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The Magistrate's explanation shows that in the present case he looked on the petitioners as persons still suspected of offences whom the police might arrest under s. 92, Act X. of 1872, and on their being arrested he treated them as still charged with murder, and committed them to prison on that charge, on a warrant in regular form. He seems to me to have considered himself acting judicially, under his powers as Magistrate, and though the circumstances do not justify his so acting, the fact will nevertheless remain, and I think it cannot be said that a proceeding, in which a Magistrate commits to prison charged with an offence a person brought up by the police, is not one which constitutes a judicial proceeding, for it will at least be one in which evidence may be taken. I would cancel the Magistrate's order.

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(*Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

BARKAT-UL-LAH KHÁN (PETITIONER) *v.* RENNIE AND ANOTHER (OPPOSITE PARTIES).*

Act X. of 1872, *ss.* 468, 469—*Prosecution—Sanction—Jurisdiction.*

Held that the sanction referred to in ss. 468 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court.

Per TURNER, Offg. C. J., and PEARSON and OLDFIELD, JJ.—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them.

Per SPANKIE, J.—When sanction is refused by one of the Courts, the refusal does not deprive the superior Courts of the discretion given to them.

AFTER the Munsif of Sháhjahánpur determined a suit between Messrs. Carew and Co. and Barkat-ul-lah Khán, the former applied to him for sanction to prosecute the latter in respect of a document which he gave in evidence suit, and which they believed to be a forgery. The application was made in reference to s. 469 of Act X of 1872, which enacts that "a complaint of an offence relating to documents described in ss. 463, 471, 475, or 476 of the Indian Penal Code, when the document has

* Miscellaneous Application, No. 23B. of 1875.

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been given in evidence in any proceedings in any civil or criminal Court, shall not be entertained against a party to such proceedings, *except with the sanction of the Court in which the document was* given in evidence, or of some other Court to which such Court is subordinate." The Munsif refused the application, not being satisfied that the document was a forgery; upon which application was made to the District Judge. The Judge was of opinion that an investigation should be made into the charge made against Barkat-ul-lah Khán, and directed the Munsif to send the case to the Magistrate.

Barkat-ul-lah Khán presented an application to the High Court praying that it would set aside the Judge's order as made without jurisdiction, under the provisions of s. 35 of Act XXIII. of 1861. It was contended on behalf of the petitioner by Bábu Jai Gopál Ghos that the sanction prescribed by s. 469 of Act X. of 1872 was one which the Court in which the document was given in evidence had discretion to give or withhold; that no other Court could interfere when this discretion had been exercised; and that if the Court in which the document had been given in evidence had not been moved for sanction, then any Court to which it was subordinate could give sanction, but that there could be no appeal or interference by the superior Court where discretion had been exercised by the lower Court, there being no provision in the Codes of Civil or Criminal Procedure for anything of the kind. On behalf of the opposite parties it was contended by Mr. Ross that the Munsif being immediately subordinate to the Judge, the Judge had power to sanction the prosecution, and sanction having been given, the High Court could not entertain a petition to set aside the order granting it. The learned counsel cited the following authorities:—*Dinobundhoo Chuckerbutty* (1); *Rám Pershád Hazáree*, v. *Soomuthra Dabee* (2); *In the Matter of Balwant Rai* (3); *In the Matter of Wahid Husain* (4); and *In the matter of Bujan Lál* (5).

The Court (Spankie, J.) referred the following questions to the Full Bench:—

"Whether, when the Court in which the evidence has been given, which is to form the basis of a criminal prosecution, has

(1) 5 W. R. *Mis. Ap.* 6.
(2) 5 W. R. *Mis Ap.* 24.
(3) H. C. R., N.-W. P., 1874, p. 124.
(4) Mis. Appl., No. 86B. of 1874, dated the 30th November, 1874.
(5) Mis. Appl, dated the 14th August, 1874.

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exercised its discretion, either by withholding its sanction from, or giving sanction to, a criminal prosecution, the Court to which it is subordinate has any authority to interfere with the order, and if it has authority, to what extent can it interfere? Can it, where the first Court has refused to grant sanction, reverse its order and itself sanction a prosecution; can it reverse that order and forbid the prosecution; and where the first Court and the Court superior to it differ, can the High Court exercise any interference, and to what extent?"

