

## APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Parker.*

THATHAYYA *in re.\**

1888.  
Sept. 5.

*Criminal Procedure Code, s. 195—Sanction does not lapse with the death of grantee.*

A civil court granted sanction under s. 195 of the Code of Criminal Procedure to the defendant in a suit to prosecute certain witnesses for perjury. The defendant died without having preferred a complaint. His brother, thereupon, preferred a complaint and the magistrate dismissed it under s. 253 of the Code of Criminal Procedure, on the ground that the sanction died with the defendant. The Sessions Judge held that the sanction was alive and directed the District Magistrate to make further inquiry under s. 437 :

*Held*, that the Sessions Judge was right.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to set aside the order of G. T. Mackenzie, Sessions Judge of Kistna, directing further inquiry into charges of perjury brought against petitioners.

The facts appear from the order of the Sessions Judge, which was as follows :—

“The District Munsif of Bapatla, in deciding suit No. 64 of 1886, expressed an opinion that two witnesses had given false evidence. Afterwards, the defendant in that suit, Rudrarazu Somarazu, presented a petition to the Munsif praying that these witnesses might be prosecuted for perjury. The Munsif heard the vakils on both sides, and, on 27th June 1887, issued an order permitting the prosecution of these witnesses under s. 193 of the Penal Code.

“Rudrarazu Somarazu died before he lodged any complaint in pursuance of the Munsif’s sanction, and, on 22nd October, his brother, Rudrarazu Sivaramarazu, preferred a complaint before the Joint Magistrate.

“The Joint Magistrate has discharged the two men accused of false evidence under s. 253 of the Code of Criminal Procedure.

\*Criminal Revision Case No. 347 of 1888.

THATHAYYA  
in 72.

The Joint Magistrate considers that, as the person who obtained the sanction died, the sanction has elapsed.

"I am unable to concur in this view. I find nothing in s. 195 of the Code of Criminal Procedure which warrants this view. The sanction given by a court under s. 195 is not a personal privilege granted to a petitioner, but a decision that the case is one suitable for magisterial investigation.

"The Joint Magistrate had power to receive a complaint from his brother, Rudrarazu Sivaramarazu. There is nothing in s. 4 (a), s. 191, or s. 200 that prevents it. The only bar is s. 195, which requires the previous sanction of the District Munsif, and that sanction had been given.

"In the inquiry held by the Joint Magistrate, the accused put in a memorandum in which they call attention to the case of *Giridhari Mondul, in re*(1).

"The Joint Magistrate quotes the head-note of the report to the effect that permission is granted to a private person to exercise his own unfettered discretion as to whether he will take proceedings or not. It is not safe to follow the head-notes of reports, and I think that this head-note has misled the Joint Magistrate. In this Calcutta case a District Magistrate, on perusing the police reports of a complaint of dacoity against one Numboo, issued an order 'Numboo directed to bring a case under s. 211.' The High Court pointed out to the District Magistrate that his order was expressed in an improper manner, but declined to stop the prosecution instituted by Numboo in accordance with that order. I can see nothing in that remark of the Calcutta High Court which supports the view taken by the Joint Magistrate that the sanction granted by the District Munsif of Bapatla was personal to Rudrarazu Somarazu. I consider that, on the death of Somarazu, his brother could, within six months of the date of the Munsif's order, file the necessary complaint before the magistrate.

"The Joint Magistrate has discharged the accused upon this preliminary point and has not entered into the merits of the case against them. I consider that these two cases ought to be heard on their merits, and, under s. 437 of the Code of Criminal Procedure, I direct the District Magistrate to make further inquiry into these cases either himself or by any subordinate magistrate."

(1) I.L.R., 8 Cal., 485.

*Anandachari* and *Sundaram Sastri* for petitioners.

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The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—A sanction granted under s. 195 of the Code of Criminal Procedure is a condition precedent to the entertainment of a complaint by the magistrate. There is nothing in the section to restrict the right of complaint to any particular individual when a sanction has been granted under that section.

The order of the Sessions Judge is right.

## APPELLATE CRIMINAL.

*Before Mr. Justice Wilkinson and Mr. Justice Shephard.*

QUEEN-EMPRESS

against

RAMAKRISHNA.\*

1888.  
Sept. 11.

*Penal Code, s. 403—Criminal misappropriation—Intention, Proof.*

R. was a Government servant, whose duty it was to receive certain monies and to pay them into the treasury on receipt. He admitted that he had retained two sums of money in his possession for several months when fearing detection he paid them into the treasury making a false entry at the time in his books with a view to avert suspicion. His explanation as to his reason for retaining the money was not credited by the magistrate who convicted him of criminal misappropriation under s. 403 of the Indian Penal Code:

*Held*, that the conviction was right.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to quash the conviction of petitioner by W. E. Clarke, First-class Magistrate, Nilgiris, confirmed on appeal by D. Irvine, Sessions Judge of Coimbatore, in appeal No. 11 of 1888.

The facts of this case are set out in the judgment of the Court (Wilkinson and Shephard, JJ.).

Mr. *Wedderburn* for petitioner.

Mr. *Subramanyam* for the Crown.

For the prisoner it was argued that there was no proof of criminal intention, and that the prosecution was bound to prove something more than retention of the money and non-payment.

\* Criminal Revision Case No. 405 of 1888.