

REVISIONAL CRIMINAL.

Before Mr. Justice *Abdul Ruof*.

KHAZAN SINGH—Petitioner

versus

KIRPA SINGH AND OTHERS—Respondents.

Criminal Revision No. 1413 of 1922.

*Criminal Procedure Code, Act V of 1898, sections 195, 439—
False charge made to police—Sanction by District Magistrate for
prosecution under section 182, Indian Penal Code—Revision by
High Court.*

K. S., the Petitioner, made certain charges to the police against the Respondents; the police found that the allegations were false and reported accordingly. Application was subsequently made to the District Magistrate for sanction to prosecute K. S. under section 182 of the Indian Penal Code, and an order for sanction was passed. Against that order K. S. appealed to the Sessions Judge who held that the sanction was granted by the District Magistrate as head of the police and could only be revoked by an authority to which the head of the district police was subordinate.

Held, that a revision to the High Court is competent.

Bishen Singh v. Amritsar (1), followed.

Sarat Chandra Mandal v. Ram Sashi Roy (2), not followed.

Held also, that the sanction granted by the District Magistrate was illegal as the police is not subordinate to the District Magistrate within the meaning of section 195 of the Code of Criminal Procedure.

Ramasory Lall v. Queen-Emress (3), followed.

Application for revision of the order of A. H. Parker, Esquire, Sessions Judge, Ambala, dated the 28th April 1922, refusing to set aside the sanction to prosecute the petitioner granted by Q. Q. Henriques, Esquire, District Magistrate of the Ambala District, on the 23rd February 1922.

GANPAT RAI, for Petitioner.

ANANT RAM, for Respondents.

(1) 5 P. R. (Cr.) 1908 (F. R.). (2) (1922) 69 Indian Cases 158.

(3) (1900) I. L. R. 27 Cal. 452.

ABDUL RAOOF J.—This is a petition for revision under section 49 of the Criminal Procedure Code against an order of the Sessions Judge, Ambala, refusing to set aside the sanction granted by the District Magistrate of the Ambala District. It appears that one Khazan Singh made a false and malicious report to the police against Kirpa Singh and others. The first information report was dated the 4th November 1921 in which Khazan Singh alleged that his servant Sundar Singh had been assaulted and bound and that Kirpa Singh and others were looting his property. An inquiry was made by the police into this matter and the facts alleged were found to be false and fabricated. The charge was, therefore, cancelled by the police. Thereupon an application was made to the District Magistrate under section 195 for sanction to prosecute Khazan Singh under sections 211 and 193. That application was rejected by the District Magistrate who remarked in his order that there would be a good ground for sanctioning the prosecution under section 182 of the Indian Penal Code on a proper application being presented for that purpose. A petition was accordingly made under section 195 for permission to prosecute Khazan Singh under section 182, Indian Penal Code, and the District Magistrate made an order granting the sanction prayed for.

Against that order Khazan Singh preferred an appeal to the Sessions Judge of Ambala. His appeal has been rejected by the learned Sessions Judge on the ground that as the District Magistrate is the head of the Ambala District police his order must be taken to have been made in that capacity and not as a Magistrate and that, therefore, that sanction granted by him can be revoked only by an authority to which the head of the Ambala District police is subordinate.

Khazan Singh has now come up in revision to this Court. Mr. Anant Ram for the opposite party has taken a preliminary objection to the hearing of the revision on the ground that only one appeal or rather one application in revision is contemplated by sub-section 6 of section 195 of the Criminal Procedure

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Code and that the legislature has not intended in cases not covered by section 439, Criminal Procedure Code, to allow a succession of appeals or applications in revision. In support of this contention he relied upon the case of *Sarat Chandra Mandal and another, petitioners v. Ram Sashi Roy and others, opposite party* (1). This view of the Calcutta Court is, however, opposed to the Full Bench decision of the Punjab Chief Court in *Bishen Singh, petitioner, v. Amrit aria, respondent*, (2). I accordingly overrule the objection and hold that a revision lies under section 439 of the Criminal Procedure Code.

The next question that I have to decide is whether the District Magistrate had authority to grant sanction in this case as the head of the police of the Ambala district. In the case of *Ramasory Lall, petitioner v. Queen-Empress, opposite party* (3) it was held that although police officers in a district were generally subordinate to the District Magistrate, the subordination contemplated by section 195 of the Criminal Procedure Code was not such subordination. That subordination contemplated some superior officer of police. This appears to be the correct view of the law, and I must hold that the District Magistrate had no power to grant sanction under section 195 (6) of the Criminal Procedure Code. The view taken by the learned Sessions Judge cannot be supported.

I, therefore, accept the revision and revoke the sanction granted by the District Magistrate.

A. N. C.

Revision accepted.

(1) (1922) 69 Indian Cases 153.

(2) 5 P. R. (Cr.) 1908 (F. R.)

(3) (1900) I. L. R. 27 Cal. 452.