

(1923) 08 MAD CK 0072
In the Madras High Court

Palikudathan alias Samudi Goundan

APPELLANT

Vs

Buddu Goundan

RESPONDENT

Date of Decision : 07-08-1923

Acts Referred:

Penal Code, 1860 (IPC) — Section 182

Citation : AIR 1924 Mad 387(1)

Judgement

1. This is an application to this Court for grant of sanction to prosecute the counter-petitioner u/s 182, I.P.C. Originally the application was made to the Sub-Magistrate under sections 193 and 211, I.P.C., but the Sub-Magistrate finding that no charge was made against the counter-petitioner by the petitioner converted the application to one u/s 182, I.P.C., and proceeded to grant sanction under that Section and Section 193 for giving false evidence before him. On appeal to the District Magistrate the order granting sanction under both the sections of the I.P.C. was revoked. The petitioner comes here and claims that we should give that sanction now.

2. Taking Section 182 first it is quite clear that the Sub-Magistrate had no authority whatever to grant any sanction in this matter because he was not the public servant to whom the information concerned was given. It was given to the Village Magistrate. It is contended before us that the Sub-Magistrate should be taken as a superior authority to the village u/s 195, Cr.P.C., and the ruling in *The Queen v. Periannan* (1882) 4 Mad. 241 is relied on for the purpose but we are unable to concur with that ruling. It was not followed by this Court in the case in *Venkatasawmi v. Narasimhayya* (1908) 4 M.L.T. 214. The learned pleader for the petitioner was not able to explain how the Village Magistrate could be taken to be subject to the authority of the Sub-Magistrate as a public servant.

3. It was also argued that we cannot go into the question ourselves because the District Magistrate who revoked the sanction did so in his capacity as the executive head of the district and that he is not subject in his capacity as such public servant to our control. But it is unnecessary to decide this point, for we

thick that no sanction could properly have been given by the Sub-Magistrate and the revocation of that sanction u/s 182, I.P.C., is therefore right. The application so far as it refers to Section 193 should have been made to the Sessions Judge and not to us because that sanction was granted by the Sub Magistrate as a Court and the appeal lay u/s 195 to the District Magistrate and from his order the application should have been made to the Sessions Judge. Such an application not having been made, we decline to interfere in the matter. If so advised, the petitioner may make his application to the Sessions Judge.

4. The petition is therefore dismissed.