

Upon the whole, their Lordships will humbly recommend His Majesty that the decree of the High Court be set aside, and the decree of the Subordinate Judge be restored, and that the plaintiff do have his costs in the Court below and of this appeal, these costs to be paid by the Secretary of State.

Solicitor for appellant: *W. W. Box & Co.*

Solicitor for respondent: *Solicitor, India Office.*

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 NARESH
 NARAYAN
 ROY
 v.
 SECRETARY
 OF STATE
 FOR INDIA.

APPELLATE CRIMINAL.

Before Newbould and Suhrawardy JJ.

KALI SINGH

v.

EMPEROR.*

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 Jan. 10.

Criminal Conspiracy—Consent of authorities to prosecution for conspiracy to commit non-cognizable offence—Application for sanction containing particulars required—Omission of the same in the order of sanction—Validity of the sanction—Criminal Procedure Code (Act V of 1898), ss. 195 and 196A.

Consent in writing of the authorities specified in s. 196A of the Criminal Procedure Code is not necessary to a prosecution for criminal conspiracy to commit a non-cognizable offence when s. 195 (3) is applicable. The petition for sanction under section 195 is to be read with the order granting it, and the latter is not bad for want of specification of the particulars required by cl. (4) when they are contained in the petition.

Dullo Singh v. Deputy Inspector-General of Police, C. I. D., Bengal (1), followed.

Baperam Surma v. Gouri Nath Dutt (2) and *Thaddens v. Janaki Nath Saha* (3), referred to.

* Criminal Appeal, No. 431 of 1922, against the order of A. D. C. Williams, Sessions Judge of Birbhum, dated July 1, 1922.

(1) (1921) I. L. R. 49 Calc. 551. (2) (1892) I. L. R. 20 Calc. 474.

(3) (1912) I. L. R. 40 Calc. 423.

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THE appellants, Kali Singh and Deb Nath Roy, and two others, Budhu Roy and Ram Prosad Roy, were residents of Kanaila, in the district of Ballia in the United Provinces. The prosecution case was that the four men entered into a criminal conspiracy to obtain money fraudulently from one Pasindh Roy, a resident of the same village, with whom they were at enmity, by instituting a false suit against him on a forged hand-note. It was alleged that, in pursuance of the conspiracy, a promissory note for Rs. 211, purporting to have been executed by Pasindh in favour of the appellant, Kali Singh, was forged by Deb Nath. Kali Singh filed a suit against Pasindh in the Court of the First Munsif of Rampurhat, on the 13th January 1919, for recovery of Rs. 105, the balance due on the hand-note. The appellants and the two other persons were examined at the trial, and supported the plaintiff's case. After the recording of evidence on both sides the Munsif dismissed the case, holding it to be absolutely false and describing the note as a forgery. An appeal against the order was dismissed by the District Judge on the 15th January 1921. The matter was then taken up by the Criminal Investigation Department, and resulted in an application to the Munsif by the Deputy Inspector-General of Police, C. I. D., Bengal, for sanction against the above four persons. The petition specified the number of the suit, the Court which tried it and the result of the trial and the appeal, and it set out in detail the facts constituting the offences for which sanction was applied. It prayed for sanction to prosecute all the four persons under s. 120B read with ss. 209, 467 and 471 of the Penal Code, and in addition, Kali Singh under ss. 193, 209, $\frac{467}{114}$ and 471, Deb Nath under ss. 193, $\frac{209}{109}$, 467 and $\frac{471}{109}$, and the remaining two under ss. 193, $\frac{209}{109}$, $\frac{467}{109}$.

and $\frac{471}{109}$. The order of the Munsif, after referring to the petition and setting out the circumstances under which it was made, concluded as follows:—
“Ordered that the application be allowed with costs. 30th April 1921.” An appeal against the order of sanction was dismissed by the District Judge on the 19th December 1921. In the meantime one Priyanath Das, an Inspector of Police, filed a complaint, on the 29th August 1921, under the written authority of the Deputy Inspector-General, before the Sub-divisional Magistrate of Rampurhat who ultimately committed the four persons to the Court of Session.

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The trial took place before the Sessions Judge of Birbhum with a jury. Kali Singh was tried on charges under s. 120B read with 209, and under s. 471 of the Penal Code, and found guilty and sentenced to consecutive terms of rigorous imprisonment for 3 years and one year respectively. Deb Nath was charged and convicted under s. 120B read with s. 209, and under ss. 467 and $\frac{471}{109}$, and was sentenced to 3 years' rigorous imprisonment on the conspiracy charge and to additional terms of one year on each of the other charges, the sentences running consecutively. Budhu and Ram Prosad were charged each under s. 120B read with s. 209, but were acquitted.

Kali Singh and Deb Nath appealed to the High Court.

Babu Dasarathi Sanyal (with him *Babu Lalit Mohan Sanyal* and *Babu Promode Kumar Ghose*), for the appellants. If the Munsif had granted a valid sanction, it would have been sufficient under the proviso to s. 196A of the Code. But the sanction was illegal as it omitted the particulars under s. 195 (4).

