REVISIONAL CRIMINAL.

1918
January, 25.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

TILAK RAM *v.* DALIP SINGH.*

*Criminal Procedure Code, section 195—Sanction to prosecute—Period for which sanction remains in force—*Terminus a quo.

Under clause (6) of section 195 of the Code of Criminal Procedure the date in which sanction is given is the date of the order of the court which originally granted sanction and not the date of any subsequent order refusing to set it aside. *In re Muthukudam Pillai* (1) followed.

IN this case sanction was granted on the 1st of November, 1915, to a litigant in the Revenue Court to prosecute the opposite party for alleged offences under section 471 and other sections of the Indian Penal Code. On the 11th of May, 1916, this sanction was set aside on the technical ground that the Assistant Collector who had granted sanction had no jurisdiction to do so. The High Court held that this view was incorrect and sent the case back to the Additional District Judge, who then held that a *primâ facie* case had been made out why the opposite party should be prosecuted, and accordingly declined to interfere. In July, 1917, a complaint was filed, based on the sanction given on the 1st of November, 1915. An objection was taken that the order granting sanction had expired and therefore the court had no jurisdiction to entertain the complaint. The court before which the complaint was filed accepted this objection; but the Sessions Judge held that the sanction was still in force. The opposite party thereupon applied in revision to the High Court.

Mr. *A. H. C. Hamilton*, for the applicant.

Mr. *Nihal Chand*, for the opposite party.

RICHARDS, C J., and BANERJI, J.:—In this case it appears that sanction was granted to a litigant in the Revenue Court to prosecute the opposite party for alleged offences under section 471 and other sections of the Indian Penal Code. The sanction was granted on the 1st of November, 1915, by an Assistant Collector. On the 11th of May, 1916, this sanction was set aside on the technical ground that the Assistant Collector who had

* Criminal Revision No. 1022 of 1917, from an order of E. R. Neave, Additional Sessions Judge of Meerut, dated the 3rd of November, 1917.

(1) (1902) I. L. R., 26 Mad., 190.

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granted sanction had no jurisdiction to do so. The High Court held that the Additional District Judge was wrong and sent the case back, with the result that the Additional District Judge held that a *primâ facie* case had been made out why the opposite party should be prosecuted, and he accordingly refused the application to revoke the sanction given by the Assistant Collector. A considerable time had elapsed in the meantime, and in July, 1917, a criminal complaint was lodged. This was met with the objection that the sanction was out of date and that therefore the court could not take cognizance of the offence. This objection found favour with the court before whom the complaint was filed, but the Sessions Judge held that the sanction was still in force. Whereupon the opposite party applied in revision to this Court. A learned Judge considering the matter of some importance has referred the question to a Bench of two Judges.

Section 195 of the Code of Criminal Procedure provides that no court shall take cognizance of certain offences committed under certain circumstances without the previous sanction therein referred to. Clause (6) is as follows :—" 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 no sanction shall remain in force for more than six months from the date on which it was given, provided that the High Court may, for good cause shown, extend the time." In the present case the High Court has never been asked for, nor has it granted, any extension of time. The question which we have to decide is whether under the circumstances of the present case it can be said that the sanction was still in force. If we hold that the sanction was " given " on the 1st of November, 1915, it is clearly long since out of date. On the other hand, if we hold that the sanction was " given " after the case had gone back to the Additional District Judge and he had refused the application to revoke the sanction granted by the Assistant Collector then the prosecution was begun within time. We think it is impossible to hold on the clear meaning of the words of clause (6) of section 195 that the sanction can possibly be said to have been " given " by the Additional District Judge. The

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application before him simply was an application to revoke sanction which had been previously granted, and his order was to refuse to revoke that sanction. It may be said that an opposite party by taking proceedings can always use up the whole six months in applications to the court and thus make the sanction of no avail. There are two answers to this. In the first place, if a party to whom sanction has been given chooses to take advantage of that sanction and lodges his complaint then he will be able to continue the prosecution notwithstanding any applications that the other side may make. It is possible that the court might stay the prosecution pending the decision of an application to revoke the sanction, but the prosecution would nevertheless have been begun within time. In the second place, there is an express power given to the High Court to extend the time for good cause shown Our attention has been called to two cases of the Madras High Court. In *In re Muthukudam Pillai* (1) a Bench of two Judges expressly held that the sanction in a case like the present is "given" by the court who first granted it and not by the court who subsequently refused to revoke the sanction. A different view was taken by a Bench of the same High Court in *Muthuswami Mudali* v. *Veeni Chetti* (2), and in a more recent case, *The Public Prosecutor* v. *Raver Unithiri*; *Marvathar Vittil* v. *Ambumarar* (3). We prefer to follow the earlier ruling of two Judges. The result is that we allow the application, set aside the order of the Sessions Judge and restore that of the court of first instance.

Application allowed.

(1) (1902) I. L. R., 26 Mad., 190. (2) (1907) I. L. R., 20 Mad., 382.
(3) (1914) 26 M. L. J., 511.