

**REVISIONAL CRIMINAL.**

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*Before Mr. Justice Harrison.*

THE CROWN (COMPLAINANT) Petitioner,

*versus*

AKBAR ALI SHAH (ACCUSED) Respondent.

1925

Nov. 27.

**Criminal Revision No. 963 of 1925.**

*Criminal Procedure Code, Act V of 1898, section 195—Sanction to prosecute granted and complaint filed prior to amending Act, XVIII of 1923—whether jurisdiction under the old Act lapsed after the amending Act came into force.*

Where sanction for the prosecution of the respondent under section 194 of the Penal Code had been obtained prior to the 1st September 1923 and the complaint was also instituted prior to that date.

*Held* that, though the case against the respondent did not in fact come on for hearing till after the coming into force of the amending Act XVIII of 1923, the restriction to the jurisdiction of the Court thereunder did not apply and the old Code governed the case.

*Jawahar Lal v. Jaggu Mal* (1), referred to.

*Muthiah Goundan v. Chinna Nallappa* (2), followed.

*Application for revision of the order of F. W. Skemp, Esquire, Sessions Judge, Gurdaspur, dated the 24th March 1925, discharging the accused.*

JAGAN NATH, BHANDARI, for Government Advocate, for Petitioner.

MEHR CHAND, MAHAJAN, for Respondent.

**Judgment.**

HARRISON J.—On the 6th of May 1922 the Sessions Judge of Gurdaspur acquitted nine accused persons, including one Gobind Singh, who had been sent up for trial on a charge of murder. On the 4th of December 1922 the successor of that Sessions Judge

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gave sanction under section 195, Criminal Procedure Code, to the prosecution of six of the witnesses, who had appeared for the Crown. On the 4th of June 1923 or on the last day of the statutory six months the present complaints were instituted in the Court of a Magistrate in Gurdaspur. At this time the amendment in the Criminal Procedure Code had been passed, but had not come into force and did not do so until September 1923. After considerable delay which was due to irregular proceedings in the Magistrate's Court and to the return of the case after it had been committed, Mr. Skemp, Sessions Judge, by his order of the 24th of March 1925, discharged the accused holding that the case was governed by the new section, and that in the absence of a complaint by the Court he had no jurisdiction. His judgment shows that he understood that he was following the view taken by the Chief Justice of this Court in *Jawahar Lal v. Jaggu Mal* (1), and dissenting from *Muthiah Goundan v. Chinna Nallappa* (2), a decision of a Division Bench of the Madras High Court. The question is whether, when the sanction has been given and the case has been instituted before the amendment comes into force, the case can proceed to its logical conclusion or whether further proceedings must be stayed and a fresh complaint presented under the present section.

Counsel for the Crown contends that the view taken in *Jawahar Lal v. Jaggu Mal* (1), so far from being opposed to the case proceeding, when once instituted, is directly in favour of it, and this on the principle of *unius inclusio, alterius exclusio*, or, in other words, that if a complaint subsequently instituted does not lie, it follows by implication that, if

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(1) (1924) I. L. R. 6 Lah. 41.

(2) (1923) 83 I. C. 702.

instituted before the amendment came into force, it does. He also contends that the view taken in *Muthiah Goundan v. Chinna Nallappa* (1), is correct. As against this all that counsel for the respondents has been able to urge is that in Webster's Dictionary the word "cognizance" in its legal sense is defined as meaning "hearing and deciding". This is not the one and only sense in which the word is used in the Criminal Procedure Code, nor indeed as far as I am aware in any legal enactment, and is at once too wide and too narrow. In section 190, Criminal Procedure Code, we find that "a Magistrate may take cognizance of any offence (a) upon receiving complaint, etc., etc.," so in section 4, sub-section (5) "offence cognizable by the police," *i.e.*, regarding which the police can take action without a warrant. The present section 195, as I understand it, and in my opinion this is also the view taken in *Jawahar Lal v. Jaggu Mal*, (2), lays down the conditions on which the Court may take cognizance, that is to say, the conditions precedent must be fulfilled and then the Court will function. So where the Court has taken cognizance before the present section was in force, these restrictions do not apply and the old Code governs the case. I hold, therefore, that the Sessions Judge had jurisdiction to try these cases.

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Counsel contends that even so the order passed was tantamount to an order of acquittal, and as the Crown has not appealed, it had no right to apply for revision. The order was in terms one of discharge. I think the present application is in order. Further, counsel contends that the sanction having been obtained by a private individual and the earlier proceedings having been taken by him it was not for the Crown to

(1) (1923) 83 I. C. 702.

(2) (1924) I. L. R. 6 Lah. 41.

take over the case at a later stage. I do not think there is any force in this contention as the Crown is technically the complainant or the prosecutor in all criminal cases.

[*The remainder of the judgment is not required for the purpose of this report—ED.*]

N. F. E.

*Revision accepted.*

### APPELLATE CIVIL.

*Before Mr. Justice Zafar Ali and Mr. Justice Addison.*

RALLA SINGH (PLAINTIFF) Appellant,

*versus*

BISHNA AND OTHERS (DEFENDANTS) Respondents

Civil Appeal No. 2752 of 1922.

1925

Dec. 1.

*Minor—respondent—Appeal filed without naming a guardian ad litem—Subsequent application to have guardian's name inserted—Limitation.*

A second appeal was presented in the High Court in which one of the respondents was a minor without naming a guardian *ad litem*. An application was made, long after the expiration of the period allowed for the appeal, to have the name of the guardian entered in the memorandum of appeal.

*Held*, that the appeal must be deemed to have been filed, not on the day on which the name of his guardian is entered in the memorandum of appeal, but on the original day of its presentation.

Though no proceedings against a minor, who is impleaded as a defendant in a suit or is made a respondent in an appeal, can be taken until his guardian for the suit or appeal is appointed to represent him, the nomination of a guardian is not an essential requirement for the filing of a suit or the presentation of an appeal, and the guardian can be nominated and appointed subsequently.

*Khem Karan v. Har Dayal* (1), and *Rup Chand v. Dasodha* (2), followed.

(1) (188) I. L. R. 4 All. 37.

(2) (1907) I. L. R. 30 All. 55.