

REVISIONAL CIVIL.

1906
April 9.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Sir George Knox,
and Mr. Justice Sir William Burdett.

SALIG RAM (PLAINTIFF) v. RAMJI LAL AND OTHERS (DEFENDANTS).*

*Criminal Procedure Code, sections 195 and 439—Civil Procedure Code,
section 622—Revision—Sanction to prosecute—Jurisdiction.*

Where sanction to prosecute is granted under the provisions of section 195 of the Code of Criminal Procedure by a Civil Court, the High Court has no jurisdiction in the exercise of its revisional powers on the Criminal side to interfere with such an order. *Nazir Hasan v. Dost Muhammad* (1) overruled. In the matter of the petition of *Bhup Kunwar* (2), *In re Chennana Goud* (3), *Flower v. Lloyd* (4) and *Diss Urban Sanitary Authority v. Aldrich* (5), referred to by Knox, J.

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

Mr. E. A. Howard, for the applicant.

The opposite parties were not represented.

STANLEY, C.J.—The point raised in this matter appears to me to be concluded by a decision of a Full Bench of this Court in *In the matter of the petition of Bhup Kunwar* (2). In that case it was held by a majority of the Bench that 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, the High Court had no jurisdiction in the exercise of revisional powers on the criminal side to interfere with such order. In the present case the Munsif acted under section 195 of the Code and not under section 476; but it appears to me that if the High Court has no jurisdiction in the exercise of revisional powers on the Criminal side to interfere with an order passed under section 476, *a fortiori* it has no power to do so in the case of an order passed under section 195. I have given the question my best consideration, and I see no reason for receding from the views which I have expressed in the Full Bench case.

KNOX, J.—Salig Ram instituted a suit against Ramji Lal and two others upon a bond in the Court of the Munsif of

* Civil Revision No. 34 of 1905.

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| (1) (1904) I. L. R., 26 All., 1. | (3) (1903) I. L. R., 26 Mad., 139. |
| (2) (1904) I. L. R., 26 All., 249. | (4) (1877) L. R., 6 Ch. D., 297. |
| (5) (1877) L. R., 2 Q. B. D., 179. | |

Ghaziabad. Subsequently he applied for sanction to withdraw the suit, and the suit was in consequence dismissed. After the suit had been dismissed, Ramji Lal and his co-defendants applied to the Munsif for sanction to prosecute Salig Ram and Salig Ram's witnesses, on the ground that the bond upon which the suit had been instituted was a forged bond within the knowledge of Salig Ram and of his witnesses. Sanction was granted to the applicants to prosecute Salig Ram for offences punishable under sections 209, 464 and 471 of the Indian Penal Code, and for the prosecution of the witnesses Tansukh and Bauke for abetment of forgery. The Munsif of Ghaziabad sitting as Munsif gave the sanction prayed for, and the orders passed by him are to be found in miscellaneous Civil Case No. 392 of 1904. This I learn from a copy of the order which has been filed in the present case. The District Judge of Meerut was asked to revoke the sanction thus given. Sitting as District Judge in Miscellaneous No. 14 of 1905, he passed an order refusing to interfere. That order has also been filed in the present case. It is an order such as is usually passed by a Civil Court. It contains a memorandum of the costs incurred by both the parties, a memorandum always to be found attached to orders passed by a Civil Court, but as invariably absent from orders passed by a Criminal Court. Salig Ram having failed in the Court of the District Judge, applied under section 622 of the Code of Civil Procedure for revision of the order of the District Judge of Meerut. Eventually this application, which forms part of the record of Civil Revision No. 34 of 1905 of this Court came before two learned Judges of this Court. They inclined to the view that section 439 of the Code of Civil Procedure applies to a case like this, and that the case was not one which should be dealt with on the Civil Revisional side of the Court. They held that upon this point there was "a conflict of opinion in this Court." It was held in *Moti Ram v. Niadar Mal* (1) that the High Court had jurisdiction to interfere in revision in a matter like this under section 439 of the Code of Criminal Procedure. A contrary view was held in *Muhammad Yakub v. Muhammad Tyab* (2). Deeming it desirable that the question should be determined by a Full Bench they have referred it.

