

APPELLATE CRIMINAL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Boddam

ISMAL ROWTHER AND OTHERS (ACCUSED). PETITIONERS,

v.

SDUNMUGAVELU NADAN (COMPLAINANT), RESPONDENT.*

1905
September
25.

Criminal Procedure Code—Act V of 1898, ss. 195, 537—Sanction, want of, only on irregularity and not fatal to the prosecution.

The general provisions of section 195 of the Code of Criminal Procedure ought not to be so construed as to nullify the special provisions of section 537 (b).

The want of sanction required by section 195 of the Code of Criminal Procedure is not fatal to a prosecution unless the accused is prejudiced thereby.

Raj Chunder Mozumdar v. Gour Chunder Mozumdar (I.L.R., 22 Calc., 176), dissented from.

THE charge against the petitioners (accused) was that they by force obstructed a marriage procession which was being carried on with the sanction and under the superintendence of the police, and compelled the bride and bridegroom to alight from their palanquin and walk to their house. They were convicted of offences under sections 143, 186 and 341 of the Indian Penal Code.

On appeal to the Sub-Divisional Magistrate, the contention of the petitioners that the conviction under section 186 was bad as no sanction had been obtained under section 195 of the Code of Criminal Procedure was overruled and the conviction confirmed.

Petitioners preferred the criminal revision petition.

Mr. E. Norton and P. Duraisawmy Ayyangar for petitioners.

The Public Prosecutor and Mr. Joseph Satya Nadar for complainant.

ORDER.—One of the offences for which the petitioners have been convicted is punishable under section 188, Indian Penal Code.

* Criminal Revision Case No. 234 of 1905, presented, under sections 495 and 499 of the Code of Criminal Procedure, praying the High Court to revise the order of C. G. Mackay, Esq., Sub-Divisional Magistrate of Ramnad, in Criminal Appeal No. 176 of 1904, presented against the conviction and sentence of M.R.Ey. V. Swaminatha Ayyar, Second-class Magistrate of Mudukulathur, in Calendar Case No. 243 of 1904.

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No sanction from the Police officers obstructed was produced in the course of the prosecution but no objection on this ground was taken on behalf of the petitioners at the trial. Mr. Norton has called our attention to *Raj Chunder Mozumdar v. Gour Chunder Mozumdar*(1) in support of his contention that the want of sanction was fatal to the prosecution of the prisoners on the charge in respect of the offence referred to. We are unable to agree with the view there taken by the learned Judges as to the construction of section 537, Criminal Procedure Code of 1882, which so far as the question of want of sanction is concerned is identical with section 537 of the present Code (Act V of 1898). Their construction virtually nullifies the provision that want of sanction is merely an irregularity which would not justify the reversal of the decision in a case prosecuted without sanction unless such want of sanction has occasioned a failure of justice. No doubt section 537 begins with the words "subject to the provisions hereinbefore contained," etc., but those words must be taken together with what follows and not read so as to give no meaning to the subsequent clause relating to the want of sanction.

Section 195, provides *generally* for cases in which sanction is necessary, while section 537 (b) provides for cases of want of or irregularity in the matter of sanction in *particular* cases. The latter as providing for a special case must have effect given to it as qualifying the general provisions in the earlier section. In this view there is nothing to show that the want of sanction caused any prejudice to the accused or occasioned any failure of justice. And no other ground has been shown for interfering with the decision of the lower Courts.

We dismiss the petition.

(1) I.L.R., 22 Cal., 176.