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Finally it was said that the sentence was too severe. But in this matter we do not feel disposed to interfere.

The application is dismissed.

ROWLAND, J. The petitioners should surrender to their bail and serve out the remainder of their sentences.

KHAJA MOHAMAD NOOR, J.—I agree.

Rule discharged.

S.A.K.

REVISIONAL CRIMINAL.

Before Khaja Mohamad Noor and Rowland, JJ.

1938.

July, 29.

SHEO AHIR

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 195 *and* 476—*unlawful assembly and obstruction to attachment—sanction to prosecute, when necessary—Penal Code*, 1860 (*Act XLV of* 1860), *sections* 143 *and* 186—*several offences committed in course of same transaction—sanction necessary in regard to some—prosecution in regard to others, whether requires sanction.*

Where the petitioners were convicted under section 143 of the Penal Code for being members of an unlawful assembly with the object of rescuing cattle attached by a Civil Court peon and it was contended in revision that the conviction was bad in law as there was no sanction of the court which issued the writ of attachment, *held*, that no sanction was necessary. If in course of the same transaction a number of offences are committed, some requiring sanction for prosecution of some authority or the other, and others not requiring sanction, it is not necessary that the prosecution for such

*Criminal Revision no. 326 of 1938, from an order of M. M. Philip, Esq., I.C.S., Sessions Judge of Gaya, dated the 4th May, 1938, modifying an order of Rai Sahib B. C. Mukharji, Magistrate of First Class, Gaya, dated the 25th March, 1938.

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offences which do not require such sanction should depend upon the obtaining of the sanction for prosecution of those offences which required such sanction. The law requires that for the prosecution of a particular offence sanction of the court should be obtained; but it does not say that if in course of the commission of an offence which requires sanction for prosecution other offences are committed, the magistracy or the police are helpless in proceeding to prosecute the offender for these latter offences unless the court sanctions the prosecution of the former.

Emperor v. *Sri Narain Singh*(1) and *Ravanappa Reddi, In re*(2), distinguished.

Krishna Pillai v. *Krishna Konan*(3) and *Tarsu Beg* v. *Muhammad Yar Khan*(4), relied on.

Application in revision.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

The case was first heard by Chatterjee, J. who referred it to a Division Bench.

On this reference

N. K. Prasad II, for the petitioners.

Assistant Government Advocate, for the Crown.

KHAJA MOHAMAD NOOR, J.—The petitioners were convicted by a first class Magistrate of Gaya under section 143 of the Indian Penal Code and were sentenced to three months' rigorous imprisonment and a fine of fifteen rupees each—in default of payment of fine they were to undergo another one month's rigorous imprisonment. They were also convicted under section 342 of the Indian Penal Code, but no separate sentence was passed in respect of this offence.

On appeal the learned Sessions Judge has upheld the conviction under section 143 of the Indian Penal

(1) (1924) I. L .R. 47 All. 114.
(2) (1931) I. L. R. 55 Mad. 343.
(3) (1907) I. L. R. 31 Mad. 43.
(4) (1924) A. I, R, (All.) 296.

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Code, has maintained the sentences but has set aside the conviction under section 342 of the Indian Penal Code.

The prosecution case shortly stated is that the landlords of the petitioners who had obtained four decrees against them, took out four warrants for attachment of their moveable properties. The petitioners formed the majority of the judgment-debtors. On 9th November, 1937, four civil court peons along with two landlords' men went to the village to effect the attachment. They attached about thirty heads of cattle of the judgment-debtors and were proceeding to attach more when the petitioners along with others came armed with lathis, rescued the cattle and chased the two landlords' men, the identifiers, till they took shelter in their kachahri. It was alleged that the mob chained the door of the kachahri from outside and also restrained the peons for some time. One Dalip Narain Singh heard about the occurrence, came to the village, reasoned with the mob and then the two identifiers, Somnarain Singh and Bansidhar Narain Singh, were allowed to come out of the kachahri.

