APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

1918, July 29, August 5, 8 and 20.

ARUNACHALAM PILLAI (SECOND RESPONDENT), PETITIONER,

v.

PONNUSAMI PILLAI (PETITIONER), RESPONDENT.*

Criminal Procedure Code (Act V of 1898) sec. 195, clause (1) (a), (b), (c) and clauses (6) and (7)—Disobedience to an order of a public servant under section 144, Criminal Procedure Code—Public servant, whether a Court—Sanction for disobedience, whether a judicial or administrative order—Appeal.

An order under section 144 of the Criminal Procedure Code is a judicial and not an administrative order and an order of a Sub-Magistrate refusing to sanction the prosecution of a person for an offence under section 188 of the Indian Penal Code in respect of an order made by him under section 144 of the Criminal Procedure Code is the order of a Court to which the appeal provisions in section 195 (7) of the Criminal Procedure Code are applicable.

Sankaram Aiyar v. *Sukkarappa Mudaliar* (1903) 2 Weir, 155, considered.

PETITIONS under section 195, clauses (6) and (7), Criminal Procedure Code, and under section 195, clauses (6) and (7) and sections 436 and 439, Criminal Procedure Code, against the Proceedings D. Dis. No. 24 of 1918, dated the 12th day of January 1918, passed by E. S. LLOYD, the District Magistrate of Trichinopoly, against the Proceedings of R. KRISHNASWAMI, the Stationary Second-class Magistrate of Trichinopoly, dated the 17th July 1917, in Miscellaneous Case No. 10 of 1917; and against the order of J. G. BURN, the Sessions Judge of Trichinopoly, dated the 1st March 1918, in Criminal Miscellaneous Petition No. 10 of 1918, filed against the said order of the District Magistrate.

The facts are stated in the judgment of NAPIER, J.

C. Rajagopala Ayyangar for the petitioner.

R. V. Seshagiri Rao for the respondent.

E. R. Osborne, Acting Public Prosecutor and *C. Narasimha Achariar* for the Crown.

NAPIER, J. NAPIER, J.—These are two petitions, one to revise an order of the District Magistrate of Trichinopoly of the 12th January

* Criminal Miscellaneous Petitions Nos. 83 and 399 of 1918.

1918, the other to revise the order of the Sessions Judge of Trichinopoly of the 1st March 1918. The order of the District Magistrate was made on appeal from an order of the Stationary Sub-Magistrate of Trichinopoly refusing to sanction the prosecution of the present petitioner and another for an offence under section 188, Indian Penal Code. The petitions were the result of an order of the Stationary Sub-Magistrate passed on the 8th May 1917 under section 144, Criminal Procedure Code, restraining this petitioner and others from taking the *Pidari* deity in procession through a lane claimed to be the private property of the present counter-petitioner. This order was alleged to have been violated and hence the petition for sanction.

The Stationary Sub-Magistrate declined to grant the sanction on two grounds—one, that the order should not have been passed and that therefore disobedience cannot be considered to be an offence; the other, that the petition for sanction was the outcome of previously existing spite. The present counter-petitioner appealed to the District Magistrate of Trichinopoly, who decided that the order having been passed, rightly or wrongly, disobedience to it was an offence, and granted the sanction. This is one of the orders appealed against. The petitioner appealed from that decision to the Sessions Judge who passed the following order:—

"The order appears to have been made by the District Magistrate as an administrative officer, and I think, therefore that no appeal lies to this Court. Petition is dismissed."

This is the other order appealed against. The petitioner before us first argued that the order of the District Magistrate granting sanction against him was passed by him as a public servant, that no appeal lay to the Sessions Judge and that therefore he was entitled to come to the High Court. On this petition it is, in our opinion, enough to say that if the order was passed by the District Magistrate administratively, the High Court has no appellate or revisional power. We asked the learned vakil to invite our attention to any provision either in the Government of India Act or the Letters Patent or in the Criminal Procedure Code which makes a public servant *qua* such servant and not *qua* Courts subordinate to the authority of the High Court as required by section 195,

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sub-section 6, and he was unable to show us any. We, therefore, dismiss this petition.

On the second petition, by way of what is for convenience called an appeal from the order of the Sessions Judge, the petitioner took up the opposite position, namely, that the order was one of a Court and that therefore the Sessions Judge was in error in declining to exercise his jurisdiction. We have therefore to decide whether the (appeal) provisions in section 195, sub-section (7), Criminal Procedure Code, apply to this order. We are clear that the Stationary Sub-Magistrate in passing this order refusing sanction was acting judicially, for the original order which it was alleged was disobeyed was an order passed under section 144, Criminal Procedure Code. These orders have always been treated as judicial orders and we cannot separate the authority issuing the order from the authority granting sanction for disobedience of it.

But the more difficult question is whether on the language of section 195, Criminal Procedure Code, even though the order was passed by a Court, the 'appeal' lies to another Court. Section 195, sub-section (1), deals with three classes of offences. The first group are sections 172 to 188 of the Indian Penal Code, which are classed in Chapter X of the Code under the heading "Of contempts of the lawful authority of public servants"; the second group refers to section 193 and others which are classed in the Code under the heading "Of false evidence and offences against public justice;" and the third group contains the sections in Chapter XVIII of the Code and classed "Of offences relating to documents and to trade and property marks". With regard to the first group, section 195, Criminal Procedure Code, provides that the Court shall not take cognizance of any such offence, except with the previous sanction or on the complaint, of the public servant or of some public servant to whom he is subordinate. With regard to the second group, the provision is that no Court shall take cognizance of any such offence when such offence is committed in or in relation to any proceeding in any Court, except with the previous sanction or on the complaint of such Court, etc. With reference to the third group, it is provided that no Court shall take cognizance of any such offence, when such offence has been committed by a party to any proceeding in any Court in respect of a document

produced or given in evidence in such proceeding, except with the previous sanction or on the complaint of such Court, etc. With reference to the second and third groups, the section provides that the term 'Court' means Civil, Revenue or Criminal Court, but not a Registrar. The appeal in all cases is provided for by sub-section 6.

