

## CRIMINAL REVISION.

*Before Imam and Chapman, JJ.*

PANCHU MANDAL

v.

EMPEROR.\*

1913

May 7.

*Sanction for prosecution—Disobedience of prohibitory order—Necessity of application for sanction—Police report setting forth the facts of disobedience, and containing a request for prosecution—Criminal Procedure Code (Act V of 1898), s. 195 (1) (a)—Penal Code (Act XLV of 1860), s. 188.*

A police report which sets out the facts of disobedience of any order, under s. 144 of the Criminal Procedure Code, prohibiting the slaughter of cows on a certain day; and contains a request that the accused should be prosecuted, under s. 188 of the Penal Code, is a sufficient application for sanction within section 195 (1) (a) of the Criminal Procedure Code.

*Per* CHAPMAN, J. No application for sanction is necessary in cases falling under s. 195 (1) (a) of the Code.

ON the 15th November 1912 the Subdivisional Officer of Kushtia issued a prohibitory order, under section 144 of the Criminal Procedure Code, directing the Mahomedans of Halia to abstain from sacrificing cows on the 22nd. The petitioner, however, performed the sacrifice on such date in a house stated not to be visible from outside. The police reported the occurrence to the Magistrate, alleging that the petitioner had slaughtered a calf in a narrow enclosure within his premises at early dawn, and requesting a prosecution under section 188 of the Penal Code.

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\* Criminal Revision No. 434 of 1913 against the order of S. C. Mallik, Sessions Judge of Nadia, dated Feb. 18, 1913.

Upon receiving such report, the Subdivisional Officer of Kushtia sanctioned the prosecution of the petitioner, under section 188 of the Penal Code, without any notice to him. The latter thereupon presented an application for revocation of the sanction to the Sessions Judge of Nadia, who rejected it. He then moved the High Court and obtained the present Rule, on the ground that if the order was one under section 195 of the Criminal Procedure Code, it was passed without an application, and if under section 476, it was not passed in a judicial proceeding.

*Mr. Zahid* (with him *Maulvi Wahid Hossain*), for the petitioner. The grant of sanction was illegal, as there was no application for it before the Magistrate: *In the matter of the petition of Banarsi Das* (1) and *Durga Das Rukhit v. Queen-Empress* (2). The police report does not amount to an application for sanction: it contains only a recommendation of a prosecution.

*Babu Atulya Charan Bose*, for the Crown. The police report is a sufficient application for sanction. No application is necessary under section 195 (1) (a) of the Code.

IMAM, J. This was a Rule calling on the District Magistrate of Nadia to show cause why the sanction to prosecute the petitioner for disobedience of the order passed by the Subdivisional Officer should not be set aside on the ground that the order complained of is neither a sanction under section 195 nor a direction to prosecute under section 476 of the Criminal Procedure Code.

We find no substance in this Rule. The order was clearly made under section 195, clause (a) of the Criminal Procedure Code. It is pressed on us that a

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(1) (1896) I. L. R. 18 All. 213.

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sanction under section 195 (a) cannot be good without an application made on behalf of somebody for sanction to be granted. It is admitted that the sanction was given by the Magistrate on a police report, setting forth the facts of the disobedience of the order, and also containing a request that the petitioner should be prosecuted under section 188 of the Indian Penal Code. We see in the report a sufficient application for the purposes of the law to justify the Magistrate in giving the sanction under section 195, if an application were needed at all. We, therefore, discharge the Rule.

The due promulgation of the order, in respect of which the disobedience is alleged, is disputed by the petitioner. We express no opinion on the point, but leave it to the Magistrate who will try the case to decide it.

CHAPMAN, J. I agree; but desire to add that, in so far as the provisions contained in section 195 (1) (a) are concerned, I do not see the necessity of any application for sanction. The cases in which it has been said that a Court acting under section 195 (1) (b) ought not to proceed except upon an application, are no authority for saying that an application is necessary in cases which come under section 195 (1) (a).

E. H. M.

*Rule discharged.*