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Refers to *Goberdhone Chowkidar v. Habibullah* (1), *Abu Sarkar v. Chengu Sarkar* (2), *Saroda Charan Haldar v. King-Emperor* (3) and *Baperam Surma v. Gouri Nath Dutt* (4). The case of *Dullo Singh, v. Deputy Inspector-General, C. I. D., Bengal* (5), did not consider the above cases. There being no valid sanction under s. 195, consent under s. 196A was necessary: see *Barindra Kumar Ghose v. Emperor* (6). The separate sentences are not legal.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The petition for sanction contained all the particulars required by s. 195(4), and the Munsif's order refers to it. The sanction is not, therefore, invalid: *Dullo Singh v. Deputy Inspector-General, C. I. D., Bengal* (5), and *Thaddeus v. Janaki Nath Saha* (7).

NEWBOULD AND SUHRAWARDY JJ. This is an appeal by two persons who have been convicted of various offences in connection with a fraudulent suit brought in the Munsif's Court. The main facts found are that the appellant, Kali Singh, filed a suit against one Pasiindh Roy of Kanaila, in the United Provinces, in the Court of the Munsif of Rampurhat, in the district of Birbhum, in this province. That suit was based on a hand-note which has been found to have been a forgery, and to have been forged by the second accused, Deb Nath Roy. Kali Singh was charged with having fraudulently used as genuine a forged document purporting to be a valuable security, punishable under section 471 of the Penal Code, and also with

(1) (1897) 3 C. W. N. 35.

(5) (1921) I. L. R. 49 Calc. 551.

(2) (1901) 6 C. W. N. 37.

(6) (1909) I. L. R. 37 Calc. 467 :

(3) (1905) 2 C. L. J. 612.

14 C. W. N. 1114, 1124,

(4) (1892) I. L. R. 20 Calc. 474.

1125.

(7) (1912) I. L. R. 40 Calc. 423.

having been a member of a criminal conspiracy for the purpose of fraudulently and dishonestly making a false claim punishable under section 209 read with section 120B of the Penal Code. Deb Nath was charged with forging a valuable security punishable under section 467 of the Penal Code, with abetment of the offence of fraudulently using a forged document punishable under section 471 read with section 109, and also with joining in the conspiracy punishable under section 120B with section 209 of the Penal Code. The appellants were convicted on all these charges. Each of these accused is sentenced to three years' rigorous imprisonment on the principal charge, under section 471 of the Penal Code in the case of Kali Singh, and under section 467 of the Penal Code in the case of Deb Nath. Each of the accused was further sentenced to one year's rigorous imprisonment on the conspiracy charge, and Deb Nath was also sentenced to the additional period of one year's rigorous imprisonment on the conviction of abetment of using a forged document.

The first point urged on behalf of the appellants is that the trial is bad for want of proper sanction. Under the proviso of section 196A of the Code of Criminal Procedure a sanction under that section for prosecution for criminal conspiracy to commit a non-cognizable offence is not necessary in the present case, since the provisions of sub-section (3) of section 195 are applicable. But it is contended that there has been no proper sanction under section 195. It is said that the sanction is contrary to the provisions of sub-section (4) of that section as the order of sanction does not give the necessary particulars. The order of sanction was passed on a petition (Ex. 3) presented by the Deputy Inspector-General of Police, and the effective part of the order is that the application be allowed. If this order be read with the application

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all the details required by sub-section (4) have been supplied. We think that the petition and the order should be read together. This was the view taken in the case of *Dullo Singh v. The Deputy Inspector-General of Police, C. I. D., Bengal* (1), and we think it is the right view. It is contended that this decision is opposed to earlier decisions on this point. But we cannot find in any of those that have been cited anything which contradicts the view that the order of sanction and the petition asking for sanction should be read together. All the rulings to which our attention was directed were to the effect that the omission to give the particulars required by sub-section (4) of section 195 renders the sanction a bad sanction. But they did not deal with the point which arises in this case. It would appear in an earlier case, *Baperam Surma v. Gouri Nath Dutt* (2), that the learned Judges in discharging the Rule referred to the record of the case, and it would seem that their order was based on a consideration of the petition with the order, though this is not clearly stated in the report. In another case on the Original Side of this Court reference was certainly made to the application in order to interpret the order granting sanction since the words used by the learned Judge, when passing the order, were only "very well." This case is *Thaddeus v. Janaki Nath Shaha* (3). We, therefore, have no hesitation in following the recent ruling referred to above, and in holding that there is no flaw in the sanction under section 195 of the Criminal Procedure Code.

The learned Sessions Judge appears to have put the facts clearly before the Jury. The only misdirection in that charge, which is suggested, is as to the

(1) (1921) I. L. R. 49 Calc. 551. (2) (1892) I. L. R. 20 Calc. 474.

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legality of the conviction of Deb Nath under section 471 read with 109 of the Penal Code, and we find it hard to see what act of abetment of using the forged document was done by him other than the acts which are covered by his conviction under the other sections. We have also some doubt as to the legality of separate sentences for all the offences of which the accused were convicted. The learned Deputy Legal Remembrancer, however, states that he does not press for upholding that part of the order which directs that the separate sentences passed should run consecutively. We, therefore, do not think it necessary to deal at length with these points as regards the sentence.

In the result we uphold the convictions of the appellants, and modify the sentences to this extent that, while upholding the terms of each sentence passed under the respective sections against each of the appellants, we direct that these sentences do run concurrently and not consecutively.

E. H. M.

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