The reference was accompanied with these remarks:—

SPANKIE, J.—(who, after stating the facts and the arguments as above, continued):—Mr. Ross cited several decisions of the Calcutta High Court and of this Court in support of his contention. In the first case the Sadr Amín refused to give the sanction asked for, because he saw no reason to impugn the *primâ facie* authenticity of the document and for putting the petitioner on his trial for forgery. The Judge was then applied to and he sanctioned the prosecution. An application was then made to the Presidency High Court to set aside the Judge's order. It was contended that the sanction contemplated by section 170 of Act XXV. of 1861, the former Criminal Procedure Code, can only be given by that Court in which the evidence is actually (for the first time) given in the suit, or by some superior Court before which the suit has come in regular course and which has thus before it all the materials of the case at the time when the application for its sanction is made. Mr. Justice Phear was of opinion that any Civil Court which has the power of calling before it the proceedings and evidence of the suit, after satisfying itself (by preliminary enquiry if necessary) that the charge is proper for investigation, can give sanction to a criminal prosecution, and that when one such Court has once given its sanction, a Magistrate is bound to proceed with the prosecution. It was a matter of indifference in Mr. Justice Phear's opinion that other subordinate Courts including, it may be, the Court of first instance, should have previously refused their sanction to the prosecution. Mr. Justice

Dinobundhoo Chuckerbutty Bayley and Phear, JJ. (1).

(1) 5 W. R. *Mis. Ap.* 6.

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Bayley concurred, and the Court refused to interfere with the Judge's order.

Ram Pershád Hazáree v. *Soomuthra Dabee* (1.)

A Full Bench of five Judges had subsequently the following case before it. The petitioner produced a copy of an order of a Division (?) Bench of the Court in a previous case, staying the proceedings of the Court below in regard to the committal of a party till the result of a special appeal then pending was known, and as it appeared questionable whether the High Court has authority to interfere with the proceedings directing the commitment of a party for perjury or forgery, the referring Judges thought that the question should be submitted for the decision of a Full Bench. It was held that the High Court cannot, in the event of a regular or special appeal being lodged against the decision of the lower Court, interfere to stay criminal proceedings until the appeal shall have been heard and determined. The order, if treated as an order in a Civil case, is not, in Sir Barnes Peacock's opinion, appealable under Act VIII. of 1859. No appeal is given either by the Civil or Criminal Procedure Code against orders which are left to the discretion of the Civil Court, either granting or withholding sanction to a criminal prosecution under s. 169 or 170 (Act XXV. of 1861), or against an order sending a case for investigation before a Magistrate under s. 171. But the learned Chief Justice went beyond this, and lays down that as a Court of Revision the High Court could not interfere and reverse such sanction or order upon the ground that it was not warranted by the facts; for, as a Court of Revision, it could not reverse an order except for error in law. In the case before the Full Bench the application was not by way of appeal, but merely by way of motion to postpone the committal. But if the Court, as one of Appeal or as one of Revision, cannot reverse or alter such an order, then there was no inherent authority that it had to stay proceedings. In this opinion of Sir Barnes Peacock, the other members of the Court concurred.

In the Matter of Balwant Rai. Pearson and Turner, JJ. (2.)

The ruling of the Full Bench just referred to was cited by a Division Bench of this Court. In this case the petitioner obtained sanction from the Court of the Subordinate Judge to a criminal prosecution under s. 193 of

(1.) 5 W. R. *Mis. Ap.* 24 (2.) H. C. R., N.-W. P., 1874, p. 124.

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the Penal Code. There was an appeal against the order to the Judge. The petitioner's counsel argued that the Judge had no jurisdiction to entertain the appeal, but the Judge held that he had, and he reversed the Subordinate Judge's order. The petitioner then applied to the High Court, urging that there was no appeal from an order of a Civil Court *sanctioning* a criminal prosecution, and he therefore prayed that the Court would send for the record and pass thereon such orders as might seem fit. The Judge held that if a Judge could give sanction when a Court subordinate to him had refused it, the natural deduction was that he could withhold sanction when the lower Court had awarded it. The Division Bench remarked that it had been already ruled by a Full Bench of the Calcutta High Court that, under the former Code of Criminal Procedure, no appeal lay to the Zila Judge from a sanction accorded by a subordinate Court of first instance to the institution of a prosecution, in cases in which such sanction is required. There was no difference in the language of the former or present Code on the point. The Court therefore, under s. 35, Act XXIII. of 1861, set aside the Judge's order. The Court further remarked:—"We are much pressed to go further and set aside also the sanction. Had it not been for the illegal assumption of jurisdiction by the Zila Judge, we should not have been empowered to do so, for it is shown that the subordinate Court fairly exercised the discretion which the law commits to it; and where a discretion has been so exercised, whether it has been wisely exercised or not, we have no authority to interfere. On these grounds we limit our order to the setting aside of the Judge's order."

In the Matter of Wahid Hussain. Brodhurst J. (1.)

Another case came before a single Judge. In this case the Judge refused to sanction a criminal prosecution. The petitioner prayed the Court to sanction the prosecution. This Court held that the application could be entertained; but having regard to the circumstances of the case, there appeared to be no grounds for interference.