(1) Weekly Notes, 1903, p. 170. (2) Weekly Notes, 1903, p. 172.

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What then has to be considered is whether this Court has power under section 439 of the Code of Criminal Procedure to pass orders in revision upon sanction to prosecute a party or witness offender for any one of the offences specified in section 195 of the same Code given by an inferior Civil Court and revoked or confirmed by a superior Court of Civil Judicature, both Courts being subordinate to this Court, or whether this Court has under similar circumstances power to revise such order under section 622 of the Code of Civil Procedure.

The power to call for proceedings of inferior Courts and to interfere with orders passed by them which, for the sake of brevity, I propose to call its revisional power is not a power inherent in a dominant Court, at any rate so far as India is concerned. It is a power expressly conferred by Statute. It does not extend to all proceedings and to all orders of inferior Courts. Numerous instances might be quoted. I refer, for example, to section 435 of the Code of Criminal Procedure and to section 622 of the Code of Civil Procedure.

In the case of this Court while a power of superintendence is conferred over all Courts subject to our appellate jurisdiction by section 15 of Statute 24 and 25 Vic., Cap. CIV, the revisional power in the case of each branch of jurisdiction is the creation of separate and distinct legislation. In the case of its criminal jurisdiction section 21 of the Letters Patent continues the powers as formerly possessed by the Court of Sadr Nizamat Adalat and as governed and limited by the provisions of the present Code of Criminal Procedure. Similarly in the case of its civil jurisdiction their revisional power is a continuation of the powers possessed by the Sadr Dewani Adalat (*vide* Statute 24 and 25 Vic., Cap. CIV., section 11 ; Act XXIII of 1861, section 35 ; Act No. V of 1898, section 622). In the case of Courts of Revenue no power was originally given to this Court, see Act No. X of 1859, sections 151, 152, and Markby, J., in *Radha Parshad Singh v. Sansar Roy* (1).

Two inferences arise from these distinct statutory provisions—(i) that the Legislature drew a clear and sharp line of demarcation between Civil and Criminal jurisdictions, and (ii) that the

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power to call for proceedings of a subordinate Court was intended to be, and is, an extraordinary power which cannot be exercised except upon authority shown in some law. Mere inferiority, as I said before, of a Court did not render its proceedings open to revision, still less was it intended that proceedings of Courts subordinate to the civil or revenue jurisdictions should be subject to the criminal jurisdiction of this Court and *vice versa*.

No question can, it appears to me, arise, but that the Courts of the Munsif of Ghaziabad and of the District Judge of Meerut are Courts over which this Court can exercise the revisional jurisdiction conferred by section 622 of the Code of Civil Procedure. The case before us is a case in which no appeal lies and in which the contention raised is that the Munsif who decided the case appeared to have exercised a jurisdiction not vested in him by law. So far as I can see, there is no difficulty whatever in applying the provisions of section 622 to the present case and in passing such order in the case as this Court may think fit.

The opposite view, *viz.* that this Court has power, under section 439 of the Code of Criminal Procedure, to call for proceedings of subordinate Civil Courts and to pass orders upon them, appears to me to raise insurmountable difficulties. In the first instance it would be a power of an exceptional nature. The criminal jurisdiction of this Court is granted and directed by sections 15 to 22 of the Letters Patent. Under 21 it is a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and it has further power to revise all such cases tried by any Officer or Court possessing criminal jurisdiction which in 1866 were subject to reference to or revision by the Court of Sadr Nizamat Adalat. The Courts of the Munsif of Ghaziabad and the District Judge of Meerut fall under neither of these classes. To bring them within the jurisdiction it would have to be shown that these Courts were, when passing the orders now before us, either Criminal Courts, or that there exists some statutory provision conferring upon this Court jurisdiction under the Code of Criminal Procedure to call for in these cases the proceedings of civil Courts.

