APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

1903. July 16.

IN THE MATTER OF SUBBAMMA, ACCUSED.*

Criminal Procedure Code—Act V of 1898, s. 195 (b)—Power of superior Court to revoke sanction after complaint lodged.

P obtained sanction from a Stationary Sub-Magistrate to prosecute S for offences under sections 211 and 193, Indian Penal Code, alleged to have been committed before that Magistrate. P did not prefer any complaint in pursuance of the sanction, but the police, relying on it, preferred a charge sheet to the Joint Magistrate against the accused in respect of the alleged offence under section 211. The Joint Magistrate struck the case off his file, giving as his reason for so doing that he *suo motu* quashed the Sub-Magistrate's sanction under section 195 (*b*) of the Code of Criminal Procedure:

Held, that the Joint Magistrate's action in striking the case off his file was legal and proper, though the reason given by him for so doing was erroneous and his act in quashing the sanction *ultra vires*. A Joint Magistrate, though authorized under section 407 (2) to entertain appeals preferred by persons convicted on a trial by the Stationary Magistrate is not the Court to which appeals from the Court of the Stationary Magistrate ordinarily lie, within the meaning of section 195 (7). The Court to which the Court of the Stationary Magistrate is, within the meaning of section 195 (6) and (7), subordinate is that of the District Magistrate. *Eroma Variar* v. *Emperor*, (I.L.R., 26 Mad., 656), and *Sadhu Lall* v. *Ram Churn Pasi*, (I.L.R., 30 Calc., 394), followed. The Joint Magistrate could not, therefore, revoke the sanction given by the Stationary Sub-Magistrate, the District Magistrate alone having the power to revoke or grant a sanction given or refused by the Stationary Sub-Magistrate. Nor was it competent to a District Magistrate, under section 407, to direct that applications for revoking or granting a sanction given or refused by a Sub-Magistrate may be presented to the Joint Magistrate.

Whether the Court authorized to exercise such a power under sub-section (6) can exercise it *suo motu*, as if it were a Court of revision, where no application has been made to it either to give a sanction which has been refused or to revoke a sanction which has been given.—*Quære.*

The course pursued by the police in sending a police report in respect of the offence was contrary to law; but whether, on the strength of the sanction accorded to P, a police officer or other stranger might have preferred a complaint against S.—*Quære.*

The mere fact that a complaint has been made, in pursuance of sanction, will be no bar to a Court competent under sub-section (6) to deal with an application for revoking such sanction, entertaining such application and disposing of it according to law, even if the complaint in pursuance of the sanction has been preferred to itself.

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* Case referred No. 52 of 1903 (Criminal Revision Case No. 189 of 1903) for the orders of the High Court under section 438 of the Code of Criminal Procedure by A. Butterworth, District Magistrate of Nellore, in his letter, dated 16th May 1903, Reference No. 481-Mag.

CASE submitted to the High Court for orders under section 438 of the Code of Criminal Procedure. One Subbamma charged one Perumma with theft, but the Stationary Sub-Magistrate discharged the accused on the ground that no case had been made out. Perumma then applied to the Stationary Sub-Magistrate for sanction to prosecute Subbamma for offences under sections 193 and 211, Indian Penal Code. The Magistrate accorded sanction as requested. Thereupon the police, acting on this sanction, laid a complaint against Subbamma in the Joint Magistrate's Court. The Joint Magistrate held this to be irregular, with reference to section 155 (2) of the Code of Criminal Procedure, as the complaint should have been laid by Perumma. He read the charge-sheet and struck the case off his file, the grounds given being (*a*) that the words constituting the offence of perjury were not quoted in the application for sanction, or in the order according it, and (*b*) that there did not appear to be a strong *primâ facie* case on the false charge and that the Sub-Magistrate did not seem to have been satisfied as to its falsity. Questioned as to the provision of law under which he had struck the case from off his file, the Joint Magistrate replied that he had not acted under any section of the Code of Criminal Procedure unless it was section 195. He said the case should never have come on his file, for he refused to take cognizance of it. But before he had examined the sanction the case had been numbered on his file. There was, in consequence, nothing left for him but to pass a proceeding striking it off the file. He considered that such an order was valid under section 195. The letter of reference stated that section 195 gives a superior Court power to revoke a sanction granted by a subordinate Court, and added that the Joint Magistrate claimed that by virtue of this provision he had power, *suo motu*, and, upon a mere perusal of the sanction accorded by a subordinate Court, to cancel it. The District Magistrate, while upholding this view, considered it doubtful whether that power continued after a complaint had been lodged or after the police had put in a charge-sheet. He raised that question in the reference.

