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have been cited to us, and which seem to require a greater amount of particularity in the sanction than we find in the present case. Were we to do so, we think that we should needlessly add to the language of the Legislature, and probably cause many failures of justice. The case of *Reg.* v. *Khushál Hiráman* (*ubi suprà*) differs so much in its facts from this case that we do not offer any opinion upon it.

April 27.

REG. v. SUBI SA'NI.

Sanction to prosecute—Sections of Code specified—Power of Magistrate to commit under different Sections—Crim. Proc. Code, Sec. 170.

Where a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under Secs. 463 and 471 of the Indian Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under Sec. 193 (giving false evidence):

It was held that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge.

THIS case was referred for the opinion of the High Court by A. Spens, Acting Session Judge of the District of North Cánará.

The facts of the case are briefly these:—

One Ráchá Sáni adopted the accused Subi, and executed to her a power of attorney, whereby Subi, in consideration of her paying off the debts of Rácha to the extent of Rs. 250, became owner of Ráchá's estate, moveable and immoveable. One of the creditors of Ráchá, by name Bhistápa, brought a suit against her in the Court of the Principal Ṣadr Amín of Sirsi for Rs. 100. Subi applied to be made a defendant in that suit, and in support of her application produced the power of attorney above referred to. The Principal Ṣadr Amín, on inspection of the power, suspected that the figure 250 had been altered to 25. He, accordingly, wrote the following letter to the First Class Subordinate Magistrate of Sirsi:—

"I have sent herewith a copy of my judgment, dated 31st January 1865, passed in Original Suit No. 352 of 1863, between Nadigá Bhistápá, *alias* Goudápá, as plaintiff, and Ráchá Sáni as defendant.

"One Subi applied in the said case to be admitted as a defendant, and in support of the application produced a power of attorney executed in her favour by the aforesaid Ráchá Sáni. In my judgment referred to above, I have expressed my opinion as to its being proved that the amount of the debt, which the applicant was required to pay under the power of attorney, had been originally entered therein as Rs. 250, which seems to have been altered to Rs. 25. From this circumstance I am of opinion that there is ground for the trial of the applicant Subi under Secs. 463 and 471 of the Indian Penal Code.

"I have, therefore, herewith forwarded to you the records of the said suit, for an inquiry being held in the manner aforesaid.

"The power of attorney in question has been enclosed in a sealed packet and placed on the record of the suit. May this be known.

"T. T. SALDANHA,
"Principal Sadr Amín."

Upon the authority of this letter, the Subordinate Magistrate of Sirsi committed Subi to take her trial on two heads of charge:—1*st*, fraudulently using as genuine a forged document, an offence punishable under Sec. 471 of the Indian Penal Code; and 2*nd*, giving false evidence in a stage of a judicial proceeding, an offence punishable under Sec. 193 of the same Code.

On the trial of Subi, the Session Judge convicted her on the first head of the charge, but acquitted her on the second, on the ground that she had been illegally charged by the committing Magistrate, as the offence alleged to have been committed was one against public justice (Sec. 193 of the Indian Penal Code), and, therefore, could not be entertained without a formal sanction under Sec. 169 of the Code of Criminal Procedure.

In deference, however, to the ruling of the High Court in the matter of the petition of *Jayasing Haribhái*, * which decided that the Magistrate, to whom the civil court might have sent the accused for commitment, might amend, under Sec. 244 of the Criminal Procedure Code, the special charge specified in the sanction given by such civil court, the Session Judge referred this case for the consideration of the High Court.

The reference was considered by WESTROPP, C.J., and LLOYD, J.

* See note, *post*, p. 31.