The Courts below, as I have already observed, when they respectively gave and upheld the sanction which we are now

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asked in revision to revoke purported to act throughout as Civil Courts, and I do not see how it can be contended that the action they took with respect to the sanction was an act done by them as Criminal Courts for the time being. Section 195 of the Code of Criminal Procedure, omitting clause 6, to which I shall afterwards refer, nowhere confers criminal powers upon any Court or person or converts them into Criminal Courts for this purpose. The section is not an empowering section properly so called. It enacts that before a Court can, in respect of certain offences, exercise the criminal powers inherent in it, as such Criminal Court, it must ask the person who wishes it to exercise such powers, whether he can show that he has been authorized by persons or Courts specified in the section to put them in motion. Ordinarily any person against whom an offence has been committed has the right to put a Criminal Court in motion. There are, however, certain offences which are known to the law as offences against the State, offences by or relating to public servants, contempts of the lawful authority of public servants, offences against public justice, &c., which, while they affect injuriously individuals, affect still more injuriously the State and Courts of Justice. The Legislature has seen fit to enact that though the private individuals may have suffered wrong from an offence of this kind, he shall not put a Criminal Court in motion without first obtaining the sanction of certain State officers or of the Courts of Justice who have also been injuriously affected by the particular offence. When the Governor General in Council, the presiding Judge of a civil Court or a public servant such as the Inspector-General of Police, or Members of the Board of Revenue grant sanction for the prosecution of offences specified in section 195 of the Code of Criminal Procedure, they give that sanction not under any power conferred by section 195 or by any criminal power inherent or conferred upon them; they give it as Governor General in Council, presiding Judge of the Civil Court, Inspector-General of Police or Member of the Board of Revenue. The proceeding, if it can be so called, in or by which they give the sanction is a proceeding of the Governor General, Judge of the Civil Court, Inspector-General of Police and Member of the Board of Revenue, respectively, and not that of a Criminal Court.

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The sanction given under section 195 appears to be equivalent more or less to the power given under Statute 14 and 15 Vic., Cap. C, section 19, to superior courts of common law and equity, &c., &c., to direct persons to be prosecuted for perjury committed before them, in case there should appear a reasonable cause for such prosecution, but I can find nothing which leads to the inference that a court of equity directing such prosecution directed it in any other capacity than as such court of equity.

The power is moreover a survival of a power conferred upon Courts of Civil Jurisdiction as far back as the year A.D. 1793 by Regulation IV upon the Courts of Dewani Adalat. The words in that Regulation conferring the jurisdiction show very clearly that it was a jurisdiction conferred upon the Courts of Dewani Adalat and that they were not created for the time being into Criminal Courts of any kind (see especially Regulation III of 1793, section 18, and Regulation IV of 1793, sections 14, 21, and 22 to 25).

The sections of the Code of Criminal Procedure which empower this Court to call for records and to exercise powers of revision are sections 435 to 442 of the Code of Criminal Procedure. The words used in section 439 as they stand by themselves are very wide, and the argument, as I understand it, is that they empower this Court to send for any proceeding as long as that proceeding is a proceeding under the Code of Criminal Procedure, and that a Civil Court granting sanction under section 195 when it records such sanction is recording a proceeding under the Code of Criminal Procedure. Does not this argument go too far? Can it be stopped at proceedings taken by Courts, and should it not extend to proceedings of other authorities when they sit down to record a sanction asked from them in accordance with section 195? It has not been contended, nor do I think it would ever be contended, that these sections empower this Court as a Court of Criminal Revision to call for proceedings of the Governor General in Council, the Inspector-General of Police or the Members of the Board of Revenue with the object of exercising any of the powers conferred upon this Court by these sections. If this be the case, parity of reasoning compels the inference that this Court cannot under section 439 call for with a similar object the proceedings of any Judge of a Civil Court.

