

CR. Rev. Appl. 17/1927

**In His Majesty's High Court of Judicature,
Appellate Side, Bombay.**

CRIMINAL JURISDICTION.

~~Appeal~~
Application for Revision No. 17 of 192 7
~~Reference~~
Confirmation Case

IMPERATOR *vs.* Nana Khanderao Ghadge.

Offence Refusing to answer public servant authorised to question -
Section 179 I.P.Code.

Sentence Fine of Rs. 50/- in default one month's simple imprisonment.

Date of Sentence 5th October 1926.

Court M. A. Phanse, Esquire, Sub Divisional First Class C.D. Satara.

Order in Appeal " Application rejected. "

Date of Order in Appeal 23rd November 1926.

Passed by G. S. Rajadhyakhsha, Esquire, Sessions Judge of Satara.

Previous Order of the High Court (*Coram*: Fawcett & Patkar, JJ.)

Rule given on the question whether the trial is illegal not having been held held as a complaint by the public servant concerned, viz. the Commissioner in accordance with the provisions of sub ~~rule (1)~~ of sec. 195 Cr. Proc. Code. D/26-1-27

Sec (1)

CRIMINAL DEPARTMENT.

Nana Khanderao Chadge

Hear [unclear]
[unclear]

(by Vakil Mr. K. A. Padhye

dated the 10-1-1927

Appeal against the conviction recorded
Application for revision of

against and the sentence passed upon him
by the Sub-Divisional Magistrate
on the case of J. C. Satara on 5/10/1926
under § 179 CPC the Sessions
Judge Satara having rejected
his application for revision
on 23-11-1926 and prays that
the delay caused in filing the
petition may be excused.

Criminal Appeal No. _____ of 1927

Application for Revision No. 17 of 1927

Beyond time by 3 days.

Order by the Court.

(Coram :— J. A. S. & S. Patkar Jg.)

Rule given on the question whether
the trial is illegal not having
been held on a complaint by the
public servant concerned, viz.,
The Commissioner in accordance
with the provisions of Art. 192
Cr. P. Code.

Writ No. 268

Notice No. 269

Notice in Ver. also.

Received on the

Recd. in the Cri. Dept. on the

Brought on in Court on the

13/1/27

[Signature]
By Regd.
prepared
4/2



In His Majesty's High Court of Judicature,
Appellate Side, Bombay.

APPLICATION FOR REVISION No. 17 OF 1927.

No. 1893 OF 1927 REVIEW No. OF 1927.

The 28th day of June 1927.

To

~~THE SESSIONS JUDGE~~
THE *Sub-Divisional* MAGISTRATE, *First class, C. D. Satara.*

UPON reading the WRIT issued by this COURT on the 26th day of

January 1927, No. 268 and the RETURN No. 423 thereunto made by

G. S. Rajashyaksha

Esq., *Sessions Judge* of *Satara*
District Magistrate

Name - *Nana Khanderao Ghatge.*

Conviction - *Refusing to answer public servants authorized to question - S 177 S.P.C.*

on the

2nd day of *February* 1927,

Sentence - *Fine of Rs. 50/- in default one month's simple imprisonment.*

in the case marginally noted and

upon reading the RECORD and

PROCEEDINGS in the case, and

Date of Sentence - *5th October 1926.*

hearing *Counsel Mr. Ambedkar with Mr. K. A. Pathy* for the accused and *Mr. P. B. Shingne, Government Pleader,*

Original Court - *M. A. Phanse, Esquire, Sub-Divisional Magistrate & C. Satara.*

Order in appeal, if any - *Application rejected.*

Passed by - *G. S. Rajashyaksha, Esquire, Sessions Judge, Satara.*

for the Crown, the High

Date of order in appeal - *23rd November 1926.*

Court passed the following order on

the 28th day of *June* 1927:—

for the reasons stated in the accompanying judgment, the Court discharges the Rule granted by it on 26th January 1927 in the case and rejects the application.

By the Court,

Deputy Registrar.

Sealer.

The 30th day of *June* 1927.

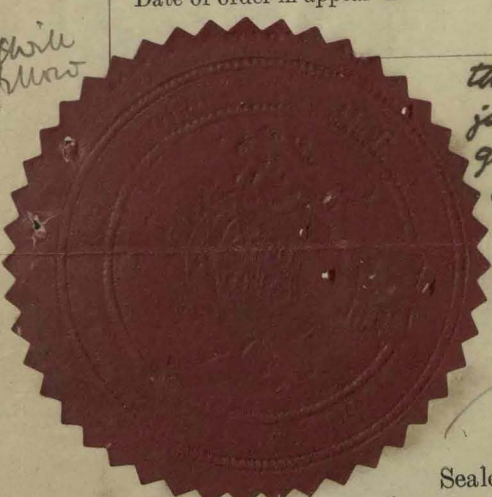
Through the *Sessions Judge* District Magistrate of *Satara*

Despd. 30/6/1927

[P.T.O.]

