

REVISIONAL CIVIL.

1911
March, 3.

Before Mr. Justice Richards.

BENI PRASAD AND OTHERS (PETITIONERS) v. SARJU PRASAD THAKURIA (OPPOSITE PARTY).*

Civil Procedure Code (1903), section 115—Criminal Procedure Code, section 195 (6)—Sanction to prosecute—Sanction granted by Munsif—Revisional powers of District Judge.

One of the parties to a civil suit applied for sanction to prosecute the plaintiff, on the ground that he had instituted a false claim. The Munsif dismissed the application on technical grounds. The applicant applied to the District Judge under section 195 (6) of the Code of Criminal Procedure. The Judge remanded the case to the Munsif for trial of the application. *Held*, that the powers of revision exercisable by the District Judge were confined to those conferred by section 195, Criminal Procedure Code, and he had no jurisdiction to make the order of remand.

THE facts of this case were briefly as follows:—

One Sarju Prasad, who was a party to certain proceedings in a Munsif's court, applied to the Munsif for sanction under section 195 of the Code of Criminal Procedure, to prosecute the applicants under section 209 of the Indian Penal Code. This application was rejected upon more or less technical grounds, and a further application for its re-hearing was also rejected. Sarju Prasad then went to the District Judge under section 195 (6) of the Code of Criminal Procedure who passed an order remanding the matter to the Munsif for trial on the merits. Against this order the applicants applied in revision to the High Court, under section 115 of the Code of Civil Procedure, 1908.

Mr. C. C. Dillon, for the applicants.

Babu Satya Chandra Mukerji, for the opposite party.

RICHARDS, J.—This is an application in revision. It appears that on the 31st March, 1910, the applicants obtained a compromise decree in the Munsif's court. The suit in which this decree was granted was conversant with a claim by the applicants on two bonds, and the matter resulted in a compromise and a decree in accordance with that compromise. On the 28th September, 1910, that is to say, six months after, the opposite party applied for sanction under section 195 of the Code of Criminal Procedure to institute a prosecution under section 209 of the Indian

* Civil Revision No. 16 of 1911.

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Penal Code, against the applicants, for having fraudulently or dishonestly or with intent to injure or annoy the opposite party, made a false claim. This application was made to the Munsif, who threw out the application on grounds more or less technical. On the 1st of October, 1910, an application for the restoration of the application for sanction was made by the same party, and this was also thrown out. Thereupon the opposite party applied under clause (6) of section 195 of the Code of Criminal Procedure, that the sanction, which was refused by the Munsif, might be granted by the District Judge. The District Judge, on the 20th January, 1911, made an order in the following terms:—

“I set aside these refusals and remand the case to the Munsif of Bausgaon with directions to apply his mind to the facts and come to a decision—(a) whether any criminal offence has been committed; (b) whether, if so, it is necessary in the interests of justice that there should be a prosecution; (c) if so, whether it is advisable to grant the sanction applied for or whether action under section 476 of the Code of Criminal Procedure would be a better course. It is because section 476 can be made use of by the Munsif and cannot by myself, that I do not decide the question in this court.”

It is contended on behalf of the applicants that the District Judge had no jurisdiction to make the order. It must be admitted that the powers of the learned District Judge, so far as the present application is concerned, are confined to the powers conferred on him by section 195 of the Code of Criminal Procedure. Clause (6) provides that “any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate,” and the learned District Judge has neither revoked nor granted the sanction. His order, amongst other things, directs the Munsif to consider whether or not the latter should exercise the powers conferred on him by section 476 of the Code of Criminal Procedure—powers which the learned Judge admits that he himself has not got to exercise in the present case. Mr. *Satya Chandra*, on behalf of the respondent, relies on the Full Bench ruling of this Court, which decides that a court exercising the powers conferred by section 195 is a Civil Court and not a Criminal Court, and that therefore the provisions of the Code of Civil Procedure enabling the appellate court to remand cases and send down issues apply. I am of course bound

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by the ruling in the Full Bench case referred to, but in my opinion even assuming the court to be a Civil Court, its powers in cases like the present are confined to powers conferred on it by section 195. In my opinion the learned District Judge had no jurisdiction to make the order in the present case. In any event after the parties had compromised, I hardly think it was a case for sanction. I therefore allow this application and set aside the order of the District Judge, dated the 20th January, 1911.

Application allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piddall.

EMPIEROR v. KRISHNA NATH TIWARI.*

Criminal Procedure Code, sections 188, 227—Offence committed in Nepal territory—Certificate granted by political officer specifying a particular section of the Indian Penal Code—Trying Magistrate not debarred from convicting under another section if within the facts stated.

A certificate granted by a political officer under section 188 of the Code of Criminal Procedure in respect of a certain set of facts will cover every charge which the facts disclosed in the proceedings will suffice to sustain. The certificate is granted on the allegation of certain facts which constitute the charge against the accused, and the trying Magistrate is not restricted to the section which is mentioned in the certificate, but at the utmost to the facts.

THIS was an application for revision of an order passed by a Magistrate of the first class, convicting the applicant under section 355, read with section 109 of the Indian Penal Code, and sentencing him to a fine of Rs. 30. Part of the facts which led to the applicant being arrested and charged occurred in Nepal, and the question raised in the present case was whether on a proper construction of the certificate granted under section 188 of the Code of Criminal Procedure by the resident of Nepal, which mentioned only section 363 of the Indian Penal Code, the applicant could under the circumstances be tried by a Magistrate in British India under a different section. The facts of the case are fully set forth in the order of the Court.

Babu Satya Chandra Mukerji, for the applicant.

*Criminal Reversion No. 55 of 1911, from an order of C. W. Gwynne, Magistrate, first class, of Benares, dated the 7th of November, 1910.

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