1904

JAIPAL KUNWAR v. INDAR BAHADUR SINGH.

decided only between the parties to the suit, and that whenever the inheritance opens by the death of the widow the present decision will have settled nothing as to who should succeed.

Appeal dismissed.

Solicitors for the appellants—Messrs. *Young, Jackson, Beard and King.*

J. V. W.

1903
December 14.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Banerji.

HARDEO SINGH AND ANOTHER (APPLICANTS) *v.* HANUMAN DAT NARAIN (OPPOSITE PARTY).*

Criminal Procedure Code, sections 195, 439—*Sanction to prosecute—Revision—Appeal—Act No. XLV of* 1860 *(Indian Penal Code), section* 211.

Held that an application made under clause (6) of section 195 of the Code of Criminal Procedure may probably be regarded as an application by way of appeal, though it is not material by what name the application is called in pursuance of which the appellate Court revokes (or grants) a sanction granted (or refused) by a Subordinate Court. *Mehdi Hasan* v. *Tota Ram* (1) discussed.

Held also that to constitute the offence provided for by section 211 of the Indian Penal Code it is sufficient that a false complaint should be made against any person. It is not necessary that summons should be issued upon such complaint.

THE facts of this case are as follows:—

A complaint was laid by Hardeo Singh against six persons, including Hanuman Dat Narain, of criminal trespass and assault. Hanuman Dat Narain was, however, though mentioned in the complaint, not summoned to answer any charge. Against the other five persons mentioned in the complaint summonses were issued and an inquiry took place before a Magistrate having second class powers. The result was that the complaint was thrown out and a formal order of acquittal was recorded. Subsequently Hanuman Dat Narain made an application to the same Magistrate for sanction to prosecute the complainant Hardeo Singh under sections 211 and 193 of

* Criminal Revision No. 458 of 1903.

(1) (1892) I. L. R., 15 All., 61.

the Indian Penal Code, and Ratan, one of the complainant's witnesses, under section 193 of the same Code. The Magistrate refused to grant sanction, principally on the ground that process had not been issued against the applicant. Against this order an application was preferred under section 195 of the Code of Criminal Procedure to the Sessions Judge, who revoked the order of the Magistrate and granted the application of Hanuman Dat Narain for sanction. Hardeo Singh and Ratan thereupon applied to the High Court in revision to set aside the Sessions Judge's order. This application was admitted on the 11th of August and on the 14th of September was referred for hearing by order of the Chief Justice to the Bench appointed for the decision of the case of *Bhup Kunwar* (1) on the ground that the question raised in both cases was the same.

Mr. *B. E. O'Conor*, for respondent, appeared to show cause.

I submit that there is no force in the first ground of revision, *viz.*, that the application made to the District Magistrate, seeking to set aside the order of the first Court, refusing sanction, should have been by way of revision, and not by way of appeal; and that if that Court had entertained a revision it would have been precluded from considering the merits of the case and would have been restricted to the consideration of points of law. Section 195 (6) of the Code of Criminal Procedure puts no limit on the scope of the authority of a Court before which a case comes, with a view to having a sanction revoked or granted under that sub-section. The words of that sub-section are very wide and give full authority to the Court to consider the merits as well the technical pleas of any application made to it. Appeals are not confined to Chapter XXX of the Code; note the words "except as provided for by this Code" in section 404. In any event it matters little what name is to be given to the application made under section 195 (6): the point to be noted is that the powers to be exercised under that sub-section are co-extensive with the powers of appellate Court. The ruling in *Mehdi Husain* v. *Tota Ram* puts an unnecessary restriction on the scope of the sub-section, if it be intended to hold

(1) *Infra* p. 249.

1903

HARDEO SINGH v. HANUMAN DAT NARAIN.

by that decision that the merits of an application under that sub-section are not to be considered, and that the Court is to confine its consideration only to points of law.

As regards the second plea that sanction to prosecute under section 211 of the Indian Penal Code should not be granted to Hanuman Dat Narain because no process was issued against him on the complaint filed by the petitioner, I submit that to complete an offence under section 211 of the Code, the issue of process is not necessary. The institution of criminal proceedings is sufficient. Here a complaint was filed, and if that complaint be false, the offence has been committed.

Mr. *A. H. C. Hamilton*, for the applicants, argued that no appeal lay to the Sessions Judge, and that therefore the Sessions Judge had no power to deal with the matter before him as an appellate Court and reverse the decision of the first Court solely on questions of fact. He relied on the ruling in *Mehdi Hasan* v. *Tota Ram* (1). In the next place it was contended that, inasmuch as no process had been issued against Hanuman Dat Narain in consequence of the complaint of Hardeo Singh, no sanction could be given for a prosecution under section 211 of the Indian Penal Code. And finally the case was argued on the merits with the view of showing that the order which it was sought to have set aside was not one which ought under the circumstances of the case to have been passed.

STANLEY, C. J., BLAIR, J., and BANERJI, J.—This is an application for revision of an order of the learned District Magistrate of Farrukhabad granting sanction for the prosecution of the applicant Hardeo Singh under section 211 of the Indian Penal Code, and of the applicant Ratan under section 193 of the same Code.

