

CRIMINAL RULE.*Before Teunon and Suhrawardy JJ.*

DULLO SINGH

v.

DEPUTY INSPECTOR-GENERAL OF POLICE,
C. I. D., BENGAL *

1921

Aug. 10.

Sanction for Prosecution—Legality of sanction when suit out of which it arose was compromised—Order of sanction embodying by reference the terms of the application—Examination of witnesses on commission in the course of the sanction proceedings—Admissibility of evidence taken on commission—Criminal Procedure Code (Act V of 1898) s. 195.

Sanction may be granted to prosecute the plaintiff for offences under ss. 193, 467 and 471 read with s. 109 or s. 114 of the Penal Code in respect of a handnote sued upon, though the suit was compromised after it was heard in part.

Emperor v. Molla Fuzla Karim (1) relied upon.

An order of sanction embodying by reference the terms of an application therefor, which stated all the essential particulars required by s. 195 of the Criminal Procedure Code, is a substantial compliance with the law.

The examination of witnesses on commission, in the course of an enquiry by a Civil Court held under s. 195 of the Code, and resulting in the grant of sanction, is permissible and sufficient.

On 3rd September 1918 the first petitioner, Dullo Singh, filed a suit in the Court of Small Causes at Sealdah against one Lakhia Chamarin and her infant son (ultimately represented by his father Dukharan), to recover Rs. 998, balance due for principal and interest, on a handnote, dated 17th October 1915, for Rs. 1,000 alleged to have been executed in favour of the

* Civil Revision No. 9 of 1921, against the order of A. J. Chotzner, District Judge of 24-Parganas, dated May 5, 1921.

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first petitioner by Gagan Chamar and his wife Ulhia, the parents of Lakhia. The plaint alleged that on adjustment of accounts between the plaintiff and Gagan and his wife the latter had jointly executed the bond, sued upon, for Rs. 1,000, and also three others for an aggregate sum of Rs. 8,000.

On the 8th November Lakhia filed her written statement denying all knowledge of these transactions. The suit came on for hearing on the 10th January 1919, and the petitioners, Nos. 2 and 3, were examined on behalf of the plaintiff to prove execution of the bond in question, which was produced in evidence. Lakhia, her husband, Dukharan, and a thumb impression expert were examined for the defence, and the case stood adjourned to the 3rd February for the evidence of the Superintendent of Police of the Benares State regarding the date of the death of Ulhia.

On the 3rd February a joint petition was presented by the parties for time to settle the case, which was put back until the next day. On the latter day a joint compromise petition was filed purporting to be signed by the plaintiff, Dukharam and by another for Lakhia. The petition was also signed by the pleaders of both parties. The suit was dismissed in terms of the petition.

On the 11th December an application was filed by the Deputy Inspector-General of Police, before the successor of the Judge who had passed the final order, in the suit, for sanction to prosecute the first petitioner under ss. 209, $\frac{467}{114}$ and $\frac{471}{109}$, I. P. C.; the second and fifth petitioners under ss. 193, $\frac{209}{109}$, 467, and $\frac{471}{109}$, I. P. C.; the third and fourth petitioners under ss. 193, 471, $\frac{209}{109}$, $\frac{467}{109}$ and $\frac{471}{109}$, I. P. C. and another, a female, under similar sections. The Judge of the Small Cause Court thereupon issued a commission for the examination of witnesses. Ten witnesses were so examined and four

in Court, and sanction accorded, on the 22nd January 1921, against the five petitioners only, under ss. 193, 467 and 471 read with s. 109 or s. 114, I. P. C. The order granting section referred to the terms of the application for the same.

The petitioners thereupon applied to the District Judge of Alipore to revoke the sanction, but the application was dismissed on 5th May 1921. They then moved the High Court and obtained a Rule on the grounds mentioned in the judgment of the High Court below.

Sir A. Chaudhuri and *Babu Kanaidhan Dutt*, for the petitioners.

The Deputy Legal Remembrancer (Mr. Orr.), for the opposite party.

TEUNON AND SUHRAWARDY JJ. This Rule is directed against an order by which the Judge of the Small Cause Court of Sealdah has granted to a responsible officer of Government sanction for the prosecution of the five petitioners on charges under sections 209, 193, 471 and cognate sections of the Indian Penal Code.

The suit out of which the application arose was one brought by the first petitioner against one Lakhia Chamarin and her minor son, Biswanath, as the heirs and representatives of Gajan Chamar and his wife Ulhia to recover a sum of money said to be due on a handnote. In this suit Dukharan, the father of Biswanath, represented his minor son, and the suit eventually terminated in a compromise by which the plaintiff gave up all claims against the defendants on the execution by Dukharan of a promissory note for the sum of Rs. 200 in favour of the plaintiff. On the order sheet the final order reads "decreed on compromise" but this is obviously a mistake, as in view of the statements

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made in the petition there could be no decree against the defendants and the suit was in fact dismissed.

The grounds on which the rule was issued are three, namely, (1) that the suit having been compromised, the application for sanction is not maintainable; (2) that the sanction is not in proper form; and (3) that the examination of witnesses on commission, in the course of the enquiry which resulted in the grant of sanction, is not warranted by law.

In our opinion none of these objections can be sustained.

On the first point it is sufficient to refer to the case of *Emperor v. Molla Fuzla Karim* (1) wherein it has been held that the existence of a decree not set aside is no bar to a prosecution. The order granting the sanction embodies by reference the application made, and in the several paragraphs of the said application all the essential particulars are to be found. Thus as to form there has been a substantial compliance with the requirements of the law.

The woman, Lakhia, and certain other witnesses reside in the State of Benares, and were examined on commission. For the purposes of an enquiry made by a Civil Court, under the provisions of section 195 of the Criminal Procedure Code, their examination on commission was, in our judgment, permissible and sufficient.

We, accordingly, discharge this Rule.

E. H. M.

Rule discharged.

(1) (1905) I. L. R. 33 Calc. 193.