

APPELLATE CIVIL.

1912
November, 22

Before Mr. Justice Banerji.

BHADESAR TIWARI AND OTHERS (APPLICANTS) v. KAMTA PRASAD
AND ANOTHER (OPPOSITE PARTIES).*

Criminal Procedure Code, section 195, clauses (b) and (c)—Sanction to prosecute—Power of appellate court to grant sanction—Appeal—Revision.

Held that the appellate Court, equally with the court of first instance, has power to grant sanction for a prosecution in respect of a document filed or evidence recorded in the suit.

Held, also, that a petition under section 195 (6) of the Code of Criminal Procedure seeking the cancelment of an order under section 195 (1) should be classed as a criminal appeal.

THE facts of this case were as follows :—

A suit was brought on a bond in the court of the Munsif of Basti. In the course of that suit, the appellants produced the original bond, which was the basis of the claim, with an endorsement on it purporting to be an endorsement of payment of the amount due upon the bond. Witnesses were examined to support the endorsement. The court of first instance held that the endorsement was a forgery. An appeal was preferred and was heard by the Additional Judge of Basti. He also was of opinion that the endorsement was forged and the evidence given in support of it was false. He affirmed the decree of the court of first instance. An appeal preferred to the High Court was dismissed under the provisions of order XLI, rule 11, of the Code of Civil Procedure. After these proceedings in the Civil Court, the plaintiffs to the suit made an application to the Additional Judge of Basti for sanction to prosecute Bhadesar Tiwari and others, and this application was granted. The persons against whom the sanction was thus given thereupon filed a petition in the High Court under section 195 (6) of the Code of Criminal Procedure.

Mr. A. H. C. Hamilton for the appellants.

The Hon'ble Pandit Moti Lal Nehru, for the respondents.

BANERJI, J.:—This is an appeal from an order of the Additional Judge of Basti granting sanction for the prosecution of the appellants for offences punishable under sections 471 and 193 of the Indian Penal Code. The appeal, being one from an order passed

* First Appeal No. 101 of 1912 from an order of E. E. P. Rose, Additional Judge of Gorakhpur, dated the 13th of June, 1912.

under section 195 of the Code of Criminal Procedure, should be deemed to be an appeal under that Code and thus a criminal appeal. It should have been registered as such, and I have heard it as a criminal appeal. It appears that a suit was brought on a bond in the court of the Munsif of Basti. In the course of that suit, the appellants produced the original bond, which was the basis of the claim, with an endorsement on it purporting to be an endorsement of payment of the amount due upon the bond. Witnesses were examined to support the endorsement. The court of first instance held that the endorsement was a forgery. An appeal was preferred and was heard by the Additional Judge of Basti. He also was of opinion that the endorsement was forged and the evidence given in support of it was false. He affirmed the decree of the court of first instance. An appeal preferred to this Court was, I am informed, dismissed under the provisions of order XLI, rule 11, of the Code of Civil Procedure. After these proceedings in the Civil Court, the plaintiffs to the suit made an application to the Additional Judge of Basti for sanction to prosecute the present appellants, and on this application the order giving sanction now complained of was made.

It is urged on behalf of the appellants that the Additional Judge of Basti had no jurisdiction to give the sanction asked for. In my opinion, this contention is untenable. The document which was found to be forged was given in evidence in the suit, which, in the stage of appeal, was pending in the court of the Additional Judge. It was thus given in evidence in a proceeding in the court of the Additional Judge. Similarly, the false evidence was given in a proceeding which was pending in the stage of appeal in the Additional Judge's court. Therefore, under clauses (b) and (c) of section 195 the learned Additional Judge was competent to sanction the prosecution of the appellants. It is true that the document was not produced in his court but it was given in evidence in the appeal which was pending in that court. That appeal was certainly a proceeding within the meaning of section 195. The Additional Judge had, therefore, jurisdiction to make the order appealed against and this appeal must fail. I accordingly dismiss it.

[But see *Mehdi Hasan v. Tota Ram*, I. L. R., 15 All., 61.—Ed.]

Appeal dismissed.

1912

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v.
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