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WESTROPP, C. J.:—We are of opinion that Mr. Spens, the Acting Judge of Cánará, was right in holding that the committing Magistrate in this case had not any authority to commit the accused Subi for trial, on the second charge framed by him against her, under Sec. 193 of the Penal Code, of having intentionally given false evidence in a stage of a judicial proceeding in the Court of the Principal Ṣadr Amín of Sirsi. The sanction for prosecution given by Mr. Saldanha, the Principal Ṣadr Amín, was only a sanction to prosecute the said accused Subi under Secs. 463 and 471 of the Penal Code, and being thus expressly limited by mention of those sections, we do not think that the committing Magistrate was entitled to commit her for trial for offences against any other sections of the Penal Code under which the sanction of the Principal Ṣadr Amín would, under Secs. 168, 169, or 170 of the Criminal Procedure Code, be necessary. This court has not overlooked the case of *Reg.* v. *Khushál Hiráman and Indragir* (*a*). That was a strong decision. But, assuming that it was rightly decided, it is not precisely on all fours with the present case. The sanctioning Judge there, was, so far as the Criminal Procedure Code is concerned, acting under Sec. 169 only, and did not specify any section of that Code, although the application for permission to prosecute did specify Sec. 170. Here, however, the Principal Ṣadr Amín was acting apparently as well under Sec. 171 as under Sec. 169 of the Criminal Procedure Code, and has specified two sections of the Penal Code (463 and 471) in the letter addressed by him to the First Class Subordinate Magistrate of Tálaká Sirsi, by which he sends the case to that Magistrate for investigation. We think that by that letter the investigation was limited to offences against those two sections of the Penal Code, and that we are not at liberty to treat the mention of them as surplusage.

As to the cases cited from the Calcutta Weekly Reporter by the Acting Judge of Cánará, four of them—namely, 8 Calc. W. Rep. 95, 9 Calc. W. Rep. 14, 25, and 54—relate to the

(*a*) 4 Bom. H. C. Rep., Cr. Ca. 28.

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form of charges, and not to the requisite particulars for a sanction to prosecute, and, therefore, are irrelevant. The Legislature has nowhere laid it down that a sanction to prosecute should be framed with as great particularity as is required in a charge. Had it done so, the inevitable result would have been numerous failures of justice, as pointed out in a Full Bench decision made yesterday by four Judges in the case of *Reg.* v. *Tái*. *Reg.* v. *Poosa Ram* (*b*), also cited by the Acting Judge, relates to the discretion to be exercised in sanctioning prosecutions, and is, therefore, wholly irrelevant here. *Reg.* v. *Kartick Chunder Holdar* (*c*) has been overruled by *Reg.* v. *Kadir Bux* (*d*), in which we concur. *Reg.* v. *Dwarkanath Bose* (*e*), cited by the Acting Judge, is in point here, and was, in our opinion, rightly decided. The case of *Reg.* v. *Gobur Chunder Ghose* (*f*) and *Reg.* v. *Ooma Moye Debea* (*g*) do not bear upon this case, and, as we think, tend perhaps somewhat too strongly towards requiring an excessive particularity in the form of sanction.

The direction in the case of *Jayasing Haribhái*, given by the Judges now present, and referred to by the Acting Judge of Cánará in his letter to this court, is not to be considered by him as an authority, that direction having, on reconsideration by the same Judges, been withdrawn.

Papers to be returned.

(*b*) 6 Calc. W. Rep., Cr. R. 11. (*c*) 9 *Ibid.* 58. (*d*) 11 *Ibid.* 17.
(*e*) 2 *Ibid.* 31. (*f*) 10 *Ibid.* 41. (*g*) 13 *Ibid.* 25.

NOTE BY THE REPORTER.—The final order made in the case of *Jayasing Haribhái* was—

"The Session Judge of Ahmedábád is to be informed, with reference to his letter No. 546 of 1869, dated 24th April, that the question of sanction to prosecute having lately come before, and been fully considered by the High Court, it has come to the conclusion that the opinion expressed on its behalf, in its Registrar's letter No. 754 of 1869, dated 19th May, that no new sanction for prosecution in this matter was necessary, and that Mr. Nugent had power to alter or amend the charge under Sec. 244 of the Code of Criminal Procedure, is unsustainable, and that Mr. Nugent's *sherá* of the 24th of November 1868 was right."