the false evidence has been given, it is not necessary to record a previous sanction to the institution of criminal proceedings. That circumstance might be a good ground for concluding that the sanction would have been given; but, in fact, it has not been given as the law requires. This is a matter of jurisdiction, for it is the sanction which gives jurisdiction. Supposing the Criminal Court of the Full-Power Magistrate in this case were the same, but the Magistrate was different, would not a special sanction be necessary?

Dhirajlal Mathuradas for the Prosecution:—The Prosecution was legal, for the institution of the Proceedings by the committing Magistrate implied his sanction. It is not enacted that that sanction must be in writing or in any particular form. It has been held in Calcutta where a man made a false charge against another before a District

Magistrate, who, on finding the complaint to be without foundation, directed a subordinate Magistrate to commit the complainant to the Session Court, that the directing order was a sufficient sanction (a). In a Bombay case prosecution for non-attendance in obedience to a summons was entertained without the sanction or complaint required by Sec. 16 of the Code of Criminal Procedure; and it was held that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt: *Reg. v. Ganu bin Tata* (b). The present case is the same in principle.

1869

Reg.

Muhammadkhan
v.
Ismankhan.*Cur. adv. vult.*

26th August—LLOYD, J.:—There is an implied sanction to the institution of criminal proceedings where the Magistrate before whom the false evidence was given is also the committing Magistrate. As the prisoner did not object to the jurisdiction of the Court when he was put on his trial, it is now too late to take this objection.

WARD N, J.:—I concur.

Petition rejected.

(a) 5 Wyman's Rep. 59. (b) 5 Bom. H. C. Rep. Cr. Ca. 38.

Reg. v. Kala Karsan, et al.

Trial with aid of assessors—Omission to state grounds of decision—Error of procedure not prejudicing accused—Crim. Proc. Code. Sec. 379.

Sept. 23.

In a trial conducted with to the aid of assessors the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction.

The accused, Kala Karsan, and seven others were convicted under Sec. 412 of the Indian Penal Code, by W. Sandwith, Session Judge of Ahmedabad, of the offence of receiving property stolen in the commission of dacoity, knowing it to have been stolen, and sentenced to be transported for life.

The prisoners, Kala Karsan, Jetha Jassa, Uma Jiva, and Amlusu Bhava, having appealed from the conviction and sentence, the appeal was argued before Warden and LLOYD, J. J.