APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

1902.
May 28.

IN RE PAREE KUNHAMMED AND ANOTHER, PETITIONERS.*

Criminal Procedure Code—Act V of 1898, s. 195—Petition to revoke sanction.

A person whose prosecution had been sanctioned by a Sub-Magistrate petitioned the Special Assistant Magistrate for its revocation. The Special Assistant Magistrate declined to interfere, on the ground that as the Sub-Magistrate had had judicial evidence before him and had also held the necessary enquiry before granting sanction, the necessary conditions had been fulfilled and it was not for him, at that stage, to usurp the functions of a Court trying the petitioner for the offence:

Held, that it is the duty of the authority giving sanction or upholding it, under section 195, to go into the merits of the application for sanction, with reference to the evidence before it, which is relied on as justifying the according of sanction. Unless there is sufficient *primâ facie* evidence and a reasonable probability of conviction, the Court giving the sanction or upholding it will not be properly exercising the discretion vested in it by law.

PETITION to revise an order declining to interfere with sanction to prosecute the petitioners. An order had been passed by the Sub-Magistrate of Tiruvangadi, sanctioning the prosecution of the petitioners for the abetment of giving false evidence, under section 193 of the Indian Penal Code. Against that order, petitioners appealed to the Special Assistant Magistrate of Malabar, who passed the following order:—"The Sub-Magistrate had judicial evidence before him and also held the necessary enquiry before granting sanction. These necessary conditions having been fulfilled it is not for me, at this stage, to usurp the functions of a Court trying petitioners for the offences, their prosecution for which has been sanctioned. I decline to interfere."

Petitioners presented this criminal petition.

Dr. *S. Swaminadha* for petitioners.

JUDGMENT.—The Special Assistant Magistrate of Malabar, in disposing of the appeal petition presented to him under section

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* Criminal Revision Petition No. 244 of 1902, presented against the order of A. R. L. Tottenham, Special Assistant Magistrate of Malabar, dated 24th December 1901, in Criminal Appeal No. 119 of 1901, declining to revoke the sanction for prosecution accorded by K. Kunhiraman, Sub-Magistrate of Tiruvangadi, in Miscellaneous Case No. 10 of 1901.

195 (6), Criminal Procedure Code, for revocation of the sanction given by the Sub-Magistrate of Tiruvangadi for the prosecution of the petitioners for the abetment of offences under sections 211 and 193, Indian Penal Code, summarily dismissed the petition on the ground that "the Sub-Magistrate had judicial evidence before him and also held the necessary enquiry before granting sanction," and such necessary conditions having been fulfilled "it was not for him at this stage to usurp the functions of a Court trying the petitioners for the offences." The Special Assistant Magistrate is entirely mistaken as to his functions and responsibility in dealing with a petition presented to him under section 195 which is really in the nature of an appeal against the order of one of his Subordinate Magistrates giving sanction to prosecute the petitioners. He is quite right in saying that in dealing with the petition of appeal before him he ought not to usurp the functions of the Court which will have to try the petitioners if the sanction be upheld and they are brought to trial. That Court will have to try the petitioners upon the evidence which may be adduced at that trial and either convict or acquit them with reference to such evidence. But the authority giving the sanction or upholding the sanction given under section 195 must go into the merits of the application for sanction with reference to the evidence before such authority which is relied upon as justifying the according of sanction. The object of section 195 is to protect parties resorting to Courts and witnesses against vexatious or frivolous prosecutions for their resorting to Courts and giving evidence therein and such protection is afforded by prescribing the necessity of a preliminary sanction by the Court before which the offence is alleged to have been committed before a prosecution is launched and by giving a right of appeal to the Court to which the Court giving sanction is subordinate. Unless there is sufficient *primâ facie* evidence and a reasonable probability of conviction the Court giving the sanction or upholding it will not be properly exercising the discretion vested in it by law and the safeguard provided by law against vexatious or frivolous prosecutions of parties resorting to Court and of witnesses attending and giving evidence in Courts of Justice in discharge of a public duty imposed upon them by law will be rendered nugatory. The according of sanction or upholding the same when a sufficient *primâ facie* case is not made out will, in the majority of cases, simply lead to waste of public time and subject

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the person against whom the sanction is given to serious annoyance and expense which he can in no way be compensated for even though he be honourably acquitted. And such prosecutions launched under the sanction of a Court of Justice are certainly not calculated to produce a wholesome effect upon the administration of justice or to improve the quality of evidence forthcoming in Courts of Justice.

