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June 14.

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Sanction by Local Government—Prosecution of a Judge or Public Servant—Terms of Sanction—Non-compliance with terms of Sanction—Jurisdiction—Crim. Proc. Code, Sec. 167.

The Local Government in sanctioning or directing (under Sec. 167 of the Criminal Procedure Code) a charge against a public servant of an offence as such public servant has power to limit its sanction, by giving directions as to the person by whom, and the manner in which, the prosecution is to be preferred and conducted; and a court has no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions.

Semble. The Local Government has power in the like case to direct that the accused public servant shall be tried before a specified tribunal, being one having jurisdiction in that behalf.

Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as Mr. C. might be prepared to prefer against him, and there was nothing on the record to show, nor did it otherwise appear, that Mr. C. had preferred any charge against, or taken any part in the prosecution of, the accused public servant, the High Court quashed the conviction of the accused, as having been without jurisdiction.

THE accused, Vináyak Divákar, was a District Deputy Magistrate in Khándesh. Upon representations made to the Government of Bombay with reference to his conduct as a public servant, the Government, on the 12th of December 1870, sanctioned his prosecution in the following terms:—"There appears to be sufficient *primâ facie* evidence to justify the suspension of the District Deputy Magistrate until he can clear himself of the accusations which have been made against him. The Right Honorable the Governor in Council is, therefore, pleased to direct that Vináyak Divákar be suspended from office, and to sanction, under Sec. 167 of the Criminal Procedure Code, his prosecution, before the Magistrate of the District of Khándesh, on such charges as Mr. Campbell may be prepared to prefer against him. The inquiry should be conducted by Mr. Ashburner in person, and not delegated to any other person, and before the commencement of the proceedings the accused Magistrate should be furnished with copies of the charges, and lists of the witnesses by whom they will be supported, and allowed full opportunity for the preparation of his defence."

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The accused was tried before L. R. Ashburner, District Magistrate of Khándesh, and, on the 30th of January 1871, was convicted of the offence of receiving a gratification other than legal remuneration, under Sec. 161 of the Indian Penal Code, and was sentenced to suffer rigorous imprisonment for a period of six months, and to pay a fine of Rs. 1,000, or in default to undergo rigorous imprisonment for a further period of six months.

The prosecution was conducted by Káshináth Mahádev Thathe, Mamlatdár of Dhuliá, and Mr. Campbell's name did not appear on the record sent up by the Magistrate, nor did it appear that Mr. Campbell lodged any complaint or took any part in the proceedings. It was stated, however, in the High Court, by counsel for the Crown, that he had been present in court on one or two occasions while the case was proceeding, but this was not admitted on behalf of the accused.

From the above conviction and sentence Vináyak appealed to the Sessions Judge of Khándesh. The Sessions Judge, A. C. Watt, confirmed the conviction and sentence of the District Magistrate.

The High Court, on the application of the accused, sent for the record and proceedings in the case, under the provisions of Sec. 404 of the Code of Criminal Procedure.

The case was argued, on the 14th of June 1871, before WESTROPP, C.J., GIBBS and WEST, JJ.

Macpherson (with him *Dhondo Shámráv*), for the prisoner:—There has not been a compliance with the Government Resolution of the 12th of December 1870, which gives sanction to Mr. Campbell to prefer any charges that he may think proper against the prisoner in respect of corrupt practices, for there is nothing in the record to show that Mr. Campbell did prefer any complaint whatever against him. On the contrary, so far as we can judge, he would seem at one time to have made some inquiry and then to have dropped all further proceedings.* The Mámlatdár it was who

* NOTE.—One of the witnesses in cross-examination stated that, about three weeks before the trial, he had been taken to a *sáheb*, probably Mr. Campbell.—ED.

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prosecuted. Mr. Campbell does not appear to have taken any part whatever in the case before Mr. Ashburner, the Magistrate of the District. That there may be a limited sanction, under Sec. 167 of the Criminal Procedure Code, appears plain from the words and general scope of that section, and here the sanction is limited to charges to be brought against the prisoner by Mr. Campbell. That limitation was not introduced without good reason. The prisoner was himself a Full Power Magistrate. The Mámlatdár was in a position subordinate to him. [WESTROPP, C. J., as to limiting sanction, referred to *Reg.* v. *Subi Sáni* (see *antè*, p. 28), and as to sanction generally, to *Reg.* v. *Tái* (see *antè*, p. 24), and to the Calcutta decisions mentioned in both of those cases.] The case showing that sanction may be limited to a particular section is in favour of my contention.

Mayhew, contra:—The main point in the Government Resolution is that the prosecution should be conducted before the Magistrate of the District. The mention of Mr. Campbell may be regarded as surplusage:—*Reg.* v. *Khushál Hiráman and Indrágir* (*a*). The gist of the matter as to that part of the Resolution is that Government has sanctioned the prosecution. [WESTROPP, C. J.:—Government has sanctioned a prosecution by Mr. Campbell on such charges as he may bring. There does not appear to be any reason why Government should not be at liberty so to limit its sanction. The record does not seem to show that Mr. Campbell took any part in selecting or bringing the charges. I do not say that he might not have the assistance of a pleader or of counsel. It has lately been decided here * that Sec. 167 renders the sanction a condition precedent to the entertainment of the charges, and, therefore, that without it the court would not have jurisdiction. Are you instructed that you could show, if this case were referred back to the Magistrate, that Mr. Campbell preferred the complaint or charge in this matter against the accused on which Mr. Ashburner has tried him?] I cannot show that