8 JUL 1927

Chirk Alwar



NOTE I.—The within-mentioned order (and the judgment accompanying it, if any) should be communicated to the Court which originally tried the case after proper execution of the order (*Vide* Circular No. 1667 of 15th July 1910).

NOTE II.—When the Writ is addressed to a First Class Magistrate who disposed of the accused's appeal, he should communicate the order noted within (and the judgment accompanying it, if any) after proper execution thereof to the Magistrate who originally tried the case (*Vide* Circular No. 1667 of 15th July 1910).

NOTE III.—Returns should be made to all writs issuing from the High Court, if possible within a fortnight, in the form of an endorsement on the writ certifying its execution, or the reasons which may have prevented its execution (*Vide* Circular No. 100 of the High Court Criminal Circular Order Book).

15 JUL 1927

No 2162 of 1927.

Sessions Court, Satara.

7th July 1927.

Forwarded with compliments to M.A. Phanse, Esquire,
Sub Divisional, Magistrate, F.C., Satara, for information
compliance and direct return to the High Court.

Phanse

Sessions Judge.

8/7
1927

No. Cr. C. 8
1926
14 July 1927.

Submitted to the Deputy Registrar, Appellate Side,
High Court, Bombay, after compliance.

hallani

Sub Divisional Magistrate,
C.D., Satara.



Judgment recorded by the High Court in Criminal Application for Revision No.17 of 1927 (with Application for Revision No. 105 of 1927) in the case of Emperor vs. Nana Khanderao Ghadge.

28th June 1927.

Coram: Madgavkar and Patkar JJ.

Per Curiam :- The petitioner Nana Khanderao has been convicted under section 179, I.P.Code, for refusing to answer questions put to him by the Commissioner appointed by the Subordinate Judge of Koregaon. The learned Subordinate Judge under section 195 of the Code of Criminal Procedure sanctioned his prosecution under section 179 of the Indian Penal Code and he has been convicted and applies in revision. The single ground taken in revision is that the sanction by the Subordinate Judge is incompetent and should have been by the Commissioner. The offence alleged being under Section 179, I.P.Code, the sanction would naturally be under section 195, clause (a), of the Code of Criminal Procedure. The question on the present application is whether the Commissioner before whom the alleged offence took place was or was not subordinate to the Subordinate Judge.

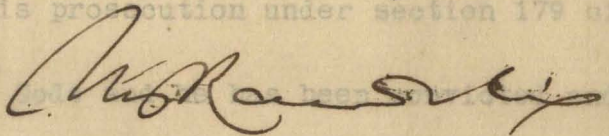
It is conceded that the Commissioner is a public servant under section 21, clause (4), of the Indian Penal Code. In the present case, the Commissioner to examine accounts was appointed under Order XXVI, rules 11 and 12. He was appointed by the Subordinate Judge; the Subordinate Judge could have terminated his appointment at any time; his specific duties were laid down with instructions; and under Order XXVI, rule 12, clause (2), the Subordinate Judge had power to direct further inquiry if he had reason to be dissatisfied with the proceedings and report of the Commissioner. It is difficult, in our opinion, to conceive of greater subordination than what is implied by all these acts. Appointment, exercise of power and termination of appointment were all throughout in law subject to the orders and supervision of the Subordinate Judge. Reliance was placed for the petitioner upon the case of Narasimhayya vs. Venkataswami: 18 Madras L.J., p.584. There in the judgment it was observed: "The subordination of one public servant to another "may arise either from express enactment or from the fact that

"both public servants belong to the same department, one being superior ~~in~~ in rank to the other." That dictum does not apply to the facts of this particular case. There it was held that a Village Munsiff in Madras to whom a theft was reported was not subordinate to the Sub-Magistrate. The dictum has no application to the facts of the present case. As far as we can judge of the intention of the Legislature and in the light of public policy, the offence to refuse to take the oath and answer the questions put by the Commissioner appointed by the Court is an offence against the Court itself, and the Court perhaps can more appropriately consider the question of sanction rather than the commissioner appointed by it. For the purposes of the present application, however, it is not necessary to consider this question more deeply.

