1914
February, 10.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Piggott.

MUHAMMAD FAKHR-UD DIN (APPLICANT) *v.* BHIKHI RAM (OPPOSITE PARTY).*

Act No. XLV of 1860 (*Indian Penal Code*), *sections* 182 *and* 211—*Sanction to prosecute—Jurisdiction—Application by insolvent to District Judge alleging misappropriation of property of insolvent.*

A person who had been declared an insolvent and in respect of whose property a receiver had been appointed by the District Judge applied to the court representing that one Bhikhi Ram had misappropriated certain property belonging to him and asking that Bhikhi Ram's house might be searched. The District Judge forwarded this application to the Magistrate and Bhikhi Ram was arrested and his house searched. Subsequently, however, proceedings against Bhikhi Ram were dropped, there being no evidence against him.

Bhikhi Ram then applied to the District Judge for sanction to prosecute the applicant under sections 182 and 211 of the Indian Penal Code. The sanction asked for was granted.

Held that as regards section 182 there was no objection to the order; but as regards section 211 the criminal proceedings taken against Bhikhi Ram were not taken in the Court of the District Judge, and it was at any rate doubtful whether it could be said that the offence committed by the applicant was committed in relation to any proceeding pending in that court.

THE facts of this case were as follows:—

The appellant was declared an insolvent and a receiver of his property was appointed. In the course of the insolvency proceedings the receiver was directed by the court to sell by auction certain property of the insolvent. The respondent purchased a considerable quantity of property at the auction sale. The appellant presented an application to the District Judge of Cawnpore, in whose court the insolvency proceedings were going on, that the respondent had, with the connivance of the agent of the receiver and under cover of the auction sale, dishonestly removed and appropriated certain goods for the sale of which no order had been passed by the court. One of the prayers in the application was that the court might be pleased to order the Police to make a prompt search of the respondent's premises. The District Judge sent the application to the Magistrate and asked him to have the search made at once. The search was effected,

* First Appeal No. 178 of 1913 from an order of Austin Kendall, District Judge of Cawnpore, dated the 4th of August, 1913.

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and the respondent was arrested and taken before a Magistrate, who released him on bail. The police made a local investigation and sent up a report in form B. The respondent was thereupon discharged. He then applied to the District Judge of Cawnpore for sanction to prosecute the appellant under sections 182 and 211 of the Indian Penal Code. The sanction prayed for was granted; hence this appeal.

Mr. *C. C. Dillon* (with him Mr. *D. R. Sawhny*), for the appellant:—

The District Judge had no jurisdiction to grant the sanction. What the appellant prayed the District Judge to do was to order the police to make a search. By making this application the appellant cannot be regarded as having instituted or caused to be instituted a criminal proceeding in the court of the District Judge; and, there being no criminal proceeding in his court, he was not competent to grant the sanction for prosecution under section 211. If any criminal proceeding was instituted in any court, it was instituted in that of the Joint Magistrate before whom the respondent was placed, who granted bail and who subsequently discharged the respondent. The only court which could give sanction for prosecution under section 211 was, therefore, that of the Joint Magistrate. The District Judge was not competent to investigate and act upon the charge contained in the application which was made to him. Under such circumstances the sanction to prosecute under section 211 was illegal. I rely on the principle of the case of the *Empress* v. *Jamoona* (1). The District Judge had no jurisdiction himself to order the search prayed for; he could not properly move in the matter. He could act merely as the applicant's agent and pass on the complaint to the police; that was all that he did. Therefore, the false information was given to the police really, and not to the District Judge. Accordingly, it was for the police and not for the District Judge to sanction prosecution under section 182. The Judge was not a public servant who, in the discharge of his duty as such, had jurisdiction to take action in the matter of the charge contained in the application.

In the second place, the sanction is bad because the appellant has not been given an opportunity of proving his case. The

(1) (1881) I. L. R., 6 Calc., 620.

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Joint Magistrate who had released the respondent had taken no evidence in the matter. The District Judge, too, has not taken any evidence and has not found whether the goods were in fact removed, or whether the allegations were made in good faith or bad faith. No sanction should be given at this stage.

