REVISIONAL CRIMINAL.

1896
May 4.

Before Mr. Justice Aikman.

MANGAR RAM (APPLICANT) *v.* BEHARI AND ANOTHER (OPPOSITE PARTIES).

Criminal Procedure Code, section 195—Sanction to prosecute—Notice to show cause not a necessary preliminary—Sanction not acted upon within six months Renewal of sanction.

An order under section 195 of the Code of Criminal Procedure sanctioning a prosecution for perjury is not bad by reason of notice to show cause not having been issued previously to the person against whom such order is made. *Krishnanund Das* v. *Hari Bera* (1) followed.

If an order under section 195 of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *Darbari Mandar* v. *Jagoo Lal* (2) not followed. *Gulab Singh* v. *Debi Prasad* (3), *Baldeo Singh* v *Prasadi* (4) referred to.

THE facts of this case sufficiently appear from the judgment of Aikman, J.

Messrs. *C. Dillon* and *C. R. Alston* for the applicants.

Maulvi *Muhammad Ishaq* for the opposite parties.

AIKMAN, J.—This is an application for the revocation of sanction granted by the Joint Magistrate of Benares on the 7th of March 1896, to prosecute the applicant Mangar Ram for an offence punishable under section 193 of the Indian Penal Code. An application was made to the Sessions Judge to revoke the sanction, but was refused by that officer on the 2nd of April 1896, and this Court is now moved in revision to revoke the sanction. In November 1895, two men, Behari and Bisheshar, were on their trial before the Joint Magistrate charged with stealing grain from several different persons, one of whom was the applicant Mangar Ram. The case resulted in the accused being discharged on the 9th December 1895. Thereafter the accused made an application to the Joint Magistrate for sanction to prosecute Mangar Ram for giving false evidence. The sanction was granted by the Joint Magistrate, but was subsequently revoked by the Sessions Judge for a supposed informality. Behari and Bisheshar made a fresh

(1) I. L. R., 12 Calc., 58.
(2) I. L. R. 22. Calc., 573.
(3) I. L. R., 6 All., 45.
(4) Weekly, Notes 1892, p. 245.

application to the Joint Magistrate for sanction. This application was granted, as stated at the outset of this judgment, and the Sessions Judge declined to interfere.

The learned counsel who appears in support of the application has assailed the sanction on various grounds. It is contended in the first instance that no notice was served on the applicant before the sanction was granted. A Full Bench of the Calcutta High Court held in the case of *Krishnanund Das* v. *Hari Bera* (1) that no notice is necessary to the person against whom it is intended to proceed before a Court can under section 195 of the Code of Criminal Procedure grant sanction to the institution of a case. No authority to the contrary has been shown to me. Although I consider that it is advisable that a person against whom it is intended to proceed should be called on by a Court to show cause why sanction for his prosecution should not be given before the grant of such sanction, I fully concur in the view taken by the learned Judges who decided the case just referred to that the law does not require any such notice to be given. I therefore hold that the failure to give notice to the applicant is no sufficient cause why sanction should be revoked.

In the next place it is contended that one sanction having been already given by the Joint Magistrate he was not competent to grant another sanction upon the same materials. In support of this view reference was made to the case of *Darbari Mandar* v. *Jagoo Lal* (2). What was there held was that after the expiry of six months from the date of the first sanction no fresh sanction can be granted. That case is not exactly upon all fours with the present, but it does to some extent support the contention of the learned counsel for the applicant. With all deference, however, to the learned Judges who decided the case of *Darbari Mandar* v. *Jagoo Lal*, I am unable to concur with them in holding that a fresh sanction cannot be given if six months has expired after the grant of a previous sanction under section 195 without any prosecution having been commenced within that period. I am of opinion that

(1) I. L. R., 12 Calc., 58. (2) I. L. R., 22 Calc., 573.

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before a fresh sanction is granted to an applicant who has not instituted a prosecution within six months of the grant of the previous sanction a very strong case must be made out for the grant of such fresh sanction. But to hold that no fresh sanction can under any circumstances be given might result in a person against whom it is sought to institute proceedings succeeding, by applications to superior Courts, in delaying the institution of a case against himself and so defeating the sanction. It is quite clear from the cases of *Gulab Singh* v. *Debi Prasad* (1) and *Baldeo Singh* v. *Prasadi* (2) that at least two Judges of this Court have held the same opinion as I do. In my judgment the first sanction having been revoked owing to a formal defect there was nothing to prevent the Magistrate from granting a fresh sanction.

The learned counsel, however, contends that on the merits no sanction ought to have been given. With this contention I entirely agree. The applicant in his evidence given on the 25th of November 1895, had stated that he had instituted a suit against the accused on the 21st of September 1895. In his cross-examination the following statement appears :—" I never made any application against accused in Civil Court for grain sold on the 14th September." It is in respect of this last statement that sanction has been granted to prosecute him for giving false evidence. There is absolutely nothing to show that this statement is false. The applicant did not, as a matter of fact, make any application against accused in the Civil Court for grain sold on the 14th of September; what he did do was to sue for the price of grain sold between the 26th of August and the 14th of September. His answer was therefore literally correct. I do not think that any Court could convict the applicant for giving false evidence on the facts stated above.

For the above reason I revoke the sanction to prosecute the applicant which was granted by the Joint Magistrate of Benares on the 7th of March 1896.

(1) I. L. R., 6 All., 45. (2) Weekly Notes, 1892, p 245.