(*a*) 4 Bom. H. C. Rep., Cr. Ca. 28.
* *Reg.* v. *Parshrám Keshav*, 7 Bom. H. C. Rep., Cr. Ca. 71.

be actually made any charge or complaint, but I am instructed that he was present on one or more occasions during the trial by Mr. Ashburner, and that he (Mr. Campbell) did not object to the proceedings. He should, therefore, be considered as having concurred in them. [WEST, J.:—The mere accident that he was present on one or more occasions during the trial is not a preferring of a charge by Mr. Campbell.] I am instructed that he never expressed any disapprobation of the proceedings, and I contend that he must be considered as being fully cognisant of them.

WESTROPP, C. J.:—In this case the question is whether this prosecution is based upon any such sanction as the law requires. It appears that the Bombay Government, on the 12th of December 1870, came to the following resolution (His Lordship read the Resolution.) Now that seems to be a very carefully drawn up and prudent Resolution, if we may be permitted so to say, of the Right Honorable the Governor in Council. That Resolution selects the principal Magistrate of the District as the person before whom the prisoner is to be tried, and also selects Mr. Campbell, a member of the Civil Service, and a Magistrate of full power in that district, as the gentleman who was to bring the charges, and, in fact, amounts to a power to him to select the cases upon which the proceedings should be taken. It is reasonable to suppose that there must have been some special intent on the part of the Government in nominating this gentleman to bring these charges. This was manifestly a case of importance, the prisoner himself being a Full Power Magistrate of considerable standing in the Presidency, and we can very well understand why Government should specially name a gentleman of character and position to select the instances upon which the prosecution should be brought, and to make the complaints before the Magistrate. It could not have been the intention of Government that any official, or other person who so pleased, should be at liberty to bring a charge of corrupt practices against Vináyak Diváakar. It would have been singular if there had been any such intention, and the careful language of this Resolution satisfies us that there

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was not, and that the intention of the Government was that a gentleman of a certain standing should be their delegate to select the cases, if any, upon which the prosecution should be rested. Government was careful that the prisoner should have fair play in this matter; their Resolution provides that the accused Magistrate should be furnished with copies of the charges, and the names of the witnesses who were to be called for the prosecution. We should be laying down more than the law would warrant us if we said that Government has not power, under Sec. 167 of the Criminal Procedure Code, to authorise some one person in particular to bring charges against a public servant. There is nothing in the section to warrant the supposition that Government might not thus limit its sanction, and there might be many cases in which it would be highly reasonable that it should do so. We cannot agree with the argument of Mr. Mayhew that the only important provision in the Government Resolution was as to the tribunal before which the prosecution should be brought. Government may, under the section, have power to limit the sanction to a prosecution before a particular tribunal, provided it be one which has jurisdiction in such a matter. The prosecution has been brought before the tribunal named by Government, so no question arises on that point. But Government has confided the duty of preferring charges to a particular gentleman, which duty cannot be delegated to any one else. We have not, indeed, any attempt on the part of Mr. Campbell to delegate his authority to any one else; and even if he had made that attempt it must have been ineffectual, unless he had special authority to delegate given to him by Government. The general rule of law is *delegatus non potest delegare*. As these charges were not brought by the sole nominee of the Government for that purpose, we think there was no jurisdiction whatsoever on the part of the District Magistrate to entertain the charges. Such is the effect of Sec. 167, and, therefore, the conviction must be quashed. We regret that we are obliged on such a preliminary ground as this to quash this conviction. Nothing could have been more easy than to keep within the limits of

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the Resolution; but those limits have been transgressed. It is possible that there has been a failure of justice on this account. We do not go further, however, than to say that it is possible. We must not be understood as in any wise reflecting upon the gentleman who did act for the prosecution and prefer the charges. He may, for aught we know, have been a very proper person to bring them. But he was not the nominee of Government. We, therefore, quash the conviction. The fine, if it has been paid, is to be returned.

REG. v. RA'VJI valad TA'JU.

June 15.

False Evidence—Judicial Proceeding—Annulment of Proceedings in Trial in which alleged False Evidence was given.

The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness, therein made, on solemn affirmation, a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled, in consequence of the sanction for the prosecution being insufficient.

Held that the conviction of the accused must be reversed, as the false statement was not made in a stage of a judicial proceeding.

The proceedings in a criminal trial, when necessary to be proved, should be proved by their production.

THE accused was tried by E. T. Candy, Acting Assistant Session Judge at Dhuliá, for intentionally giving false evidence. He was convicted, and was sentenced to one year's rigorous imprisonment and to pay a fine of Rs. 100, or in default of payment to suffer further rigorous imprisonment for three months.

The circumstances out of which this case arose were as follow:—

At the trial of Vináyak Divákar Shárangpáne, Deputy Collector and Magistrate F.P. in Khándesh (for receiving an illegal gratification), held before the District Magistrate, the accused, Rávji, was examined as a witness, and he stated on solemn affirmation that Vináyak Divákar did not on a certain day and at a certain place hold *kacheri*.

This statement the Assistant Session Judge held to be false, and convicted the accused.

The appeal was heard by GIBBS and WEST, JJ.