We hold that the Commissioner was subordinate to the Subordinate Judge who appointed him and the sanction is therefore proper. The applications fail and are dismissed.

 section 195 of the Code of Criminal Procedure

By the Court



sanctioned his prosecution under section 179 of the Indian Penal Code. The Deputy Registrar in revision is that the sanction by the Subordinate Judge is incompetent and should have been by the Commissioner. The offence alleged being under section 179, I.P. Code, the sanction would naturally be under section 195, clause (a) of the Code of Criminal Procedure. The question on the present application is whether the Commissioner before whom the alleged offence took place was or was not

Criminal Revision Application No. 17 of 1927 ~~(with~~
(with Cri. Revision Application No. 105 of 1927) (Civ. 66.)

~~APPEAL~~ No.

~~OF 192 FROM~~

~~Original~~
~~Appellate~~

~~DECREE~~

For Approval and Signature.

The Hon'ble Mr. Justice Madgavkar *Mad*

The Hon'ble Mr. Justice Patkar. *Pat*

Whether Reporters of Local Papers may be allowed to see the Judgment?

To be referred to the Reporter or not?

Whether the Hon'ble Mr. Justice Madgavkar wishes
to see the fair copy of his judgment?

KAR
25/6

30/6/27

Handwritten marks on the right margin, possibly initials or a signature.

Criminal Application for Revision No.17 of 1927.

(With Criminal Revision Application No.105 of
1927).

Mr. Ambedkar with Mr. K.A.Padhya for the petitioner.
The Government Pleader for the Crown.

Coram:- Madgavkar and Patkar JJ.

28th June 1927.

Madgavkar J.--

The petitioner Nana Khanderao has been convicted under section 179, I.P.Code, for refusing to answer questions put to him by the Commissioner appointed by the Subordinate Judge of Koregaon. The learned Subordinate Judge under section 195 of the Code of Criminal Procedure sanctioned his prosecution under section 179 of the Indian Penal Code and he has been convicted and applies in revision. The single ground taken in revision is that the sanction by the Subordinate Judge is incompetent and should have been by the Commissioner. The offence alleged being under section 179, I.P.Code, the sanction would naturally be under section 195, clause (a), of the Code of Criminal Procedure. The question on the present application is whether the Commissioner before whom the alleged offence took place was or was not

subordinate to the Subordinate Judge.

It is conceded that the Commissioner is a public servant under section 21, clause (4), of the Indian Penal Code. In the present case, the Commissioner to examine accounts was appointed under Order XXVI, rules 11 and 12. He was appointed by the Subordinate Judge; the Subordinate Judge could have terminated his appointment at any time; his specific duties were laid down with instructions; and under Order XXVI, rule 12, clause (2), the Subordinate Judge had power to direct further inquiry if he had reason to be dissatisfied with the proceedings and report of the Commissioner. It is difficult, in our opinion, to conceive greater subordination than what is implied by all these acts. Appointment, exercise of power and -- termination of appointment ^{were} are all throughout in law subject to the orders and supervision of the Subordinate Judge. Reliance was placed for the petitioner upon the case of Narasimhayya vs. Venkataswami, 18 Madras L.J., p.584. There in the judgment it was observed: "The subordination of one public servant to another may arise either from express enactment or from the fact that both public servants belong to the same department, one being

superior in rank to the other." That dictum does not apply to the facts of this particular case. There it was held that a Village Munsiff in Madras to whom a theft was reported was not a subordinate to the Sub-Magistrate. The dictum has no application to the facts of the present case. As far as we can judge of the intention of the Legislature and ^{in the light of} the public policy, the offence to refuse to take ^{the} oath and answer the questions put by the Commissioner appointed by the Court is an offence against the Court itself, and the Court perhaps can more appropriately consider the question of sanction rather than the commissioner appointed by it. For the purposes of the present application, however, it is not necessary to consider that question more deeply.

We hold that the Commissioner was -- subordinate to the Subordinate Judge who appointed him and the sanction is therefore proper. The applications fail and are dismissed.

W.S.
29/6/27

f. O. [Signature]

CRIMINAL JURISDICTION.

Confirmation Case No. of 192

Appeal No. of 192

Reference No. of 192

Review No. of 192

Application for Revision No. 17 of 1927

IMPERATOR vs. *Nana Khanderas Ghatge*

Decided on *28th June 1927*

- 1. Handed over to the Ver. Dept. on *11/10*
- 2. Placed in the Record Room, Shelf No. , on the

P. G. Khele

Deputy Sheristedar.

- 3. Received and entered in the Catalogue of Criminal Cases, Class

Anant Kulkarni

Record Keeper.

Bombay, *20-6-1927*