The learned Magistrate found the occurrence to be entirely proved and convicted and sentenced the petitioners as stated above.

The learned Sessions Judge, though he held the main occurrence to be true, has not believed the shutting up of the identifiers in the kachahri, and, therefore, has set aside the conviction under section 342 of the Indian Penal Code.

The case was at first placed before a learned Judge of this court, who thinking that a question of law arose which required consideration, has referred the case to a Division Bench.

The main argument of the learned Advocate for the petitioners is that the case required sanction of

the court which issued the warrants of attachment, and without the sanction the prosecution and the conviction were illegal. I find no authority in support of the proposition urged by the learned Advocate. If there is an assemblage of five or more men with the common object of resisting by force or show of force the execution of processes of law every one of them is guilty of being a member of an unlawful assembly whether resistance is offered or not. If force is used by any member of the assembly, each one of them becomes liable for rioting under section 147. But if actual resistance is offered, a separate offence of resistance of the process of law punishable under section 186 of the Indian Penal Code is committed. Being member of an unlawful assembly and resistance to the process of law are two separate offences though they may be committed in the course of the same transaction. If in course of one transaction a number of offences are committed some requiring for prosecution sanction of some authority or the other and others not requiring such sanction, it is not necessary that the prosecution for those offences which do not require such sanction should depend upon the obtaining of the sanction for prosecution of those offences which required such sanction. The law requires that for the prosecution of a particular offence sanction of the court should be obtained; but it does not say that if in course of the commission of an offence, which requires sanction for prosecution other offences are committed, the magistracy or the police are helpless in proceeding to prosecute the offender for these latter offences, unless the court sanctions the prosecution of the former. Take, for instance, a case in which in the course of resistance of process of law the offender commits murder or other cognate offences: can it be said that the police or the magistracy are incompetent to take cognizance of those offences, simply because they were committed while resisting the process of law? The learned Advocate for the petitioners has argued that as long as there is

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an unlawful assembly with the object of resisting by force the execution of a writ but no resistance is offered, the police or the magistracy is competent to prosecute the members of the assembly for being members of an unlawful assembly, but once the members of the assembly do actually resist the writ of the court, the offender cannot be prosecuted even for the offence of the unlawful assembly or rioting without the sanction of the court. The argument is untenable and the learned Advocate has not been able to place before us any authority in support of his contention. He relied upon the decision in *Emperor* v. *Sri Narain Singh*(1). The judgment of the court is a very short one and commences at about the middle of page 117 and ends at the top of page 118. It has absolutely no application to the facts of this case and does not in the least support the contention of the learned Advocate. In this case the conviction of the accused was under section 173 of the Indian Penal Code. This is one of those sections for which sanction is necessary before a magistrate can take cognizance of it. There was, however, no sanction. The learned Magistrate, who convicted the accused, in his explanation stated that he took cognizance not of the offence punishable under section 173 of the Indian Penal Code but one punishable under section 225B of the Indian Penal Code and having once taken cognizance, he punished the offender under section 173 of the Indian Penal Code. His point of view seems to have been that the prohibition of the law was against taking cognizance and not against conviction. The learned Judge of the Allahabad High Court pointed out that this was not permissible and no device could be adopted to evade the clear words of section 195 of the Code of Criminal Procedure. It is clear that this case has absolutely no application.

We have found a case [*Ravanappa Reddi, In re*(2)] which at first sight may appear to support

(1) (1924) I. L. R. 47 All. 114.
(2) (1931) I. L. R. 55 Mad. 343.

the contention of the learned Advocate, but in fact it does not. There a private party complained before a magistrate of an offence which was obviously punishable under section 193 of the Indian Penal Code but he showed the offence to come within sections 467 and 109 of the Indian Penal Code. Their Lordships of the Madras High Court held that the offence was really one under section 193 of the Indian Penal Code and as such required sanction, and, therefore, they set aside the conviction as being without jurisdiction for want of sanction. Here also it was not a case of any independent offence committed while committing an offence for which sanction is needed. The very offence for which the accused was convicted was held by the court to be coming under section 193 of the Indian Penal Code.