The circumstances out of which the matter has arisen are shortly as follows:—A complaint was laid by Hardeo Singh against six persons, including Hanuman Dat Narain, of criminal trespass and assault. Hanuman Dat Narain, though mentioned in the complaint as one of the offenders, was not summoned to answer the charge. Summonses were issued, however, against the other five persons so charged, and an

(1) (1892) I. L. R., 15 All., 61.

investigation took place by a Magistrate having second class powers. The result of the trial was that the complaint was thrown out and a formal acquittal was recorded. About a fortnight afterwards, Hanuman Dat Narain made an application to the same Magistrate for sanction to prosecute Hardeo Singh and Ratan under section 195 of the Criminal Procedure Code. The sanction sought was to prosecute Hardeo Singh for the offence under section 211 of the Indian Penal Code of making a false charge, and Ratan under section 193 for the offence of perjury at the trial. The Magistrate refused to grant sanction principally upon the ground that process had not been issued against the applicant Hanuman Dat Narain.

An appeal from this refusal was made to the District Magistrate, and he, on the 10th of July, 1903, after a careful review of the facts, came to the conclusion that sanction ought to have been granted. Accordingly he revoked the order of the Magistrate of the 1st of June 1903 and granted sanction to prosecute.

Against this order the present application for revision has been made to this Court, and reliance is placed upon the decision of this Court to which we shall presently refer. Three grounds have been urged before us:—(1) that no appeal lay to the District Magistrate from the order of the Magistrate, (2) that the application ought not to have been granted, inasmuch as no formal charge was pressed against the applicant Hanuman Dat Narain, process not having been issued against him, and (3) that under the circumstances of this case the sanction to prosecute ought not in the interest of justice to have been granted.

As regards the first point, that no appeal lay to the District Magistrate, we may observe that sub-section 6 of section 195 gives a right of appeal in very clear terms. Whether it is called an appeal or a right to make a substantive application to have an order refusing or giving sanction set aside appears to us to be immaterial. The sub-section provides "that any sanction given or refused under the section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate." The application to the District Magistrate was made to the proper Court, he being the authority to which the

1903

HARDEO SINGH v. HANUMAN DAT NARAIN.

Magistrate having second class powers was subordinate within the meaning of the section.

The case which has been strongly relied on in support of the contention that no appeal lay is the case of *Mehdi Hasan* v. *Tota Ram* (1), which came before our brother Knox. In that case an appeal was presented to the High Court under section 195 from the order of the Sessions Judge of Mainpuri granting sanction for a criminal prosecution under section 193 of the Indian Penal Code. It was urged before the learned Judge that no appeal lay, inasmuch as section 404 did not, nor did any other section of the Criminal Procedure Code, make provision for such an appeal. The learned judge says:—"I do not find either in section 439 or section 195 any express provision made for an appeal. Section 195 only contains the word 'appeal' as a convenient mode of designating a particular Court which the law directs shall deal with the revoking or granting of sanctions under section 195. As regards section 439 I am of opinion that the word 'Court' there used is again used to designate a particular Court and cannot be construed in face of the precise wording of section 404 into a word granting an appeal." Now section 404 provides that "no appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force." Section 439, which refers to section 195 amongst other sections, provides that "in the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may in its discretion exercise any of the powers conferred on a Court of appeal by section 195, &c." It would therefore appear that the Legislature in referring to a Court of appeal in connection with section 195, sub-section (6), regarded the application to be made under that sub-section as an application made to a Court of appeal and therefore in the nature of an appeal. It does not appear, however, to us at all material by what name the application is called in pursuance of which the appellate Court sets aside an order for sanction and gives sanction under the provisions

(1) (1892) I. L. R., 15 All., 61.

1903

HARDEO SINGH v. HANUMAN DAT NARAIN.

of section 195. That section clearly enables the proper appellate Court to set aside an order which has been passed by a Subordinate Court, and we fail to see that the District Magistrate had not power as an appellate Court to revoke the order of the Magistrate, of the 1st June 1903, and grant sanction as he did. Therefore, so far as this ground of objection goes, we are of opinion that there is no substance in it.

The second ground pressed before us is that Hanuman Dat Narain was not prosecuted upon the complaint which was made by Hardeo Singh. True it is that he was not prosecuted; but it is also clear that he was named in the complaint of Hardeo Singh as having taken part, and an active part, in the criminal offences charged against him and the others. It is said that no criminal proceedings were taken against him, and that is so. But this is not necessary, inasmuch as section 211 of the Indian Penal Code provides for a prosecution where a person falsely charges another with an offence. It is clear that Hardeo Singh did make a charge against Hanuman Dat Narain and that the District Magistrate had ground for believing that charge was false.

The remaining ground is as to the propriety of the sanction. The learned District Magistrate came to the conclusion upon a review of the evidence that the case was a proper one for the granting of a sanction. Nothing has been laid before us to lead us to think that the order passed by him in this respect was erroneous. We therefore discharge the rule and dismiss the application.

1903

December 23.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Banerji.

IN THE MATTER OF THE PETITION OF BHUP KUNWAR AND ANOTHER.*

Criminal Procedure Code, sections 439 and 476—High Court's powers of revision—Order passed by a Munsif directing the prosecution of a party to a civil suit.

Where a Munsif acting under section 476 of the Code of Criminal Procedure directed the prosecution of a party to a civil suit pending before him: it was *held* by STANLEY, C. J., and BLAIR, J., that the High Court had no jurisdiction in the exercise of its revisional powers on the criminal side

* Criminal Revision No. 500 of 1903.