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In the present case the only proceeding in existence, if it may be termed proceeding, is the proceeding granting sanction. No action has been taken on it. The proceeding has not yet been taken by the person to whom it was given and has not been shown to any Court as an authority for that Court taking action. Neither in original nor in any other form has it found a place upon the record of any Criminal Court. For these reasons I find myself in accord with what the learned Chief Justice has laid down in *In the matter of the petition of Bhup Kunwar* (1), see especially p. 254, *et seqq.* I have no doubt that this section "has no application whatever . . . to an order passed by a Civil Court, such as the order which was passed by the Munsif in this case. The general words with which the section opens, namely, 'in the case of any proceeding,' must, I think, be understood as used in reference to the subject-matter in the mind of the Legislature, which was undoubtedly the records and orders of inferior Criminal Courts referred to in the earlier section, section 435, and must be strictly limited to it. They cannot have general application." Upon this point there is to my mind no difference whatever between the proceedings which a Civil Court takes up to the point when it sends a case under section 476 of the Code of Criminal Procedure for inquiry or trial to the nearest Magistrate, and the proceeding, if proceeding it may be called, in which it gives sanction to a private individual to set the Criminal Court in motion.

With one exception, perhaps, I know of no statutory provision which confers upon any Civil Court, as a Civil Court, criminal powers of any kind. Enactments which create or appear to create new jurisdiction have to be construed strictly; see *Flower v. Lloyd* (2), and *Diss Urban Sanitary Authority v. Aldrich* (3). In the one and only case in which I know of Criminal jurisdiction being conferred upon Civil or Revenue Courts, *viz.* sections 478 and 479 of the Code of Criminal Procedure, the powers and the procedure are laid down in very precise and well-defined terms. No similar power is conferred by section 195, except perhaps it may be argued that such power is to be found in clause (6) of that section. It is well to compare and contrast carefully the language

(1) (1904) I. L. R., 26 All., 249. (2) (1877) L. R., 6 Ch. D., 297.
(3) (1877) L. R., 2 Q. B. D., 179.

used in section 195(6) and section 478(2). Surely, if the Legislature had intended in the former section to convert Civil Courts recording proceedings under section 195 into Criminal Courts for the time, it would have used language as express as it has done in section 478(2). There is no such provision, and therefore after full consideration it seems to me unnecessary to hold that clause (6) confers such extraordinary powers as would be the case if criminal jurisdiction were conferred upon a Civil Court or (for we cannot stop here) upon the Governor General in Council or other public servant referred to in section 195(1)(a). Why should we construe this clause into anything further than a revisional power granted to a Civil Court as such Court or to the Governor General in Council as such Governor General in Council? Such a construction does no violence to, but rather continues along the ordinary lines, the ordinary powers of such Courts or of the Governor General in Council, &c. I know the view I am here expressing is in conflict with the view taken upon the question by my brother Banerji in his very careful and elaborate judgment in *In re Bhup Kunwar*. That judgment is concerned only with the sections 439 and 476 of the Code of Criminal Procedure. But my learned brother does undoubtedly there hold that section 439 authorizes this Court to send for proceedings taken by a court of Civil Judicature under section 476 mainly on the ground that they are proceedings taken by that Court, under the Code of Criminal Procedure. It is no part of my judgment to deal with such proceedings, and I would only point out that I do not find any mention in the argument or in the judgment in that case of section 643 of the Code of Civil Procedure. He points out that "as regards the *cursus curiae* on the subject, all the High Courts, except the High Court of Bombay, had held until recently that the High Court has jurisdiction to revise an order made in proceedings taken under section 476." As regards Madras this must now be qualified; see *In re Chennana Goud* (1). My learned brother further points out that the same view was held by myself in Criminal Revision No. 604 of 1903. This, however, must be due to misapprehension on my learned brother's part, for

(1) (1908) I. L. R., 26 Mad., 159.