"Any sanction given or refused may be revoked or granted by any authority to which the authority giving or refusing it is subordinate.

Then sub-section 7 provides :

"For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lies ".

The question is whether the word 'Court' in sub-section 7 refers to 'Court' mentioned in sub-section (1), clauses (*b*) and (*c*) only or whether it applies also to order made by a public servant as a Court under sub-section (1), clause (*a*). The Sessions Judge took the former view following a decision of this Court in *Sankaram Aiyar* v. *Sakkarappa Mudaliar*(1). That decision is however no authority for his view, as the High Court held that the order was not one of a Court. It is of course clear that the offences grouped in clause (*a*) include disobedience of orders of Courts, such as contempts of summonses issued by Courts (section 172, Indian Penal Code), refusal to produce documents before Courts (section 175), refusal to take an oath or affirmation before a Court (section 178), giving false information to Court (section 181), obstructing sale of property offered for sale by the lawful authority of the Court (section 184) and disobeying a direction to abstain from a certain act promulgated by a Court under section 188, which is the present case. There can be no doubt that the various summonses and orders referred to in those sections when issued by a Magistrate or a Judge are issued judicially, and, as pointed out above, it surely must follow from that that the sanction to prosecute for disobedience of such summons or order must be issued by the same authority, namely, the Court.

But this still leaves the other question open, namely, whether sub-section 7 applies to such sanction. I am of opinion that

(1) (1903) 2 Weir, 155.

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the word 'Court' in sub-section 7 is not confined to clauses (*b*) and (*c*). The legislature must have been aware that offence against the authority of the Courts were covered by Chapter X of the Indian Penal Code, and there is of course no reason why any difference should be made with regard to appeals between offences against the lawful authority of Courts and offences against public justice in relation to proceedings in Courts. The word 'public servant' was obviously used in clause (*a*), because it is used in the Penal Code throughout the provisions in Chapter X, and 'public servant' is defined in section 21 of the Code as including Judges and Magistrates. Sub-section 7 is, I think, enacted for the purpose of explaining what is subordination within the meaning of sub-section 6, where the authority giving or refusing sanction is a Court, and does not purport to confine its operation to clauses (*b*) and (*c*) of sub-section (1), nor do I think that the legislature had that intention. It seems to me that the word 'Court' was used in clauses (*b*) and (*c*), because it was intended to limit the operation of those clauses to proceedings in relation to Courts, thereby constituting a narrower class than is dealt with in clause (*a*), and I see no reason why because a narrower class of cases confined to Courts only is provided for in those two clauses, the word 'Court' in sub-section 7 should be confined to those two groups and not read as applicable to the wider group in clause (*a*) which applies to both Courts and other public servants, both of whom are clearly covered by the word 'authority' in sub-section 6.

In the result, I hold that where the sanction is given with reference to an offence against a Court, the appeal is governed by sub-section 7. The order of the Sessions Judge is set aside and he is directed to take the petition on his file and dispose of it according to law.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—I agree entirely. It is not essential for the decision of this case to express an opinion on the question whether the particular order of the Sub-Magistrate mentioned in *Sankaram Aiyar* v. *Sakkarappa Mudaliar*(1) was rightly held by this Court on the facts of that case to have been passed by that public servant, not as a criminal court but as a public servant who was not a Court. It is however necessary

(1) (1903) 2 Weir, 155.

to guard myself from subscribing to the opinion suggested by a sentence in that decision, that opinion being that a Sub-Magistrate would act as a Court, only when he grants sanction for offences mentioned in section 195, clauses (*b*) and (*c*), that he could never act as a Court when he grants sanction for any of the offences mentioned in clause (*a*) and that therefore sub-section (7) could never apply to a sanction given by a Sub-Magistrate for such an offence. N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

KANDASAMI PILLAI AND ANOTHER (ACCUSED), PETITIONERS,*

v.

EMPEROR.

1918. July 17, Aug. 12 and 23.

Defence of India Act (IV of 1915), sec. 2—Rules framed under—creating offences—Time from which acts specified in rules are offences—Special tribunals, no creation of—Trial by Magistrates as under Criminal Procedure Code, validity of—Sanction for prosecution by Acting District Magistrate, validity of—General Clauses Act (X of 1897), sec. 17, Cl. 1.

Rules framed under section 2 of the Defence of India Act must be read as part of that section and are effective from the date of their publication and are not dependent on the remainder of the Act being brought into operation.

Held accordingly that a person in the Presidency of Madras, who, in contravention of the rules, dissuades any one from entering into His Majesty's Military Service, is guilty of an offence though the remainder of the Act had not been brought into operation in this province.

Held further that in the absence of a notification creating special tribunals for the trial of such offences under the Defence of India Act, such offences are triable by the ordinary Magisterial Courts of the country in the manner provided by the Criminal Procedure Code as 'offences against other laws' within schedule II of the Code.

By virtue of section 17, clause 1, of the General Clauses Act (X of 1897) an Acting District Magistrate is competent to sanction a prosecution in all cases where a District Magistrate can sanction the same.

PETITION under sections 435 and 439 of the Code of Criminal Procedure against the judgment of F. A. COLERIDGE, the

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* Criminal Revision Case No. 815 of 1917 (Criminal Revision Petition No. 660 of 1917).