Mr. *W. Wallach*, for the respondent:—

This appeal should properly have been filed on the criminal side and not as a civil appeal from an order. The District Judge was competent to grant the sanction. The appellant by his application instituted a criminal proceeding in the court of the District Judge. There is no definition in the Code as to what constitutes the institution of a criminal proceeding. But there can be no doubt that the laying of any information upon which a man can be taken into custody and is taken into custody amounts to instituting a criminal proceeding; or at any rate, to causing the institution of a criminal proceeding. The terms "or causes to be instituted" in section 211 are very wide. By making the application to the District Judge the appellant caused a proceeding to be instituted against the respondent, in the course of which he was arrested by the Police and taken before a Magistrate. As the application, which caused the institution of the criminal proceeding, was made in the court of the District Judge, that court was the proper court to grant the sanction under section 211. The order of discharge passed by the Joint Magistrate was one merely discharging the security or bail on which he had released the respondent from custody; it was not an order of discharge within the meaning of section 203 of the Code of Criminal Procedure. So, the Joint Magistrate's Court was not the court competent to grant the sanction for prosecution under section 211. As to the sanction under section 182, the District Judge was the proper authority to grant it. The question is not whether the District Judge had jurisdiction to do what the application prayed him to do, namely, to order the police to make a search. The point is that the appellant asked the District Judge as a public officer to do this; he intended the Judge to act in this way. The District Judge did what he was asked by the petition to do. The appellant did not ask the police to do anything,

The proper authority to grant the sanction under section 182 was, therefore, the District Judge and not the police.

Then, as to whether the sanction should have been granted at this stage. A sufficient *primâ facie* case has been made out that the charge contained in the application was false. The District Judge by requesting the police to make the search gave the best possible opportunity to the appellant to prove his case. Moreover, the Joint Magistrate discharged the respondent; the police sent in a report in Form B. The order granting the sanction is, under the circumstances, a proper order.

Mr. *C. C. Dillon* replied.

RYVES and PIGGOTT, JJ :—This proceeding, though registered as a First Appeal from an Order of a Civil Court, is in reality an application to this Court to exercise its powers under clause 6 of section 195 of the Code of Criminal Procedure to revoke a sanction which has been given by the District Judge of Cawnpore for the prosecution of one Haji Hafiz Muhammad Fakhruddin on charges under sections 182 and 211 of the Indian Penal Code. The said Haji Hafiz Muhammad Fakhruddin had been declared insolvent in the court of the District Judge of Cawnpore and proceedings against him were pending. He presented on the 4th of June, 1913, a written petition to the District Judge of Cawnpore in which he alleged, in effect, that one Bhikhi Ram had, under cover of proceedings which were being taken by the Receiver appointed under orders of the Court, and in collusion with a subordinate agent of the Receiver and with another person, dishonestly taken possession of certain property, to wit, a large number of steel bars, and appropriated it to his own use, knowing that he had no right to do so. The petition asked the District Judge to take action in various ways, one of these ways being by procuring a police search of Bhikhi Ram's premises. This petition was forwarded by the District Judge to the Magistrate with a request that immediate action might be taken by the police. The result was that Bhikhi Ram was arrested, and his house was searched. He was placed before a Magistrate, but released on bail. Eventually the investigating police officer reported that there was no sufficient evidence to warrant further proceedings being taken against Bhikhi Ram and the Magistrate discharged

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his security. It is under these circumstances that on the application of Bhikhi Ram the District Judge of Cawnpore has sanctioned the prosecution of Haji Hafiz Muhammad Fakhruddin for offences under sections 182 and 211 as aforesaid. The objection taken before us is that the sanction given is bad in law and not warranted by the circumstances of the case. So far as it concerns the alleged offence under section 182 of the Indian Penal Code, we are satisfied that Mr. Kendall, the District Judge of Cawnpore, was a public servant to whom the alleged false information was given and that he had before him materials sufficient to warrant his granting sanction to the institution of proceedings under that section. With regard to the alleged commission of an offence punishable under section 211 of the Indian Penal Code, our position is this:—We think that criminal proceedings were instituted against Bhikhi Ram within the meaning of that section; but looking to the words of section 195 of the Code of Criminal Procedure, we are quite clear that the court of the District Judge of Cawnpore was not the court in which these proceedings were instituted and we are at any rate doubtful whether it could be said that this offence of causing to be instituted criminal proceedings without just or lawful ground was committed in relation to a proceeding pending in the court of the District Judge. The record of the police investigation and the orders of the Magistrate thereon have not been before us. Consequently, we think it better that we should refrain from expressing any opinion one way or the other as to whether the sanction of the Magistrate who directed the release of Bhikhi Ram on bail, and eventually discharged his security, may not be required before proceedings under the section are taken against Haji Hafiz Muhammad Fakhruddin. At the same time, however, to avoid the possibility of any technical objection that might be raised hereafter as to the necessity for the District Judge's sanction, we think it advisable to leave the Judge's order as it stands. The result is that we dismiss this appeal with costs, including in this Court the fees paid by the respondent to the amount certified in this Court.

Appeal dismissed.