In re MUTHUKUDAM PILLAI.

an Appellate Court declining to revoke it. The Court was requested to extend the time if necessary.

JUDGMENT.—The application is not opposed. We do not think hat the period of six months can be reckoned from the date of the inal order of the Appellate Court declining to revoke the sanction. The sanction will lapse at the expiration of six months from the late on which it was given. The fact that an appeal has been preferred against it is no impediment to the institution of criminal proceedings on the strength of the sanction, though, as a general rule, it may be a reasonable ground for stay of proceedings by the Magistrate before whom the complaint has been preferred, pending the disposal of the appeal

We resolve, in the circumstances now reported, to extend the time under section 195 (6), Criminal Procedure Code, to the 7th May next inclusive.

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

1902. July 29.

EMPEROR, APPELLANT,

v.

CHERATH CHOYI KUTTI (ACCUSED), RESPONDENT.*

Evidence Act—I of 1872, s. 155 (3)—Statements previously made by witnesses—Inadmissibility as substantive evidence.

Two persons made statements to the effect that C and another had robbed them and caused hurt while doing so. One statement was made to their employer, and the other to the Head Constable. C was subsequently charged and these two persons were called as witnesses for the prosecution, but they then denied that C was one of the men who had assaulted them. Their previous statements were filed, but neither the employer nor the Head Constable was called to depose to the terms of the statements which the witnesses were said to have made:

Held, that the former statements referred to, and which implicated the accused, could be used only under section 155 (3) of the Evidence Act for discrediting their evidence and not as substantive evidence against the accused.

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* Criminal Appeal No. 409 of 1902 under section 417 of the Code of Criminal Procedure, against the judgment of acquittal passed on the accused in Criminal Appeal No. 126 of 1901 by A. Venkataramana Pai, Sessions Judge of South Malabar.

EMPEROR v. CHERATH CHOYI KUTTI.

CHARGE of voluntarily causing hurt in committing robbery under section 394 of the Indian Penal Code. The accused was convicted and sentenced by the Special Assistant Magistrate of Malabar to nine months' rigorous imprisonment. That conviction was set aside by the Acting Sessions Judge, from whose judgment appeared that (according to the case for the prosecution) two of th prosecution witnesses had, on the night of 5th May 1900, been assaulted by the accused and another, and had been forced to give up money that was in their possession. The other assailant had already been convicted of robbery. The two prosecution witnesses stated at the trial that the accused was not the man who assaulted them. It appeared, however, that shortly after the robbery they had complained of it to their employer, and mentioned the name of the accused. A record made by the Police Head Constable of the complaint of one of the witnesses was filed as exhibit A: and a letter from their employer setting out the complaint of the other was filed as exhibit B, and in both of those the accused was named. Neither the Head Constable nor the employer was called. The Acting Sessions Judge held that exhibit B ought not to have been placed on the record, and that if the witnesses complained to their employer, the latter should have deposed to the terms of their complaint. He acquitted the accused.

Against that order of acquittal the Public Prosecutor preferred this appeal.

The Public Prosecutor in support of the appeal.

JUDGMENT.—There is no legal evidence at all against the accused. The former statements made by the first and second prosecution witnesses which are evidenced by exhibits B and A implicating the accused can be used only under section 155 (3) of the Indian Evidence Act for discrediting their evidence given in this case, but in themselves they cannot be used as substantive evidence against the accused by converting and regarding the same as the evidence now given on oath by the first and second witnesses subject to cross-examination. The appeal is dismissed.