Apart from the considerations which I have set out on the meaning of the law, the view which we are inclined to take is supported by observations in some decided cases. In the case of *Krishna Pillai* v. *Krishna Konan*(1) a man was assaulted when trying under the orders of an amin to open the door of the judgment-debtor's house. The argument advanced before their Lordships of the Madras High Court was exactly the same which has been advanced before us by the learned Advocate for the petitioners. But it was held that as hurt was an offence for which a separate charge was permissible under section 323 of the Indian Penal Code, it was immaterial that there was no sanction and that the complaint was ordered to be proceeded with.

In *Tarsu Beg* v. *Muhammad Yar Khan*(2) Stuart, J. observed as follows:—

"The law on the subject is this. No complaint, the institution of which requires sanction under section 195 of the Code of Criminal Procedure,

(1) (1907) I. L. R. 31 Mad. 43.
(2) (1924) A. I. R. (All.) 296.

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can be entertained unless that sanction exists. But when a complainant combines such a complaint with a complaint which does not require sanction, the court must investigate the complaint which does not require sanction while refusing to investigate the complaint which requires it."

In this case also the Magistrate was ordered to proceed with the complaint. Therefore, on the whole, I have no hesitation in holding that there is no substance in the contention of the learned Advocate.

The second contention of the learned Advocate was that as the civil court which issued the warrant of attachment took no steps on the report of the peons, we should infer that the peon's report did not disclose the commission of any offence; and, therefore, the case must be false. I am unable to accept this contention for more reasons than one. First of all, the report is not before us. If the petitioners had any reason to believe that the reports of the peons who were examined as witnesses in this case and who supported the version of the complainant were not according to their evidence in court, it was open to them to ask the trying magistrate to send for the reports and to confront the peons with them. This was not done. It cannot be presumed that the evidence of the peons was inconsistent with their reports. Secondly, because the learned Munsif, for some reason or other which is not before us, did not think it fit to take steps under section 476 of the Code of Criminal Procedure for the disobedience of his warrant, there is no reason why the complainant should be debarred from getting his redress in criminal court for offences for which the sanction of the court was not necessary. The occurrence is said to have taken place on 9th November, 1937, and the complainant in this case was examined on oath on 11th November, 1937. It may be that the civil court, having been apprised that a criminal case in connection with the same incident was pending before a

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magistrate, did not think it fit to take action under section 476 of the Criminal Procedure Code, thinking that the offenders could be adequately punished for an offence which did not require the sanction of the civil court.

Finally it was urged that the sentence was severe. I do not think so. I look upon the defiance of the processes of law as a serious offence, as they hamper the administration of justice. If allowed to be committed with impunity, the prestige of the court is lost. In my opinion in view of the manner in which the offence, as found by both the courts, was committed, the sentence is not only adequate but, in my opinion, somewhat lenient.

The application is rejected.

The petitioners should surrender to their bail and serve out the unexpired portion of their sentences.

ROWLAND, J.—I agree.

Rule discharged.

J.K.

APPELLATE CIVIL.

Before Dhavle and Agarwala, JJ.

BAHURIA RAM SAWARI KUER

v.

DULHIN MOTIRAJ KUER.*

1938.

August, 16.

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 2(2) *and Order VII, rule* 11—*Order rejecting memorandum of appeal as insufficiently stamped, whether is appealable as a "decree"—Order VII, rule* 11(*c*), *whether applies to*

*Appeal from Appellate Decree no. 289 of 1937, from a decision of S. K. Das, Esq., I.C.S., District Judge of Saran, dated the 18th November, 1936, affirming a decision of Muhammad Shamsuddin, Munsif at Chapra, dated the 28th September, 1936.