1895

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the provisions of section 566 of the Code of Civil Procedure, remit to the lower appellate Court the following issue for determination:—Did the house mentioned in the pleadings belong to Munna Das or to the plaintiff appellant, Hanuman Prasad, on the 18th of June 1891, the date of the mortgage by Munna Das to Ajudhia and Munni Lal?

This issue will be determined upon the evidence already before the Court. On return of the finding the parties will have the usual ten days for filing objections.

Issue referred.

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July 21.

REVISIONAL CRIMINAL.

Before Mr. Justice Richards.

INAYAT ALI *v.* MOHAR SINGH.*

Criminal Procedure Code, section 195—*Sanction to prosecute—Notice of application for sanction—Practice.*

Where an application is made to a Court under section 195 of the Code of Criminal Procedure for sanction to prosecute, although it is not legally necessary that notice of such application should be given to the opposite party before orders are passed thereon, nevertheless it is highly desirable that such notice should be given. *Pampapati Sastri* v. *Subba Sastri* (1), *In re Bal Gangadhar Tilak* (2), *Mangar Ram* v. *Behari* (3) and *Maula Bakhsh* v. *Niazo* (4) referred to.

THE facts of this case are as follows:—

In certain proceedings taken against one Mohar Singh for an assault one Inayat Ali was examined as a witness for the prosecution. In cross-examination he was asked some questions as to a promissory note which he and others were alleged to have given to Mohar Singh. Amongst other questions it was put to him whether or not he owed to Mohar Singh the money secured by that note. His answer was that he did not owe the money. Mohar Singh was convicted for the assault upon the evidence of this witness and several others. The promissory note had nothing whatever to do with the assault, and the only object and materiality of the question was to lessen the weight

* Criminal Revision No. 329 of 1905.

(1) (1899) I. L. R., 23 Mad., 210.
(2) (1902) 4 Bombay Law Reporter, 750.
(3) (1896) I. L. R., 18 All., 358.
(4) Weekly Notes, 1904, p. 171

of the evidence of the present applicant as against Mohar Singh. Civil proceedings were subsequently taken by Mohar Singh against the present applicant founded upon the promissory note, when the latter admitted that he owed his share of the debt due on the promissory note. The criminal proceedings were brought in July 1904 and the civil proceedings in December of the same year. On the 2nd of March 1905, Mohar Singh applied, under section 195 of the Code of Criminal Procedure, for sanction to prosecute the present applicant, alleging that he had committed an offence under section 193 of the Indian Penal Code, when he stated that he did not owe the money on the promissory note. Inayat Ali got no notice of that application for sanction until the following May. As soon as possible he applied to the Sessions Court for the revocation of the sanction which had been given by the Magistrate on the ground that he had got no notice, that there had been great delay in taking the proceedings, and that had an opportunity been offered to him, he would have reconciled the statements he had made in the criminal and civil proceedings. The Sessions Judge offered him no opportunity of being heard upon this application. He simply marked the application "Rejected." Inayat Ali thereupon applied to the High Court for revocation of the sanction granted against him. In this application he contended, first, that there is an established practice that as a general rule and in the absence of special circumstances on an application under section 195, Code of Criminal Procedure, the party against whom proceedings are contemplated should get notice, and secondly, on an application for the revocation of this sanction the Sessions Judge ought judicially to determine the questions involved in the application for revocation and give his reasons for his determination.

Mr. *G. P. Boys*, for the applicant.

Babu *M. L. Sandal*, for the opposite party.

RICHARDS, J.—This is an application for revision of an order of the Sessions Judge of Agra upholding an order of a Magistrate of the first class at Agra sanctioning proceedings under section 195 of the Code of Criminal Procedure against the applicant. It appears that in certain proceedings taken

