

**Maduray Pillay and anr. Vs. H.T. Elderton**

**LegalCrystal Citation :** [legalcrystal.com/852715](http://legalcrystal.com/852715)

**Court :** Kolkata

**Decided On :** Feb-12-1895

**Reported in :** (1895)ILR22Cal487

**Judge :** Norris and ;Beverley, JJ.

**Appellant :** Maduray Pillay and anr.

**Respondent :** H.T. Elderton

**Judgement :**

Norris and Beverley, JJ.

1. The facts out of which these rules arise are these : One Gool Mahomed was charged with assaulting a person of the name of Elderton, and Maduray Pillay and Soobramony Pillay were charged with aiding and abetting Gool Mahomed in the assault. They were tried before the City Magistrate of Rangoon, who convicted them. All three appealed to the Recorder of Rangoon, and the conviction of Gool Mahomed was upheld, and that of the two Pillays was set aside; and we are told by the learned Counsel who has just addressed us on behalf of the petitioners that practically the Government Advocate withdrew the case as against these two persons, or at any rate intimated that in his opinion the evidence was not sufficiently strong to support the conviction. Subsequently Elderton filed a suit in the Recorder's Court in which he claimed 20,000 rupees damages against the two Pillays for assault. That case was tried, and the two Pillays, who were of course unable to give evidence on oath on their own behalf in the criminal case, availed themselves of their right to give evidence on their own behalf in the civil suit. The result of the suit was a decree in favour of the plaintiff for damages to the extent of 4,000 rupees. The defendants desired to appeal, and they were under the impression that an appeal lay to this Court. A Division Bench of this Court has decided that an appeal lies direct to Her Majesty in Council. These rules were granted in September 1894 by Mr. Justice BANERJEE and Mr. Justice Sale in these terms: 'Let a rule issue calling upon the opposite party to show cause why the order of the Recorder of Rangoon complained of and mentioned in the within petition should not be set aside,' and the first question that arises is whether this Bench has any jurisdiction to set aside, if it should be disposed to, the sanction which has been granted by the Additional Recorder of Rangoon for the prosecution of the two Pillays for giving false evidence in the civil suit.

2. The decision of that question depends upon the construction of Section 195 of the Criminal Procedure Code, which, inter alia, says that 'any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate.' 'For the purpose of this section any Court other

than a Court of Small Causes shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie.' The question is, do appeals from the Recorder or Additional Recorder of Rangoon ordinarily lie to this Court? Upon the construction to be placed upon this section we are not left without authority. In the case of Anant Ramchundra Lotlikar I.L.R. 11 Bom. 438 the facts were these : A decree-holder applied to the First Class Subordinate Judge for sanction to prosecute his judgment-debtor under Sections 206 and 424 of the Indian Penal Code for fraudulent concealment of certain moveable property worth about Rs. 10,000 awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere, on the ground that the decree being appealable to the High Court, the High Court alone could deal with the application under Section 195 of the Criminal Procedure Code. Mr. Justice West and Mr. Justice BIRDWOOD held that, though that decree was appealable to the High Court, still as appeals from the Court of the First Class Subordinate Judge ordinarily (that is, in the majority of cases) lay to the District Court, the former (that is, the First Class Subordinate Judge) was subordinate to the latter Court (that is the Court of the District Judge) within the meaning of Section 195 of the Criminal Procedure Code.

3. Appeals from the Recorder of Rangoon, in the majority of cases, lie to this Court; and, if for 'the Court of the District Judge' we read 'the High Court of Judicature at Fort William in Bengal' and for 'the High Court' (that is, the High Court of Bombay) we read 'Her Majesty in Council,' the cases are exactly parallel. This decision commends itself entirely to our judgment, and we follow it and hold that we have jurisdiction to revoke this sanction if we thought that it was a case in which we ought to do so. But having heard Mr. Henderson upon the whole case, we do not think that it would be a proper exercise of our discretion to interfere with the sanction which has been accorded by the Additional Recorder of Rangoon. Therefore these rules must be discharged.