

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

ALI HUSSAIN KHAN—*Petitioner,*

versus

HARCHARAN DAS—*Respondent.*

1921

August 14.

Criminal Revision No. 793 of 1921.

Criminal Procedure Code, Act V of 1898, sections 197, 195—order passed by a District Judge under section 197—whether open to revision by the High Court.

The respondent, a practising Vakil, applied to the District Judge at Hissar for sanction under section 197, Criminal Procedure Code, to prosecute the petitioner, a Subordinate Judge, for offences under sections 500, 504, and 506, Indian Penal Code, in connection with an incident which occurred while the petitioner was hearing a case in his Court. The District Judge ordered a notice to issue to the petitioner to show cause why sanction should not be granted, and petitioner then filed an application to the High Court for the revision of that order.

Held, that the application for revision was not maintainable as the order complained of was an executive and not a judicial order. The distinction between the provisions of section 197 and those of section 195 of the Code explained.

Nando Lal Basak v. Mitter (1), followed.

Grey v. North-Western Railway Administration (2), referred to.

Revision from the order of Rai Bahadur Lala Sri Ram, Poplai, District Judge, Hissar, dated the 16th April 1921, directing the petitioner to show cause why the application for prosecution should not be granted.

CARDEN NOAD, KHADIM ALI SHAH and IFTIKHAR ALI, for Petitioner.

JAGAN NATH, for Respondent.

(1) (1899) I.L.R. 26 Cal. 852.

(2) 13 P. R. (Cr.) 1891.

1921

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MARTINEAU, J.—The respondent, who is a Vakil practising at Hissar, applied to the District Judge of Hissar for sanction under section 197, Criminal Procedure Code, to prosecute the petitioner, Sardar Ali Hussain Khan, Senior Subordinate Judge, for offences under sections 500, 504 and 506, Indian Penal Code, in connection with an incident which occurred while the petitioner was hearing a case in his Court on the 4th November 1920. The District Judge ordered a notice to issue to the petitioner to show cause why sanction should not be granted, and the present application has been made for the revision of that order under sections 435 and 439, Criminal Procedure Code.

One of the objections urged on behalf of the respondent is that the order is an executive and not a judicial order, and that, therefore, the present application is not maintainable. In my opinion this objection is correct. The granting of sanction under section 197 is clearly not a judicial but an executive act where the authority granting the sanction is the Government, and it is difficult to see how it can assume a different character if the sanction is granted by a Court. Courts exercise executive as well as judicial functions, for instance in imposing fines upon ministerial officers under section 36 of the Courts Act.

There is a wide distinction between the provisions of section 197 and those of section 195 in regard to the granting of sanction. Section 195 not only prohibits a Court from taking cognizance of certain offences, except with the previous sanction or on the complaint of certain authorities, but lays down the nature of the sanction required specifying what it must contain and what it need not contain. In section 197, on the other hand, no particular form of sanction is prescribed, and the section merely provides that no Court shall take cognizance of a certain class of offences unless the sanction of one of certain specified authorities has been obtained. Further, there is no provision in section 197, as there is in section 195, by which a sanction given or refused may be revoked or granted by a superior authority, and it is also noticeable that whereas it is provided in section 439 that the

High Court may exercise any of the powers conferred on a Court of appeal by section 195, it contains no reference to section 197. It was in fact held in *Nando Lal Basak v. Mitter* (1) that under the revisional powers conferred by the Criminal Procedure Code the High Court has no authority to interfere with an order made by a Subordinate Court granting or refusing sanction under section 197.

It is contended on behalf of the petitioner that as the matter has been treated by the District Judge as a judicial one, it can be treated here also in the same way, and *Grey v. North-Western Railway Administration* (2) has been cited in this connection, but I cannot agree with this contention. An executive proceeding does not become a judicial proceeding merely because the Court regards it as such.

I hold, therefore, that this application cannot be entertained and I dismiss it.

Application rejected.

(1) (1899) I. L. R. 23 Cal. 352.

(2) 13 P. R. (Cr.) 1891.

1921

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