In the Matter of Bujan Lál. Pearson, J. (2.)

In another case before a single Judge the petitioners stated that they had applied to the Zila Judge for sanction to prosecute one Kunhia Lál

(1.) Mis. Appl., No. 86B. of 1874, dated the 30th August, 1874.

(2.) Mis. Appl., dated the 14th August, 1874.

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criminally; failing to get a clear order, they went to the Court of first instance. But that Court thought that it was precluded by the Judge's order from giving sanction. This Court remarked that, as it appeared from the proceeding of the Subordinate Judge that, in his opinion, ample grounds existed for sanctioning the prosecution under s. 469 of the Criminal Procedure Code, but that he considered himself to be precluded by some not very intelligible order passed by the Zila Judge, it would be right and proper in the interests of public justice to grant the sanction applied for by the petitioners. In this case the Judge, when applied to for sanction to prosecute Kunhia Lál for forgery, is stated by the Subordinate Judge to have passed this order:—"I cannot give sanction." If so, Mr. Justice Pearson's order seems to have practically, though not in so many words, reversed the Judge's order withholding sanction.

It appears to me that there is some confusion and uncertainty as to the extent of interference which the Court has a power of exercising.

The case now before me is the exact converse of that which came before the Division Bench and has been cited. That decision is based upon the Full Bench decision of the Calcutta Court also cited. But the judgment of that Full Bench appears to me to hold that neither as a Court of Appeal or Revision can the High Court reverse or alter an order granting or withholding sanction to a criminal prosecution, and further that it has no inherent authority by which it can interfere in such cases. Sir Barnes Peacock remarked that in some of the cases cited "the question as to reversing such sanctions was brought before the Court by motion. I asked how the case came before the Court by motion. The answer was that the motion was in the nature of a petition of appeal. But I am clearly of opinion that, in cases in which no appeal lies to this Court, relief cannot be given indirectly by motion in the nature of an appeal." According, therefore, to the Full Bench decision, there does not appear to be any power of interference. But the Division Bench of this Court, whilst acting on the judgment of the Full Bench, adds:—"We are much pressed to go further and set aside also the sanction. Had it not been for the illegal assumption of jurisdiction by the Zila Judge,

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we should not have been empowered to do so, for it is shown that the subordinate Court fairly exercised the discretion which the law commits to it; and where a discretion has been so exercised, whether it has been wisely exercised or not, we have no authority to interfere." But though the Court was doubtless right to set aside a jurisdiction illegally assumed by the Zila Judge, it does not follow that it had itself authority to question the order passed by the first Court. The record was sent for by this Court to see whether the Judge had or had not exercised illegal jurisdiction. If the Calcutta judgment be correct, there is no authority to interfere at all. If the Division Court's judgment here be correct, the Court can interfere (though it has the record before it for one special object), but will only do so where discretion has not been fairly exercised.

Mr. Justice Brodhurst's order is one on a petition in the nature of an appeal from the Judge's order, and he considered that it could be entertained.

Mr. Justice Pearson's order, as I have observed, practically ignores the Judge's order refusing sanction, and grants it as the act of this Court.

I do not wish at the present stage to express any opinion as to the power of the Court to interfere. I think that it is desirable that the Full Bench should consider the subject and record an opinion that will remove all uncertainty.

Bábu *Jai Gopál Ghos* for petitioner.

Mr. *Ross* and Mr. *Conlan* for opposite parties.

TURNER, OFFG. C. J. and PEARSON and OLDFIELD, JJ. concurred in the following opinion :—

S. 469 of the Criminal Procedure Code, in declaring that the Magistrate shall not entertain a prosecution of any of the offences therein specified without the sanction of the Court before which the offence was committed, or of some Court to which it is subordinate by implication gives the Court before which the alleged offence has been committed, and to the Courts to which that Court is subordinate, a discretionary power to sanction the prosecution. If this discretionary power is exercised and sanction accorded, the

