

CIVIL RULE.

Before Justice Sir Asutosh Mookerjee and Mr. Justice Carnuff.

HARI MANDAL

v.

KESHAB CHANDRA MANA*

1912

April 12.

Sanction for prosecution—Application to District Judge under s. 195, cl. (6) of the Criminal Procedure Code (Act V of 1898)—Transfer of such application to a Subordinate Judge for disposal—Jurisdiction—Civil Courts Act (XII of 1887), ss. 21 (2), (4) and 22 (1)—Appeal.

An application made to a District Judge under s. 195, sub-s. (6) of the Criminal Procedure Code, against the order of a Munsif, cannot be transferred by the District Judge to a Subordinate Judge for disposal.

Ram Charan Chanda Talukdar v. Taripulla (1) approved.

Semle : An application under s. 195, sub-s. (6) of the Criminal Procedure Code is not an "appeal" within the meaning of s. 22, sub-s. (1) of the Bengal Civil Courts Act, 1887.

RULE granted to the petitioners, Hari Mandal and others.

On the 27th April 1908, an application for compromise was filed on behalf of one Keshab Chandra Mana, the decree-holder, in execution of a decree obtained by him against Hari Mandal and others, the judgment-debtors, in a mortgage suit, and the execution case was ordered by the Munsif to be dismissed on full satisfaction having been entered. Subsequently, on the 20th May 1908, the decree-holder filed a petition under sections 244 and 623 of the Code of Civil Procedure, 1882, to set aside the order of dismissal on the ground that the application for compromise was

Civil Rule, No. 5977 of 1911, against the order of Ganendra Nath Mookerjee, Subordinate Judge of Midnapore, dated Aug. 24, 1911.

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not filed by him or on his behalf, and he alleged that the said application was forged. On the case having been heard by the Munsif, it was found that the application was a forgery, and it was ordered, on the 9th September 1908, that the order of dismissal in the execution case be set aside. Against this latter order Hari Mandal preferred an appeal, in which the judgment of the Munsif was upheld. Thereupon, Keshab Chandra Mana applied for and, on the 21st January 1911, obtained sanction from the Munsif to prosecute Hari Mandal, one of the judgment-debtors, under sections 193, 196, 463 and 471, Indian Penal Code, and his witnesses under sections 193 and 471 read with section 107, Indian Penal Code, while the other judgment-debtors were ordered to be discharged. Against the Munsif's order granting sanction for prosecution, two appeals were filed before the District Judge who transferred the said appeals to the file of the Subordinate Judge for disposal. On the appeals being dismissed on the 24th August 1911, Hari Mandal and his witnesses applied for and obtained a Rule from the High Court against the order granting sanction to prosecute them.

Babu Manmatha Nath Mookerjee and Babu Satindra Nath Mukerjee, for the petitioners, in support of the Rule. The District Judge had no jurisdiction to transfer the case from his file to that of the Subordinate Judge. An appeal from an order under section 195, Criminal Procedure Code, is not such an appeal as is contemplated by section 22(1), Bengal Civil Courts Act, and must be disposed of by the District Judge himself, who alone is the competent authority to deal with such matters. Appeals from the Court of the Munsif ordinarily lie to the Court of the District Judge, and for the purposes of section 195, Criminal

Procedure Code, the Munsif's Court is subordinate to that of the District Judge. This was virtually a petition for revision, though couched in the form of an appeal, and the District Judge was, therefore, the only competent authority to dispose of it.

Babu Mohini Nath Bose, for the opposite party, showed cause. The sanction to prosecute the petitioners was granted by the Munsif. The petitioners appealed to the District Judge, who transferred the appeal to the Subordinate Judge for disposal. Under section 22(1) of the Bengal Civil Courts Act (XII of 1887) the District Judge was competent to make this transfer, and the Subordinate Judge was acting within his jurisdiction when he made the order against which this Rule has been obtained.

MOOKERJEE AND CARNDUFF JJ. This Rule raises the question, whether when an application has been made to a District Judge under section 195, sub-section (6), Criminal Procedure Code, the application can be transferred by him to a Subordinate Judge for disposal. Sub-section (6) provides that any sanction given or refused under the section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate. Sub-section (7) then provides that for the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. Now, section 21, sub-section (2) of the Bengal Civil Courts Act, 1887, provides that an appeal from an order of the Munsif lies to the District Judge. Consequently, the District Judge is the authority competent under sub-section (6) of section 195, Criminal Procedure Code, to revoke or grant a sanction which has been given or refused by a Munsif. The District Judge, in our opinion, is not competent under

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section 22, sub-section (1) of the Bengal Civil Courts Act, 1887, to transfer the application presented to him, for disposal by the Subordinate Judge. That section provides that a District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decree or order of a Munsif. An application under sub-section (6) of section 195 of the Criminal Procedure Code, is, in our view, not an appeal within the meaning of sub-section (1) of section 22 of the Bengal Civil Courts Act, 1887. It has not been suggested to us in this case that any order has been made by the High Court under sub-section (4) of section 21 of the Bengal Civil Courts Act, 1887, so as to constitute the Subordinate Judge the appellate authority over the Munsif. Consequently, the order made by the Subordinate Judge was passed without jurisdiction. The Rule is therefore, made absolute and the order assailed is discharged. The District Judge will now take up the matter and deal with it as early as practicable.

Since this order was passed, we have found that the view taken by us is in harmony with that adopted by D. Chatterjee, and N. R. Chatterjee, JJ., in *Ram Charan Chanda Tahukdar v. Taripulla* (1).

O. M.

Rule absolute.

(1) (1912) I. L. R. 39 Calc. 774.