

REG. V. PARSHRA'M KESHAV.

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July 28.*Crim. Proc. Code, Sec. 167—Sanction for Prosecution.*

Sec. 167 of the Code of Criminal Procedure requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced; and, until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad.

Where a complaint charged a person who was one of the public servants mentioned in Sec. 167 of the Criminal Procedure Code with committing acts which if committed by a private individual would have constituted the offence of extortion:

It was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.

THE accused, Parshrá'm Keshav, a First Kárkún, and Sub-ordinate Magistrate, Second Class, at Pachorá, was convicted of extortion, and sentenced to one year's rigorous imprisonment, by J. McLeod Campbell, Magistrate F. P. in the Khándesh district. In appeal, the Session Judge reversed the conviction and sentence, on the ground that the sanction of the Magistrate of the District for prosecuting the accused, though dated prior to the framing of the charge against him, was filed in the case subsequently. The Magistrate F. P. addressed a letter to the Magistrate of the District representing that, following the circular of the Calcutta High Court No. 20 of 1864, quoted by Prinsep and Currie in their editions of the Code of Criminal Procedure under Sec. 167, he did not think it necessary to obtain any sanction for prosecution. The District Magistrate forwarded that letter to the High Court, and requested them to send for the record and proceedings and review the case.

The record and proceedings having been sent for and reviewed by GIBBS and MELVILL, JJ., the following judgment of the court was delivered by

MELVILL, J.:—The first question which we have to decide is whether a conviction by a Magistrate for any of the offences to which Sec. 167 of the Criminal Procedure Code refers is vitiated by the circumstance that the necessary

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sanction for the prosecution was not received until an advanced period of the trial.

We agree with the Session Judge that Sec. 167 of the Criminal Procedure Code requires that sanction to certain prosecutions should be given before such prosecution is commenced. A Magistrate may in such a case receive a complaint of the nature mentioned against a public servant, and, if he think right, may make a preliminary inquiry into the truth of the complaint, under Sec. 180 of the Criminal Procedure Code; but he is not authorised to cause the attendance of the accused, or to take any evidence against him, until he has obtained the necessary sanction. Until the sanction is obtained the Magistrate has no jurisdiction, and a conviction founded on evidence taken without jurisdiction would be bad. This view does not conflict with that taken by this court in the case of *Reg. v. Jivan Vasudev*, to which the Magistrate of the District has referred. That was a case tried by a Court of Session, and this court held that the trial might be proceeded with, though the sanction of Government to the prosecution had not been given until after the committal of the accused. The Magistrate's proceedings had been irregular, but the prosecution had been duly authorised before the trial commenced, and it was held that under these circumstances the irregularity of the preliminary inquiry did not prevent the Court of Session from trying the case. But it by no means follows from this that, if the offence in that case had been within the cognisance of the Magistrate, and if the Magistrate had convicted the accused, instead of committing him for trial, this court would have upheld a conviction founded on evidence which had been taken without jurisdiction.

The next question on which the Session Judge and the Magistrate are at issue is whether a sanction was necessary at all in this case. The accused was convicted, under Sec. 384 of the Indian Penal Code, of extortion. The trying

Magistrate has relied, in support of his opinion that no sanction was necessary, upon a note by Mr. Prinsep to Sec. 167 of the Criminal Procedure Code, in which it is stated that the Calcutta High Court has declared that this section relates to offences specified in Chap. IX. of the Indian Penal Code, and to no other. If the Circular referred to be correctly quoted, we cannot fully concur in it, for it seems to us impossible to hold that Sec. 167 does not relate to such offences as those specified in Secs. 217 to 223 of the Indian Penal Code, which are not contained in Chap. IX. of the Code. But we agree with the view which was no doubt intended to be expressed in the Circular, namely, that Sec. 167 relates only to those acts and omissions which are declared in the Penal Code to be offences when they are committed by a public servant.

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In the present case the trying Magistrate might have treated the complaint as a charge of an offence punishable under Sec. 161 of the Indian Penal Code, and it would perhaps have been more judicious to have done so; and in that case the sanction of the Magistrate of the District would have been necessary before the prosecution could be commenced. But the complaint certainly did allege acts which if committed by a private individual would have constituted the offence of extortion; and, therefore, we cannot say that the Magistrate acted illegally in treating the charge as a charge of extortion, and in proceeding with the trial without the sanction of the Magistrate of the District.

On this ground we think that the finding of the Session Judge must be overruled; and we, accordingly, reverse it, and direct him to hear and decide the appeal on its merits.

Session Judge's order reversed, and appeal ordered to be reheard.