In the present case sanction has been accorded to prosecute the petitioners for the abetment of a false charge preferred by one Pathumma who is being prosecuted for having preferred a false complaint (exhibit A) and for abetting her in giving false evidence. The order of the Sub-Magistrate giving sanction, which extends over eight pages, does not disclose the existence of any evidence as to the complaint made by Pathumma being really false and false to the knowledge of the petitioners. Several witnesses seem to have been examined simply to prove that the petitioners instigated Pathumma to prefer the complaint, but that is quite compatible with the complaint itself being well founded and true. Exhibit C, which was a petition presented by Pathumma herself shortly after she presented the complaint A, in which (C) she says that her complaint (A) is a false one and that she preferred such false complaint at the instigation of petitioners and some others, and the sworn statement taken from her in support of C, are no evidence against petitioners, not to say that the conduct of Pathumma as manifested by exhibit C and its contents and the compounding of the complaint (exhibit B) which was reported to be true by the Police is extremely suspicious. The complaint A was not dismissed by the Sub-Magistrate as false after holding any enquiry and the Sub-Magistrate does not point to any evidence as to petitioner's having abetted Pathumma in giving false evidence if she gave any such evidence. It is strange that in the enquiry made by the Sub-Magistrate in connection with the application for sanction against the petitioners he should have examined on oath (*vide* section 5, Indian Oaths Act) as a Court witness Pathumma, who was then an accused person before the Special Assistant Magistrate in connection with the very matter of enquiry, namely, her having preferred a false complaint. Even assuming that the evidence thus elicited from her is not illegal it can hardly be used as evidence against the petitioners whom it is sought to bring to trial jointly with her and in view to which the proceedings against Pathumma

have been stayed by the Special Assistant Magistrate. Exhibits D and E and F which, the Sub-Magistrate states, show that the first petitioner is by profession a law agent and mediator and interferes in many cases to earn something are perfectly irrelevant and inadmissible. The Sub-Magistrate also says that the first witness swears that the first petitioner is a proclaimed law tout and that he read recently the proclamation to that effect on the notice board of the Parappanangadi Munsif's Court. The authority giving sanction under section 195 should never be influenced in giving sanction by evidence which it ought to know will be altogether inadmissible against an accused person in a criminal trial. It would be an abuse of the power vested in Courts under section 196, Criminal Procedure Code, if sanction should be given or upheld on the principle that, though the conviction of the party complained against is a *mere possibility* and is by no means *probable* yet the giving of sanction would in itself operate as a punishment which, in the opinion of the authority giving or upholding the sanction, will be fully deserved by the person whose prosecution is sanctioned, for, he will have either to pay a substantial consideration to his adversary as an inducement to the latter quietly dropping the sanction and allowing it to die a natural death by effluxion of the period of six months prescribed by law or to undergo the worry, hardship and expense of a criminal prosecution, though eventually he may be acquitted and acquitted honourably too. As this case comes before this Court not by way of appeal under section 195, but only as a Court of Revision under section 439, I pass no final order in the matter of sanction, but, under sections 439 and 423 [1(6)], I set aside the order of the Special Assistant Magistrate, dated 24th December 1901, in Criminal Appeal No. 119 of 1901, declining to revoke the sanction given by the Sub-Magistrate and direct that the said appeal be restored to the file and disposed of according to law, with reference to the foregoing observations, by the Head Assistant Magistrate at Palghat, as I think it undesirable that the appeal should be heard and disposed of on the merits by the Special Assistant Magistrate before whom the case against Pathumma is pending and at whose suggestion, as appears from the Sub-Magistrate's order, application was made by the Police Inspector to the Sub-Magistrate for sanction to prosecute the petitioners for abetment of the false complaint preferred by Pathumma.