

1914

November, 26.

Before Mr. Justice Chamier and Mr. Justice Piggott.

GUR BAKHSH SINGH v. KASHI RAM AND ANOTHER*

Criminal Procedure Code, section 537—Act No. XLV of 1865 (Indian Penal Code), sections 182 and 211—Acquittal upon ground of absence of sanction—Practice—Revision—Application by private prosecutor against order of acquittal.

Held that a court of criminal appeal was not justified in setting aside a conviction under section 182 of the Indian Penal Code on the sole ground that the offence, if any, which the appellants had committed was one under section 211 of the Code and that no sanction for a prosecution under that section had been obtained.

In this case under special circumstances the High Court entertained an application in revision presented by a private prosecutor against an order of acquittal.

THE facts of this case were as follows:—

In the course of an inquiry in a case of dacoity a statement was made to the investigating police officer implicating one Gur Bakhsh Singh. It appears that Gur Bakhsh Singh was arrested and remained for some period in custody. He was eventually released by the police officer concerned, on the ground that the investigation did not disclose any evidence warranting his prosecution. Several persons implicated in the same dacoity were prosecuted to conviction. Gur Bakhsh Singh subsequently applied to the Superintendent of Police for sanction to prosecute Kashi Ram and Baldeo for having given false information to the investigating police officer to his injury, and thereby committed an offence punishable under section 182 of the Indian Penal Code. Sanction was given by the Superintendent of Police, and Kashi Ram and Baldeo were prosecuted to conviction in the court of a Magistrate of the first class. They appealed to the Sessions Judge. The learned Sessions Judge formed an opinion that the facts alleged by Gur Bakhsh Singh disclosed the commission of an offence punishable under section 211 of the Indian Penal Code, and presumably also held that, this being the case, it was not legal to prosecute Kashi Ram and Baldeo for the lesser offence. He held that there could be no conviction under section 211 of the Indian Penal Code for want of sanction from the court in which, or in relation to some proceedings in which, the offence, if any, had

*Criminal Revision No. 1027 of 1914, from an order of J. L. Johnston, Sessions Judge of Farrukhabad, dated the 15th of October, 1914.

been committed. He accordingly set aside the conviction and sentence against the appellants before him, without going into the merits of the case or discussing the evidence in any way. An application for revision of this order was filed by Gur Bakhsh Singh.

Mr. *D. R. Sawhny*, for the applicant.

Mr. *E. A. Howard*, for the opposite parties.

CHAMIER and PIGGOTT, JJ.—This is an application for revision filed under somewhat peculiar circumstances. In the course of an inquiry in a case of dacoity a statement was made to the investigating police officer implicating one Gur Bakhsh Singh. It appears that Gur Bakhsh Singh was arrested and remained for some period in custody. He was eventually released by the police officer concerned, on the ground that the investigation did not disclose evidence warranting his prosecution. Several persons implicated in the same dacoity were prosecuted to conviction. Gur Bakhsh Singh subsequently applied to the Superintendent of Police for sanction to prosecute Kashi Ram and Baldeo for having given false information to the investigating police officer to his injury, and thereby committed an offence punishable under section 182 of the Indian Penal Code. Sanction was given by the Superintendent of Police, and Kashi Ram and Baldeo were prosecuted to conviction in the court of a Magistrate of the first class. They appealed to the Sessions Judge. The learned Sessions Judge formed an opinion that the facts alleged by Gur Bakhsh Singh disclosed the commission of an offence punishable under section 211 of the Indian Penal Code, and presumably also held that, this being the case, it was not legal to prosecute Kashi Ram and Baldeo for the lesser offence. He held that there could be no conviction under section 211 of the Indian Penal Code for want of sanction from the court in which, or in relation to some proceedings in which, the offence, if any, had been committed. He accordingly set aside the conviction and sentence against the appellants before him, without going into the merits of the case or discussing the evidence in any way. An application for revision of this order has been filed by Gur Bakhsh Singh and we have entertained it. We treat this case as an exception to the general rule of practice by which this Court declines to entertain

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an application for revision against an order of acquittal presented by a private person.

The complaint made by Gur Bakksh Singh is that Kashi Ram and Baldeo, the persons accused by him, have been acquitted and released without any trial of their appeals on the merits, and in reality without any finding that they either have or have not committed the offence under section 182 of the Indian Penal Code of which they had been convicted by the trying Magistrate. We are both of opinion that the Sessions Judge was not justified in ignoring the provisions of section 537, clause (b), of the Code of Criminal Procedure. There had been a conviction by a court of competent jurisdiction, and if there was any question as to sanction, the provisions of section 537 could have met the case. Apart from this, the conviction had actually been obtained in respect of an offence under section 182 of the Indian Penal Code upon a prosecution based on a sanction granted by a competent authority. The Sessions Judge has in fact held that Gur Bakksh Singh was not entitled to institute the prosecution for an offence under section 182 of the Indian Penal Code upon facts which might perhaps also constitute a graver offence punishable by section 211 of the Indian Penal Code. The question of the relation of these two sections *inter se* has been much debated. In the opinion of one of us at any rate, Gur Bakksh Singh was perfectly entitled to institute a prosecution for the minor offence only, more particularly as it is at least open to doubt whether the facts alleged would constitute an offence under section 211 of the Indian Penal Code, whereas there can be no doubt that they fall within the purview of section 182. On these grounds we set aside the order of the Sessions Judge and send the record back to his court, directing him to re-admit the appeals of Kashi Ram and Baldeo to the file of pending appeals and dispose of the same on the merits. We understand that the accused Kashi Ram and Baldeo have been released on bail. They should continue at large on the same security until the appeal itself has been properly disposed of.

Application allowed.