1870.
August 11.

REG. v. MALHA'R RA'MCHANDRA.

False Report—Sanction for Prosecution by Mámlatdár—Kulkarni—Public Servant—Crim. Proc. Code, Sec. 167—Ind. Pen. Code, Sec. 218.

The sanction for the prosecution of a Kulkarni for making a false report as a public servant, required by Sec. 167 of the Code of Criminal Procedure, may be given by the Mámlatdár or by the Pátíl to whom such Kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose.

A Kulkarni who makes a false report with reference to an offence committed in his village with intent, &c. is punishable under Sec. 218 of the Indian Penal Code.

THE record in this case was called for by the High Court, upon a review of the monthly Criminal Return of the Honorable G. A. Hobart, Session Judge of Khándesh, under Sec. 403 of the Code of Criminal Procedure.

Four men were charged before the Police Pátíl of Boris, in the táluká of Dhuliá, with misappropriating a sum of money belonging to one Kunashee. The accused, who was Kulkarni of the village, was directed to write a report of the case, which he, accordingly, did. Subsequently he wrote another report, which was untrue, and calculated to make the charge appear untrue, and to save the offenders from legal punishment.

The Subordinate Magistrate of the First Class at Dhuliá, who was also Mámlatdár of that place, committed the accused for trial, under Sec. 218 of the Indian Penal Code, on the charge that "he, on the 3rd of April 1870, at Boris, being a public servant, and being, as such public servant, charged with the preparation of a record respecting an offence alleged to have been committed by Bárkiá valad Náráyaṇ and three others, framed the record in a manner which he knew to be incorrect, with intent thereby to save the said Bárkiá and others from legal punishment."

The accused was tried at the Criminal Sessions held at Dhuliá by Satyendra Náth Tagore, Assistant Session Judge in the Khándesh district, and was convicted and sentenced to six months' imprisonment.

The accused appealed to the Court of the Session Judge, where the conviction and sentence by the Assistant Judge were reversed. The following is an extract from the judgment of the Session Judge :—

"It is unnecessary to analyse the evidence in this case, for there is, among the other objections taken in appeal, this objection, which I think is a good one, namely, that the accused is a Kulkarni, and that, to legalise the present charge against him, it was necessary, under Sec. 167 of the Code of Criminal Procedure, that there should have been a sanction for the prosecution such as is prescribed in that section, and that this sanction is wanting.

"It appears that the charge is against the Kulkarni as such, for it was his duty to prepare the report; and it appears that the accused is not removeable from office without the sanction of Government: Act XI. of 1843, Secs. 7 and 11. Unless the officer who committed the case for trial, namely, the Subordinate Magistrate of the First Class, who is also Mámlatdár of Dhuliá, had authority to sanction the prosecution, there was no proper sanction; for there is no other than is implied on the part of the Subordinate Magistrate, who is also Mámlatdár, investigating the case, and committing the accused to the Session Court for trial. But only the Collector, and perhaps his Assistants in charge of the táluks within which the Kulkarnis officiate, are the officers to whom Kulkarnis are subordinate, *i. e.*, there is no officer of lower grade to whom they are subordinate. And the Mámlatdár is not empowered by the local Government within the meaning of the term 'empowered,' and he, therefore, could not sanction the prosecution."

The papers in this case were called for by the High Court, upon a review of the monthly Criminal Return of the Session Judge of Khándesh for May 1870, to determine the question (1) whether the sanction of the Collector was necessary for the prosecution, and (2) whether the prisoner was a public officer within the meaning of the Code, and (3) whether the writing of the report was his duty as such public servant.

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The case was considered by GIBBS and MELVILL, JJ.

PER CURIAM:—It must be held that the Mámlatdár of the táluká sanctioned this prosecution, as he himself, in his capacity of Subordinate Magistrate, made the preliminary inquiry.

A Kulkarṇi is certainly subordinate to the Mámlatdár of the táluká. The very section of the Regulation (Sec. 26 of Reg. XVI. of 1827) which makes it the duty of the village accountant to furnish such reports as that which was the subject of this prosecution declares that "it shall be his duty to do so whenever called upon by the head of the village, or by the Native Revenue or Police Officer of the District." These words clearly imply subordination not only to the Mámlatdár, but to the Páṭíl.

It may well be that it is not desirable that the prosecution of hereditary officers, such as Kulkarṇis, should be sanctioned by officers who themselves hold such subordinate positions as those of Mámlatdár and Páṭíl. But the words of Sec. 167 of the Criminal Procedure Code are, "a charge of an offence punishable under the Indian Penal Code, of which any Judge, or any public servant not removable from his office without the sanction of the Government, is accused, as such Judge or public servant, shall not be entertained against such Judge or public servant except with the sanction of * * * some authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the local Government shall not think fit to limit or reserve." As the local Government has not thought fit to limit the power of Mámlatdárs to sanction the prosecution of any officers subordinate to them, there was sufficient sanction in this case; and the Session Judge's order, reversing the conviction, on the ground that there was no sanction, must be set aside, and he must be directed to hear and decide the appeal on its merits.

Order reversed. Appeal directed to be heard on its merits.

NOTE.—The Court forwarded to Government an expression of their opinion in this case, in order that Government might, if it thought fit, make rules on the subject.