

present case. We fully agree with him that the present is a totally different case to the one reported. The Madras High Court in volume 8, page 15, of the Indian Law Reports have gone perhaps a little further even than it is necessary for us to go in the present instance, but we agree that the document in the present case was merely a petition to the court informing it of an agreement into which the parties had orally entered out of court to compromise the suit, and praying for a decree in the terms of the compromise. As such the document did not require to be engrossed upon a general stamp but only required the ordinary court fee label. In our opinion the conviction in this case is bad in law. We set it aside and direct that the fines, if paid, be refunded.

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*Conviction set aside.*

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## REVISIONAL CIVIL.

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*Before Justice Sir Pramada Charan Banerji.*

EMPEROR v JAGRUP SHUKUL.\*

*Criminal Procedure Code, section 195—Sanction to prosecute—Appeal against order refusing sanction—Munsif of Jaunpur—Additional Sessions and Subordinate Judge of Jaunpur—Act No. XII of 1897 (Bengal, Agra and Assam Civil Courts Act), section 21 (4).*

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*Held* that an application to revoke or grant a sanction for a prosecution granted or refused by the Munsif of Jaunpur would lie to the Additional Sessions and Subordinate Judge of Jaunpur.

*Held* also that a court to which such an application is made is competent to take additional evidence for the purpose of satisfying itself whether sanction ought or ought not to be granted. *Rahmat-ullah v. The Emperor* (1) followed.

THE facts of this case were as follows :—

A suit was filed in the court of the Munsif of Jaunpur which was dismissed on the 19th of November, 1914. An application was made to the Munsif of Jaunpur by the Government Pleader for sanction to prosecute the applicant under various sections of the Indian Penal Code, these being some of the sections mentioned in section 195 of the Code of Criminal Procedure. The application purported to be one under section 195, paragraph (1), clause (b), of the Code of Criminal Procedure. It was not an

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\* Civil Revision No. 103 of 1917.

(1) (1916) 82 Indian Cases, 157.

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application under section 476, as was stated in the order of the Munsif. The matter was taken up by the successor in office of the Munsif who had dismissed the suit. He took some additional evidence and came to the conclusion that there was not sufficient reason for sanctioning the prosecution of the present applicant, and he accordingly rejected the application. Thereupon a petition was presented in the Court of the Sessions and Subordinate Judge of Jaunpur, purporting to be an application under section 195, paragraph (6), of the Code of Criminal Procedure. Mention was made in the application of the fact that the Munsif had refused sanction, and the prayer was that sanction might be granted for the prosecution of the present applicant. The Sessions and Subordinate Judge of Jaunpur, who was Subordinate Judge of Jaunpur as regards civil matters and Additional Sessions Judge as regards criminal cases, took some further evidence and came to the conclusion that there was a *prima facie* case against the present applicant. He accordingly granted the sanction asked for.

Against this order the person against whom sanction to prosecute was granted applied in revision to the High Court.

Mr. C. Ross Alston and Mr. E. A. Howard, for the applicant.

Mr. G. P. Boys, for the opposite party.

BANERJI, J.—This application for revision was made under the following circumstances. A suit was filed in the court of the Munsif of Jaunpur which was dismissed on the 19th of November, 1914. An application was made to the Munsif of Jaunpur by the Government Pleader for sanction to prosecute the applicant under various sections of the Indian Penal Code, these being some of the sections mentioned in section 195 of the Code of Criminal Procedure. The application purported to be one under section 195, paragraph (1), clause (b), of the Code of Criminal Procedure. It was not an application under section 476, as is erroneously stated in the order of the learned Munsif. The matter was taken up by the successor in office of the Munsif who had dismissed the suit. He took some additional evidence and came to the conclusion that there was not sufficient reason for sanctioning the prosecution of the present applicant, and he accordingly rejected the application. Thereupon a petition was presented in the court of

