1920

EMPEROR v. RAJBANSI.

like looking for a needle in a bundle of hay, and if we had not found by the incontrovertible papers on the record that the matter was too clear for argument, I should have adjourned the case for Mr. *Malcomson* to get an explanation from the Sub-Divisional officer. In this case it is not necessary, but as a rule I think it a desirable practice that parties applying in revision should be confined, where cause is shown, to the grounds upon which the original order issuing notice was made.

This application is allowed and the proceedings are set aside.

Proceedings set aside.

Before Justice Sir George Knox.

CHHOTI v. KHACHERU.*

1920

May, 21.

Criminal Procedure Code, section 195, *clauses* (6) *and* (7); *sections* 5,12,40—*Sanction to prosecute—Application under section* 195 (6) *not an appeal—No revision intended after order passed under section* 195 (6)—*Jurisdiction to grant sanction not ousted by transfer of Magistrate from one sub-division to another in the same district.*

Held that an application under section 195, clause (6), of the Code of Criminal Procedure to revoke or grant a sanction given or refused by a Subordinate authority is not an appeal. *Bhadesar Tiwari* v. *Kamta Prasad* (1) not followed.

Held also that it was not the intention of the Legislature that when a question of granting or refusing sanction to prosecute has already been before two courts it should be brought by way of revision before a third. *Mata Prasad* v. *Baran Barhai* (2) followed.

Held further that, where an application for sanction is properly before a Magistrate of the first class in charge of a sub-division of a district, his jurisdiction to pass orders on such application is not taken away by the fact of his being transferred to another sub-division of the same district. *Mithani* v. *King-Emperor* (3) referred to.

It is objectionable for a court dealing with a sanction case under section 195, clause (6), of the Code of Criminal Procedure to confine itself to merely writing the word "Rejected" on the application without giving any reasons for the rejection thereof.

IN this case a complaint was filed against the opposite party under section 395 of the Indian Penal Code. The Magistrate discharged the accused. The accused, thereupon, applied to the same Magistrate for sanction to prosecute the complainant

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*Criminal Revision No. 157 of 1920, from an order of E. R. Neave, Sessions Judge of Meerut, dated the 27th of January, 1920.

(1) (1912) I. L. R., 35 All., 90. (2) (1914) 1 L. R., 36 All., 469.

(3) (1912) 9 A. L. J., 448.

1920

CHHOTI v. KHACHERU.

and some others under various sections of the Indian Penal Code. The Magistrate granted sanction on the 21st of November, 1919. On the 20th of November, 1919, (i.e., one day before the order) the Magistrate was placed in charge of another sub-division. On appeal the Sessions Judge maintained the order, and wrote a judgment consisting of the word "Rejected", only. The complainant then applied to the High Court to set aside the order.

Mr. *G. P. Boys* (with him Babu *Satya Chandra Mukerji*), for the applicant. (In reply to a preliminary objection that the Court had no jurisdiction under section 195 of the Code of Criminal Procedure Code to hear this application):—

Under section 195, clause (7), of the Code of Criminal Procedure, the Sessions Judge is subordinate to this Court; a sanction granted by him may be revoked by this Court. It does not make any difference that the application was not made to him originally, but his order was the order passed on appeal under section 195, clause (6), of the Code of Criminal Procedure. Further, the Magistrate when he granted the sanction (i.e., on the 21st November, 1919,) was not in charge of that sub-division, therefore the order was without jurisdition and must be set aside. Reliance was placed on *Chunni* v. *Harbans* (1). The ruling relied on by the Magistrate, *Dalip Singh* v. *Nawal* (2), is not applicable. There the sanction was granted by an Assistant Collector of the First Class. Further, the judgment of the Sessions Judge is most incomplete and unsatisfactory.

Munshi *Kumuda Prasad* (for Mr. *N. C. Vaish*), for the opposite party:—

This Court has repeatedly held (approving the referring order of WALLIS, J., in I. L. R., 30 Mad., 382) that this Court has no power to entertain a second application under section 195, clause (6), of the Code of Criminal Procedure. That section gives only one right of appeal and a second application under that section is not contemplated: *Mata Prasad* v. *Baran Barhai* (3), *Emperor* v. *Serhmal* (4) and *Kanhai Lal* v. *Chhadammi Lal* (5). This Court can interfere under section 439

(1) (1903) 1 A. L. J., 315.
(2) (1917) I. L. R., 39 All., 297.
(3) (1914) I. L. R., 36 All., 469.
(4) (1908) I. L. R., 30 All, 243.
(5) (1908) I. L. R., 31 All., 48.