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I find that Criminal Revision No. 604 of 1903 was a case asking this Court to revise proceedings of a Magistrate who took action under section 476 of the Code of Criminal Procedure and whose action was upheld by the Sessions Judge. The question therefore did not arise in that case of interference by this Court in Criminal Revision with proceedings of a Civil Court. I find, however, to my great regret that in *Nazir Hasan v. Dost Muhammad* (1), to which I was a party, and in two preceding cases, to which I was also a party, I held that this Court is empowered, under section 439 of the Code of Criminal Procedure, to interfere in revision in the case of any proceeding which has in any way come to its knowledge, and that a sanction given or refused under section 195 of the Code of Criminal Procedure can be revised even when given by a Civil Court. All these three cases were decided on one and the same day, and they were decided before the Full Bench of this Court gave their decision in *In re Bhup Kunwar*. I note that I attempted to fortify the conclusion at which I arrived in the case of *Nazir Hasan* by a reference to the concluding words of clause (6) of section 195. A more careful reading, however, of clauses (6) and (7) satisfies me that the provision that the High Court may, for good cause shown, extend the time does not really support this conclusion. The High Court would extend the time either acting as a Court of Appeal or Revision in the case in which sanction was given or when moved to do so by a person to whom the sanction had been given and who wished to put it in force before a Criminal Court, which, but for such extension, would be debarred from taking cognizance. In the former case it would be acting, if I may use the expression, in the exercise of its normal jurisdiction, civil, criminal or revenue as the case might be; in the latter case it would presumably be acting either as above, or as a Criminal Court initiating criminal proceedings under section 195.

Lastly, even if clause 6 of section 195 could in any way be considered an empowering section, which I hold it is not, it would not be of any assistance in the present case. Section 439 authorizes the High Court to exercise any of the powers conferred on a Court of appeal by section 195. What are those powers?

(1) (1904) I. L. R., 26 All., 1.

They are the power to revoke or grant sanction given or refused by the Court (and only that Court) from which appeals to it ordinarily lie. The power cannot travel beyond the orders of that Court. In the present case the sanction we are asked to revoke is the sanction given by the Munsif of Ghaziabad. Appeals from that Court do not "ordinarily lie" to this Court as those words are defined in clause 7(a) of section 195.

The answer then I would propose to the reference is that this Court has no power under section 439 of the Code of Criminal Procedure to call for the proceedings of the Munsif of Ghaziabad and to pass orders on them. On the other hand, it has power under section 622 of the Code of Civil Procedure to call for those proceedings and to pass on them such order as it may deem expedient.

BURKITT, J.—I have already frequently expressed my opinion on the question mooted in this case. I therefore think it unnecessary to say more than that I am of the same opinion as the other members of the Court.

BY THE COURT:—Our answer to the question of the learned Judges who made the reference in this case, namely, whether the application lies on the Civil Revisional side of the Court or should have been made under section 439 of the Code of Criminal Procedure is that the application lies on the Civil Revisional side of the Court and not under section 439 of the Code of Criminal Procedure. The case will therefore be returned with this answer to the Divisional Bench of this Court.

APPELLATE CIVIL.

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April 10.

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

TULSA KUNWAR (PLAINTIFF) v. JAGBSHAR PRASAD AND OTHERS
(DEFENDANTS).*

Act No. IX of 1872 (Indian Contract Act), section 69—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 183 and 233—Suit to recover money paid to release property from unlawful attachment—Jurisdiction—Civil and Revenue Courts.

The plaintiff sued in a Civil Court to recover money from the defendants on the allegation that certain property belonging to her having been wrongfully attached in order to realize arrears of Government revenue due from

* Second Appeal No. 621 of 1904, from a decree of Syed Muhammad Ali, Esq., District Judge of Jaunpur, dated the 7th of April, 1904, confirming a decree of Maulvi Syed Zain-ul-abdin, Subordinate Judge of Jaunpur, dated the 7th of December, 1903.