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against one Mohar Singh for an assault the present appellant was examined as a witness for the prosecution. In cross-examination he was asked some questions as to a promissory note which he and others were alleged to have given to Mohar Singh. Amongst other questions it was put to him whether or not he owed to Mohar Singh the money secured by that note. His answer was that he did not owe the money. Mohar Singh was convicted for the assault upon the evidence of this witness and several others. The promissory note had nothing whatever to do with the assault, and the only object and materiality of the question was to lessen the weight of the evidence of the present applicant as against Mohar Singh. Civil proceedings were subsequently taken by Mohar Singh against the present applicant founded upon the promissory note, when the latter admitted that he owed his share of the debt due on the promissory note. The criminal proceedings were brought in July 1904 and the civil proceedings in December of the same year. On the 2nd of March 1905, Mohar Singh applied, under section 195 of the Code of Criminal Procedure, for sanction to prosecute the present applicant, alleging that he had committed an offence under section 193 of the Indian Penal Code, when he stated that he did not owe the money on the promissory note. The present applicant got no notice of that application for sanction until the following May. As soon as possible he applied to the Sessions Court for the revocation of the sanction which had been given by the Magistrate on the ground that he had got no notice; that there had been great delay in taking the proceedings, and that had an opportunity been offered to him, he would have reconciled the statements he had made in the criminal and civil proceedings. The Sessions Judge offered him no opportunity of being heard upon this application. He simply marked the application "Rejected." It is contended here on behalf of the applicant that there is an established practice that, as a general rule and in the absence of special circumstances, on an application under section 195, Code of Criminal Procedure, the party against whom proceedings are contemplated should get notice, and secondly, on an application for the revocation of this sanction the Sessions Judge ought judicially to determine the

questions involved in the application for revocation and give his reasons for his determination. It occurred to me that it is desirable that there should be a recognised practice as to these applications for sanction, and I think Mr. *Boys* was justified when he stated that such a practice had been established. He has cited the cases *Pampapati Sastri* v. *Subba Sastri* (1) and *In re Bal Gangadhar Tilak* (2). Those cases, I think, do show that the Court holds that, while it is not legally necessary that notice should be given, nevertheless it is highly desirable that notice should be given. Of course there may be special or exceptional cases where the Court might be justified in dispensing with the notice. As against the authorities cited by Mr. *Boys* I have been referred to the case of *Mangar Ram* v. *Behari* (3), in which Mr. Justice Aikman decided that an order sanctioning a prosecution for perjury was not void by reason of the fact that no notice had been previously given to the person against whom the order was made. The case does not seem to have been fully argued, and the Judge says, after referring to the ruling of the Calcutta High Court in which it was decided that such notice was not necessary:—"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 the 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." It, therefore, appears that in the opinion of the learned Judge it is desirable, though legally not necessary, that notice should be given. Having regard to the particular circumstances of this case, the nature of the alleged false statements, which might possibly have been reconciled, the fact that the statement had no direct bearing upon the criminal case, the fact that the statement was made in answer to a question put in cross-examination, and also the delay in taking proceedings, I consider that this is just the class of case which demonstrats the desirability of giving notice before

(1) (1899) I. L. R., 23 Mad., 210. (2) (1902) 4 Bombay Law Reporter, p. 750.
(3) Weekly Notes, 1896, p. 113.

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sanctioning proceedings under section 195 of the Code of Criminal Procedure. I am also of opinion that when the present applicant applied to the Sessions Judge, he ought to have given the applicant an opportunity of being heard, or at least have recorded his reasons for rejecting the application. The case of *Maula Bakhsh* v. *Niazo* (1) is a decision of some importance upon this question. I think that in considering whether or not sanction should be given the Magistrate ought not to forget that the question which was put to the applicant in the criminal case was a question upon a collateral issue, having no direct bearing upon the charge which he was investigating, and that it was a question asked in cross-examination. Once the witness had denied owing the money, it would not have been proper for the Court to have allowed further investigation in that criminal proceeding as to whether or not any amount was due on the promissory note. It was merely a question upon a collateral issue entirely foreign to the issue he was trying. This fact prevented any further question being put to the witness as to what he meant when he stated that he did not owe the money, whether he meant that he had actually paid it, or that, if accounts had been taken between him and his creditor, no money would be due. I set aside the order of the Sessions Judge rejecting the application to revoke the sanction. I also set aside the order of the Magistrate of the first class sanctioning proceedings under section 195 of the Code of Criminal Procedure and all proceedings subsequent to such orders. Let the record be returned, and let the Magistrate take such steps as he may consider right under all the circumstances.

(1) Weekly Notes, 1904, p. 171.