1920

CHHOTI v. KHACHERU.

of the Code of Criminal Procedure, but only if there is something illegal, incorrect or improper in the order complained of. As to the contention that the order is without jurisdiction on the ground that on the date of the order the Magistrate was placed in charge of another sub-division, under section 12, clause (2), of the Code of Criminal Procedure, the jurisdiction of the Magistrate extends to the whole district. Further, the order cannot be set aside merely on the ground that the proceedings took place in the wrong sub-division. Section 531 of the Code would cure the defect. The facts in 1 A. L. J., 315, were different; there the order was passed by a Treasury Officer, who could not entertain any criminal proceedings, which is not the case here. Further, section 367 of the Code of Criminal Procedure applies to the judgment of trial courts only, so the Sessions Judge was not required by the Code to write any particular sort of judgment.

KNOX, J.:—Khacheru presented an application to the court of Mr. Nathu Ram, a Magistrate of the First Class of Meerut, asking for sanction to prosecute Musammat Chhoti for an offence under section 211 of the Indian Penal Code, on the 28th of October, 1919. The exact section is not given in this application, but it appears in the cognate application filed on the same day. On the 21st of November, 1919, the court of the First Class Magistrate, Meerut, accorded sanction as applied for. It was brought to his notice that the sanction, so it was contended, should have been applied for from another Magistrate. In connection with this, in his order granting sanction he writes :—"It was just yesterday, 20th of November, I was relieved of the charge of the sub-division of Sardhana and placed in charge of the sub-division of Hapur." The learned Magistrate referred counsel to the ruling of *Dalip Singh* v. *Nawal* (1), which he appears to have found in what he describes as Criminal Law Journal, vol. 18, page 303. Chhoti then went to the Sessions Judge of Meerut and applied under the provisions of section 195 of the Code of Criminal Procedure that the order, dated the 21st of November, 1919, might be set aside because the sanction had not been properly granted. The petition is headed as an appeal. This is

(1) (1917) I. L. R., 39 All., 297.

1920

CHHOTI v. KHACHERU.

a mistake. I am aware that a learned Judge of this Court in *Bhadesar Tiwari* v. *Kamta Prasad* (1) has laid down that proceedings of this kind should be registered as appeals. But, with all due respect, it must be remembered that an appeal can only lie from an order when provided by the Code of Criminal Procedure or by any other law for the time being in force. No suggestion had been made that "any other law" has provided an appeal in this class of cases. We are thrown back upon the Code. The chapter in the Code of Criminal Procedure which deals with appeals is Chapter XXXI, and nowhere within the bounds of that chapter has an appeal been provided from an order passed by a Criminal Court under section 195.

It is true that in section 195, clause (6), a sanction given may be revoked by any authority to which the authority giving it is subordinate. Clause (7) lays down that for the purpose of this section every court should be deemed to be subordinate only to the court to which appeals from the former courts ordinarily lie. The word "only" contained in this clause is an important limitation and cannot be overlooked. It would be obviously incorrect to say that section 195, clauses (6) or (7), creates an appeal from the Criminal Court giving sanction. I have dealt with this matter fully in *Salig Ram* v. *Ramji Lal* (2). The other learned Judges who were members of the Full Bench in which this decision was given did not dissent and may be taken to have agreed with the view taken by me, and I have had no reason since to be doubtful that the view which I then took was other than the right view. The Calcutta High Court in *Ramadhin Bania* v. *Sewbalak Singh* (3) and again in *Hari Mandal* v. *Keshab Chandra Mana* (4), had held that an application under section 195, clause (6), to the superior court is not an appeal. In this Court a learned Judge held that the right conferred by the sixth clause of section 195 is not exactly a right of appeal but is strongly analogous to such right, *Ram Raja Dat* v. *Sheo Dayal* (5). The learned Judge of Meerut had ground for dealing with the application as though it were

(1) (1912) I. L. R., 35 All., 90.
(2) (1906) I. L. R., 28 All., 554.
(3) (1910) I. L. R., 37 Calc., 714.
(4) (1912) I. L. R., 40 Calc., 37.
(5) (1915) I. L. R., 37 All., 439.

an application in revision, but passed upon it only the order "Rejected." Now in more than one case this Court has pointed out that an order of this kind is not sufficient and should not have been made and the learned Sessions Judge should bear this in mind and not content himself with writing merely the word "Rejected." The Magistrate, however, was thoroughly cognizant of the facts of the case and has gone very fully into them in his judgment.

