

**Lachhmi NaraIn Vs. Bindraban**

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**Court :** Allahabad

**Decided On :** Jan-29-1918

**Reported in :** AIR1918All247; 44Ind.Cas.582

**Judge :** Tudball, J.

**Appellant :** Lachhmi Narain

**Respondent :** Bindraban

**Judgement :**

Tudball, J.

1. The applicant in this case on the first of September 1916 preferred a charge under Section 406 of the Indian Penal Code against Bindraban in a 'Criminal Court. He was given sufficient opportunity of producing preliminary evidence but he failed to do so and finally in the beginning of January the complaint was dismissed. He at once put in a fresh complaint and finally the case was tried by a Bench of Honorary Magistrates, who dismissed it again in the presence of the accused. Bindraban then applied to the Bench for sanction to prosecute Lachhmi Narain for the offence of perjury. The Bench of Magistrates did not think it advisable to grant sanction and rejected the application. In the meantime Lachhmi Narain had brought a suit in the Civil Court to recover the sum of money in respect of which he had preferred the charge in the Criminal Court. That suit was pending when Bindraban appealed to the District Magistrate against the order of the Bench refusing sanction to prosecute. The District Magistrate wrote a strange order. It runs as follows: 'The appellant admits that the respondent has got a civil suit now pending to recover the money, he alleges he paid to appellant, about which he filed his complaint, under Section 406 of the Indian Penal Code, which was dismissed. It would be obviously improper to grant sanction to a prosecution for a false case at this stage. If, when the civil suit is finished, the appellant still thinks that he has good ground for asking for a prosecution, he can, apply again to this Court for a revision of the lower Court's order. Till that time this appeal stands dismissed.' On the 14th of September 1917, Bindraban again applied to the District Magistrate, the civil suit in the meantime having come to an end. It had been dismissed and he furnished the Court with copies of the judgments of the first Court and the Appellate Court in that suit. Notice was issued by the District Magistrate to Lachhmi Narain and then the District Magistrate passed the following order: 'Having now seen the judgments of the lower and Appellate Civil Courts in this matter, in both of which Courts the respondent in this case entirely failed to substantiate his claim, I think this is a proper case in which to grant sanction to prosecute, as apart from the personal enmities between the parties, the interest of the state demands that such prosecutions, on biased and unreliable evidence, should be stopped. I set aside the order of the lower Court and grant the sanction asked for.'

Lachhmi Narain has come to this Court in revision against this letter order. Such things as temporary dismissals of appeals are unknown to law and so far as the appeal is concerned, practically the District Magistrate was functus officio when he passed his order of the 22nd of September. His proper course would have been to have postponed the decision of the appeal until the decision of the civil suit. The case, however, appears to be one in which some action might be taken as regards Lachhmi Narain and his witnesses but in which the prosecution should not be left in the hands of a private person, as it would simply be used as a weapon of extortion. I, therefore, allow this application and set aside the order of the District Magistrate of the 22nd of September 1917. I direct the record to be returned to the Magistrate with direction that, if he thinks fit, he may take up the case suo motu and issue notice and, if necessary, direct the prosecution of Lachhmi Narain and his witnesses so as not to leave the prosecution in the hands of a private person. The District Magistrate will understand that I do not seek to fetter his discretion in any way.

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