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law gives no appeal from such an order. This was ruled by this Court in the case of *Balwant Rai*, decided on the 4th April, 1874, (1): and there being no appeal, the Court cannot interfere on motion in the nature of an appeal; this was ruled by the High Court of Calcutta in the case of *Ram Pershád Hazáree* (2). But the refusal of one Court to exercise its power does not deprive the other Courts of the right to exercise the same power. If the Court before which the alleged offence is committed refuses to exercise its power, the application to the superior Court is in the nature of an original application and not of an appeal. It is an application to one of two or more Courts which are vested with independent powers of sanction. If the law declares that a person may act with the consent of A. *or* B. *or* C., although A. and B. may refuse to give consent, the consent of C. will be sufficient. In placing a restriction on the right of prosecution in respect of certain offences, the legislature has not confined the power of sanction to the Court before which the offence is committed, but has conferred it on that Court and on any other Court to which that Court is subordinate, and the sanction accorded by any one of those Courts satisfies the restriction. This view of the law is supported by the rulings of the High Court, Calcutta (*Dinobundhoo Chuckerbutty*), (3), and of this Court, and we are aware of no ruling to the contrary. But it is contended that sanction can only be given by a superior Court when the case in which the offence was committed comes before it in appeal. To accede to this contention would be to import into the Act a condition which we do not find there, and which we cannot find anything in the Act itself to warrant us in introducing. Again, it has been objected that in the view here taken of the existence of independent powers of sanction in two or more Courts, it may happen that a subordinate Court may grant sanction after it has been refused by a superior Court. Doubtless this is so, but to obviate the unseemliness of such procedure, it has been the practice of this Court, and we think it should be the practice of all superior Courts, to refuse to entertain the application until it is shown that an application has been made to the subordinate Court and that by that Court sanction has been refused. In reply to the

(1) H. C. R., N.-W. P. 1874, *p.* 124.
(2) 5 W. R. *Mis. Ap.* 24.
(3) 5 W. R. *Mis. Ap.* 6.

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reference made to us, we answer that, in our judgment, a sanction given by any one of the Courts empowered under the Act cannot be disturbed by a superior Court, and that where sanction is refused by one of those Courts the refusal does not deprive the other Court of the discretion given to them.

SPANKIE, J.—I cannot agree with the entire draft of the proposed judgment. I think that there is force, and great force too, in the objection that, in the view taken of the existence of independent powers of sanction with two or more Courts, it may happen that a subordinate Court may grant sanction after it has been refused by a superior Court. The objection to such a course is on the surface, and it is met with the reply that it has been the practice of this Court, and should be the practice of all superior Courts, to refuse to entertain an application until it is shown that an application has been made to the subordinate Court and that by that Court sanction has been refused. But, in my opinion, there is no need of any such practice in order to get rid of any such objection. It appears to me that the words of s. 469, Criminal Procedure Code, do not admit of the suggestion that there are two or more Courts with independent powers, and that if one refuses, the other can grant sanction. The words are that a complaint "shall not be entertained against a party to such proceedings except with the sanction of the Court in which the document was given in evidence, or of some other Court to which that Court is subordinate." These words signify, I think, that the Court to which such Court is subordinate may, by virtue of its superiority, grant the sanction withheld by the lower Court. At the same time, I hold that sanction, once given by the Court to which the first Court is immediately subordinate, cannot be withheld by any Court superior to that Court. When no sanction has ever been applied for in the two Courts below, it may, I think, be given by this Court as the superior of both, and so, where no sanction has been granted by the first, it may be given by the second Court.

There is no appeal from one Court to the other. But an application may, I apprehend, be made on what is known as the miscellaneous side of the superior Court, and sanction, if not already given, may be granted.

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With these remarks, I may say that I agree in substance with the proposed reply to the reference made; that is to say, sanction given by any one Court cannot be disturbed by a superior Court, and that when sanction is refused by one of those Courts, the refusal does not deprive the superior Courts of the discretion given to them.

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BEFORE A FULL BENCH.

(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.)

RAM DIAL AND OTHERS (DEFENDANTS) *v.* GULAB SINGH AND OTHERS (PLAINTIFFS.)*

Act XIX. of 1873, *s.* 241, *cl. (i)—Revenue—Pattídár—Suit for Contribution—Jurisdiction—Civil Court—Revenue Court.*

The question in the case was whether the plaintiff, a pattídár who had paid a sum on account of a demand for Government revenue, should sue to recover from the defendants, his co-pattídárs, the balance in excess of his own quota in the Civil or in the Revenue Court.

Held (SPANKIE, J., dissenting) that the Civil Courts were competent to entertain suits of the nature.

Per SPANKIE, J., *contra.*

THE plaintiff, a pattídár who had paid a sum on account of a demand for Government revenue, not merely in respect of his own share, but also in respect of the shares of the defendants, his co-pattídárs, sued to recover the sum paid in excess of his own quota. The suit was instituted in the Court of the Munsif of Chibramau. The Munsif dismissed the suit, deeming it to be a claim connected with or arising out of the collection of revenue, and that he was therefore prohibited by s. 241 of Act XIX. of 1873 from entertaining it. On appeal by the plaintiff, the Judge held that there being no special provision for the trial of such a suit by the Revenue Court, the Civil Court had jurisdiction, and remanded it for disposal on the merits.

The defendants appealed to the High Court on the ground that the suit was not cognizable by the Civil Courts.

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* Special Appeal, No. 293 of 1875, from a decree of the Judge of Farukhabad, dated the 16th January, 1875, reversing a decree of the Munsif of Chibramau, dated the 24th August, 1874.