Musammat Chhoti has come here in revision. The grounds set out are (1) that the learned Magistrate who gave sanction had ceased to be the Sub-Divisional Magistrate of Sardhana on the date he granted sanction and the matter should have been dealt with by his successor; (2) that the learned Magistrate should not have granted sanction under the circumstances of this case; (3) the judgment of the learned Sessions Judge is not in accordance with law. All these grounds are in my opinion entitled to little or no weight. As regards the third I have pointed out above. As regards the second ground I hold, after careful consideration, that this Court has no authority to revoke or to grant sanction in this case. The court of the First Class Magistrate of Meerut is not, in the words of section 195, subordinate to this Court. Appeals from courts of First Class Magistrates do not ordinarily lie to this Court. I was referred to the words used in section 439 of the Code of Criminal Procedure. It was argued that the words "any of the powers conferred on a court on appeal by section 195" clearly lead to the opposite conclusion. There may be cases in which this Court would have such authority. As for instance, if sanction had been given by the Sessions Judge of Meerut and this Court held that the sanction was not for any reason expedient or regular, it could acting under section 439 in exercise of the power granted by section 195, revoke that sanction. But it does not follow that because it can exercise this power under one set of circumstances it can exercise that power when such exercise would be in defiance of the limitation prescribed by clause (7) of section 195.

The question raised in ground no. 1 remains to be considered. The plea is that the Magistrate having been relieved of the

1920

CHHOTI v. KHACHERU.

charge of Sardhana could not pass the order he did. In this plea a "Sub-divisional" Magistrate is spoken of as a court. Section 5 of the Code of Criminal Procedure shows that under that Code there are only five classes of Criminal Courts in British India. The "Sub-divisional Magistrate" is not entered as being one of those five classes of courts. The court in this case was the court of a Magistrate of the First Class of Meerut, and by section 12 the local area of Sardhana was defined as the local area within which that First Class Magistrate might exercise all or any of the powers with which he was invested under the Code. But, except as otherwise provided by such definition, the jurisdiction and power of the First Class Magistrate extended throughout the district of Meerut. See section 12, clause (2). The mere fact that Mr. Nathu Ram was relieved of the charge of the local area or Tahsil of Sardhana did not take away from him the jurisdiction and power of granting sanction under section 195. I had occasion to deal with this point in *Mithani* v. *King Emperor* (1) and in that case I held that the contention that all cases pending on a file of a Magistrate who had been relieved of the charge of a sub-division did not necessarily pass automatically into the hands of his successor merely because the former had been transferred to another local area in the same district. I then pointed out that such procedure was obviously inconvenient and that section 12 of the Code of Criminal Procedure did not lay down any such automatic rule. To hold otherwise would be to overlook the provisions of section 40 of the Code of Criminal Procedure. The present case was not the case of an officer transferred from the district of Meerut to another district. Furthermore, to grant sanction was inherent in him as a court of a Magistrate of a First Class. It was not a power with which he had to be specially invested and by both section 12 and section 40 his powers continued although he was relieved of the sub-division of Sardhana and placed in charge of the sub-division of Hapur. The language of his order shows that the application for sanction was instituted in his court long before he was relieved of the charge of Sardhana; it was pending and had been pending for some time. I hold that he was under the circumstances fully

(1) (1912) 9 A. L. J., 448.

empowered to pass the order he did. I was referred to the case of *Empress of India* v. *Anand Sarup* (1), but in that case the Magistrate was under transfer from the original district in which he was to another and different district. The case of *Shaik Fakrudin* (2) is also not in point and can be at once distinguished and is no authority in the present case.

1920

CHHOTI v. KHACHERU.

Over and above all this, granting sanction is not the trial or punishment of the offence charged. To make such a proceeding drag through several courts is a mistake and in my opinion the Procedure Code has very properly confined this matter to two courts and two courts only, the court applied to and that court to which it is immediately subordinate.

I fully agree with what was laid down in *Mata Prasad* v. *Baran Barhai* (3). It is true that, that was a case in which a Civil Court had granted sanction, but the underlying principle is the same and I am quite prepared to extend it to cases in which sanction was granted by a Criminal Court.

On every ground I dismiss the application. As the six months during which the sanction can remain in force expires to-day, under section 195, clause (6), I extend the time up to the 30th of June, 1920.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BENGAL AND NORTH-WESTERN RAILWAY AND ANOTHER (DEFENDANTS) *v.* MUL CHAND (PLAINTIFF).*

1920

May, 22.

Railway Company, duties of, as carriers—Goods allowed by consignee to remain on railway premises for an unreasonable time—Company not liable for loss or damage—Demurrage.

The consignee of goods sent by rail is bound to take delivery thereof within a reasonable time. If by his own laches he omits to do so, he cannot hold the railway company liable for any loss or damage which may accrue. Different considerations would arise if there were any evidence to show an agreement on the part of the railway company to act as warehousemen; but the mere fact of the company charging demurrage would not necessarily give

* First Appeal No. 143 of 1919, from an order of Jagat Narain, District Judge of Aligarh, dated the 14th of May, 1919.

(1) (1881) I. L. R., 3 All., 563. (2) (1894) I. L. R., 9 Bom., 40.

(3) (1914) I. L. R., 36 All., 439.