the Sessions and Subordinate Judge of Jaunpur, purporting to be an application under section 195, paragraph (6), of the Code of Criminal Procedure. Mention was made in the application of the fact that the Munsif had refused sanction and the prayer was that sanction might be granted for the prosecution of the present applicant. I may mention that the officer called Sessions and Subordinate Judge of Jaunpur is Subordinate Judge of Jaunpur as regards civil matters and Additional Sessions Judge as regards criminal cases. He took some further evidence and came to the conclusion that there was a *prima facie* case against the present applicant and accordingly granted the sanction asked for. It is this order of which revision is sought, and the main arguments upon which the application for revision is founded are that the court below had no jurisdiction to grant the sanction asked for, and that on the merits its order was not a proper one. It is clear from the provisions of section 195 of the Code of Criminal Procedure that an original application for sanction may be made under clause (b) of sub-section (1) of that section either to the court in which the proceedings in connection with which the alleged offence is said to have been committed were held, or to some other court to which that court is subordinate. Under paragraph (6) any sanction given or refused may be revoked or granted by any authority to which the authority giving or refusing sanction is subordinate. If, therefore, the Munsif of Jaunpur was subordinate to the Subordinate Judge of Jaunpur, within the meaning of section 195 of the Code of Criminal Procedure, an original application for sanction could be made to that officer, or that officer could be moved to grant the sanction which had been refused by the Munsif. It is, therefore, immaterial whether the application made to the Sessions and Subordinate Judge of Jaunpur was an original application under clause (b) of paragraph (1) or an application under paragraph (6) of section 195. The real point for consideration is whether the Munsif of Jaunpur is to be deemed to be subordinate to the Subordinate Judge. Paragraph (7) of the section provides that for the purposes of the section every court shall be deemed to be subordinate to the court to which appeals from the former court ordinarily lie. As I have stated above, the position of the Subordinate Judge of Jaunpur is somewhat

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different from the position of ordinary Subordinate Judges; he is Additional Sessions Judge and he is Subordinate Judge for civil cases. Under orders issued by the High Court under section 21 (4) of the Bengal, Agra, and Assam Civil Courts Act, 1887, (vide notification no. 1703/15-114, dated the 25th April, 1913) appeals from the court of the Munsif of Jaunpur are preferred to his court and "ordinarily lie" to his court. Therefore the Subordinate Judge must be deemed to be the authority to which the Munsif of Jaunpur is subordinate within the meaning of section 195, and he was competent to entertain the application made to him, whether that application be regarded as one under paragraph (6) or as an original application under clause (b) of paragraph (1). As to the merits of the case, the Subordinate Judge was, I think, competent to take and consider additional evidence for the purpose of satisfying himself whether sanction should or should not be granted. This is the view which was taken by a learned Judge of this Court in *Rahmatullah v. The Emperor* (1). The learned Judge of the court below has not, it is true, set forth at length the reasons for the conclusion at which he arrived, but having regard to the additional evidence, which was produced before the Munsif and also before the Subordinate Judge, it cannot be said that there was no *prima facie* case against the applicant. I am therefore of opinion that the present application is without force and I accordingly reject it. The order staying proceedings is discharged and it is directed that the record be sent back to the court below.

*Application rejected.*

Before Mr. Justice Piggott.

EMPEROR v. GANGA RAM.\*

*Criminal Procedure Code, section 476—Jurisdiction—Order for prosecution of persons not parties to a proceeding before the Court.*

A court in taking action under section 476 of the Code of Criminal Procedure is not restricted, as regards the person against whom an order may be made, to the parties to a proceeding pending before it. *Jadu Nandan Singh v. Emperor* (2) dissented from.

THE facts of this case were as follows:—

There was a litigation going on in the court of the Munsif of Bisauli, in which one of the parties was seeking to establish the

\* Civil Revision No. 88 of 1917.

(1) (1916) 82 Indian Cases, 157. (2) (1909) I. L. R., 37 Calo., 250.

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August, 18.