

## CRIMINAL REVISION.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.*

1922.

IN RE BUDIUDDIN SARFUDDIN\*.

June 28.

*Criminal Procedure Code (Act V of 1898), section 195 (1) (a)—Order under section 145 passed by a First Class Magistrate—Transfer of Magistrate—Order disobeyed—Sanction to prosecute.*

A Magistrate of the First Class made an order under section 145 of the Criminal Procedure Code, which was disobeyed. The Magistrate having been transferred to another district, an application for sanction to prosecute was made to the District Magistrate :—

*Held*, that the District Magistrate was right in refusing to entertain the application.

Per SHAH, AG. C. J. :—“ Under clause (a), sub-section (1) of section 195, if a public servant making the order is a Court, in respect of that order, the Court to which that Court would be subordinate would be the Court to which appeals would ordinarily lie.”

*Arunachalam Pillai v. Ponnusami Pillai*<sup>(1)</sup>, followed.

THIS was an application against an order passed by G. E. Chatfield, District Magistrate of Ahmedabad.

Sanction to prosecute.

Mr. Date, a First Class Magistrate of Ahmedabad, passed an order under section 145 of the Criminal Procedure Code. The order was disobeyed, and, Mr. Date having been transferred to another district, an application for sanction to prosecute for disobedience of the order was made to the District Magistrate of Ahmedabad. The District Magistrate, however, declined to entertain the application on the ground that he had no jurisdiction to make the order.

The applicant applied to the High Court.

*G. N. Thakor* with *R. J. Thakor*, for the applicant.

*Coyajee* with *J. G. Rele*, for the opponents.

\* Criminal Application for Revision No. 84 of 1922.

<sup>(1)</sup> (1918) 42 Mad. 64.

SHAH, AG. C. J. :—In this case the original order which is said to have been disobeyed, was made by the First Class Magistrate, Mr. Date. It appears that the present petitioner made an application to the District Magistrate for sanction under section 195, Criminal Procedure Code, as an authority to which Mr. Date would be subordinate. The District Magistrate was of opinion that Mr. Date made his order as a First Class Magistrate, and that the Court to which he would be subordinate in that capacity would be the Sessions Court to which appeals from his decisions as a First Class Magistrate would ordinarily lie. On that ground the District Magistrate refused to entertain the application. We are not concerned with the application which the complainant subsequently made to the Sessions Court, nor with the result of that application. The present application is against the order of the District Magistrate; and it is urged on his behalf that Mr. Date must be taken to have made his order as a public servant within the meaning of clause (a), sub-section (1) of section 195, Criminal Procedure Code, and that, though he was a First Class Magistrate, as a public servant he must be taken to be subordinate to the District Magistrate, though as a Court he may not be subordinate to the Court of the District Magistrate within the meaning of section 195. On the construction of the section, I do not feel any difficulty in disallowing this contention; but the point has been decided by the Madras High Court in the case of *Arunachalam Pillai v. Ponnusami Pillai*<sup>(1)</sup>; and it is needless to deal with it at any length. I accept the view taken in that case and hold that under clause (a), sub-section (1) of section 195, if a public servant making the order is a Court, in respect of that order, the Court to which that Court would be

1922.

BUDHDDIN,  
In re.<sup>(1)</sup> (1918) 42 Mad. 64.

1922.

BUDIUDDIN,  
*In re.*

subordinate would be the Court to which appeals would ordinarily lie, that is, in the present case, the Sessions Court and not the District Magistrate. I am of opinion that the order of the District Magistrate is right.

I would discharge the rule.

CRUMP, J. :—I concur.

*Rule discharged.*

R. R.

### APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.*

1922.

July 10.

AMBAJI BALWANTRAO MANE (ORIGINAL PLAINTIFF), APPLICANT *v.*  
HANMANTRAO BAJIRAO DESHMUKH (ORIGINAL DEFENDANT), OPPO-  
NENT<sup>o</sup>.

*Civil Procedure Code (Act V of 1908), Order XXXIII—Suit in forma pauperis—Plaint, amendment of—Costs of amendment—Order to pay the costs in cash, improper.*

In a suit instituted *in forma pauperis* the plaintiff was allowed to amend the plaint, but was ordered to pay in cash the costs of the amendment to the defendant. On failure to pay the costs, the suit was dismissed :—

*Held*, reversing the order of dismissal, that the lower Court should not have directed the plaintiff, who was a pauper, to pay in cash the costs of the amendment.

THIS was an application under the extraordinary jurisdiction of the High Court against an order passed by N. G. Chapekar, First Class Subordinate Judge at Sholapur.

The plaintiff was allowed to sue *in forma pauperis*. He applied to amend the plaint. The amendment was allowed on condition that the plaintiff should pay to the defendant in cash the costs consequent on the amendment. The costs amounted to about Rs. 500. The

<sup>o</sup> Civil Extraordinary Application No. 225 of 1921.