JUDGMENT.—In this case one Perumma was accorded sanction by the Stationary Sub-Magistrate, Ongole, Nellore district, under section 195, Criminal Procedure Code, to prosecute the accused for offences under sections 211 and 193, Indian Penal Code, alleged to have been committed before the said Magistrate. Perumma did

IN THE MATTER OF SUBBAMMA.

not prefer any complaint in pursuance of the sanction obtained by her. But the police, relying upon the sanction accorded by the Sub-Magistrate, preferred a charge-sheet to the Joint Magistrate, Ongole, against the accused in respect of the alleged offence under section 211, Indian Penal Code, notwithstanding that an offence under that section is not cognizable by the police. It is clear that the course pursued by the police in sending a police report in respect of this offence is contrary to law. It does not appear that any police officer preferred any complaint on oath in the ordinary way to the Joint Magistrate. It is therefore unnecessary to consider whether, on the strength of the sanction accorded to Perumma, a police officer or other stranger may prefer a complaint against the accused. Under these circumstances the Joint Magistrate's action in striking the case off his file is legal and proper, though the reasons given by him for so doing, viz., that *suo motu* he quashed the Sub-Magistrate's sanction under sub-section (6) of section 195 is unsound in law. The question referred to this Court by the District Magistrate is whether a superior Court which has power, under section 195 (6), to revoke the sanction, loses that power in respect of a sanction under which a prosecution has been already instituted before itself. The District Magistrate has evidently assumed that the Joint Magistrate, who presumably has been authorized under section 407(2) to entertain appeals preferred by persons convicted on a trial by the Stationary Magistrate, is the Court to which appeals from the Court of the Stationary Magistrate ordinarily lie within the meaning of section 195 (7). This view is erroneous and within the meaning of sub-sections 6 and 7 of section 195 the Court to which the Court of the Stationary Magistrate is subordinate is that of the District Magistrate (*vide* Full Bench decision in *Eroma Variar* v. *Emperor*(1) and *Sadhu Lall* v. *Ram Churn Pasi*(2)). The Joint Magistrate of Ongole is therefore not the authority which can revoke under sub-section 6, the sanction given by the Stationary Sub-Magistrate, and it is the District Magistrate alone that can revoke or grant a sanction given or refused by the Stationary Sub-Magistrate of Ongole, nor is it even competent to a District Magistrate, under section 407, to direct that applications for revoking or granting a sanction given or refused by the Sub-Magistrate may be presented to the Joint

(1) I.L.R., 26 Mad., 656. (2) I.L.R., 30 Calc., 394.

Magistrate. The action of the Joint Magistrate in quashing the sanction being therefore *ultra vires it is unnecessary to consider* whether the Court authorized to exercise such a power under sub-section (*b*) can exercise the same *suo motu* as if it were a Court of revision when no application has been made to it either to give a sanction which has been refused or to revoke a sanction which has been given.

As regards the question put by the District Magistrate I may observe that the mere fact that a complaint has been made in pursuance of the sanction would be no bar to a Court, competent under sub-section (6) to deal with an application for revoking such sanction, entertaining such application and disposing of it according to law, even if the complaint in pursuance of the sanction has been preferred to itself. The order striking the case off the file being legal for the reasons already stated, it does not require to be revised, but the order of the Joint Magistrate, if any, revoking or quashing the sanction given by the Stationary Magistrate is set aside.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice.

MALLAPPA REDDI AND ANOTHER (FIRST AND FOURTH ACCUSED), PETITIONERS,

1903. March 20.

v.

EMPEROR, COUNTER-PETITIONER.*

Penal Code—Act XLV of 1860, s. 211—Preferring false charge—Statement not reduced to writing by Police officer.

A person was convicted, under section 211 of the Indian Penal Code, of having preferred a false charge. It appeared that the accused had stated to a Police officer that certain of the prosecution witnesses had stolen his goats, and that he had made this statement intending to set the criminal law in motion against those persons. The statement had not been reduced to writing in accordance with the requirements of section 154 of the Code of Criminal Procedure. On its

* Criminal Revision Petition No. 570 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the judgment of J. Hewetson, Sessions Judge of Tinnevelly, in Criminal Appeal No. 43 of 1902, confirming the finding and sentence of E. H. Wallace, Joint Magistrate of Tuticorin, in Calender Case No. 18 of 1902.