

1904  
MARCH 29.  
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APPELLATE  
CIVIL.  
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31 C. 658.

parties to the suit and in fact there never was any contention between the plaintiff and the defendant transferors in that suit.

That being the case I do not think the claim of the present plaintiff is affected by the order in the partition suit made against their then transferors in favour of co-defendants, who had made no claim against the transferors, until after the transfer.

In the case of *Bellamy v. Sabine* (1) Lord Justice Turner points out the difficulties there are in the application of the doctrine of *lis pendens* as between co-defendants and pertinently asks when the *lis pendens* between them is to commence.

Whatever may be the answer to that question I think it is clear that the *lis pendens* cannot be said to commence, until the co-defendant has by his pleading contested the rights of the other defendant.

*Appeal dismissed.*

31 C. 664 (=1 Cr. L. J. 525.)

[664] CRIMINAL APPEAL.

*Before Mr. Justice Pratt and Mr. Justice Handley.*

EMPEROR v. ARJAN PRAMANIK.\*

[27th April, 1904.]

*Sanction—Complaint—Assault—Public servant—Resistance to authority of Public Servant—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Indian Penal Code (Act XLV of 1860) ss. 183, 352.*

A Munsif of Pabna held an inquiry under s. 476 of the Criminal Procedure Code, and having come to the conclusion that the accused had committed various offences under the Penal Code in connection with certain execution proceedings in his Court sent the case for trial to the District Magistrate, who in turn transferred the case to a Deputy Magistrate for disposal.

The accused were tried under ss. 183 and 352 of the Penal Code.

The Deputy Magistrate, without considering the case on its merits, acquitted the accused on the ground that there was no sanction as required by law for the prosecution of the accused.

On appeal by the Local Government against the acquittal,

*Held* with regard to the charge under s. 183 of the Penal Code that as the Munsif had acted under s. 476 of the Criminal Procedure Code, it was incumbent on the Deputy Magistrate under cl. (2) of that section to proceed with the case according to law.

*Held* also that the charge under s. 352 of the Penal Code required no sanction.

*Ishri Prasad v. Sham Lall* (2), referred to.

[Ref. 40 Cal. 477=17 C. L. J. 245=17 C. W. N. 647=14 Cr. L. J. 197=19 I. C. 197.]

IN execution of a decree obtained from the Court of the Second Munsif of Pabna, by Shome Biswas against the accused Arjan Pramanik and Nirjan Pramanik some moveable property belonging to the accused was attached by the Civil Court peon and placed by him in the custody of the decree-holder. The accused however with the aid of a number of persons forcibly recovered the property, and assaulted the decree-holder. The peon reported the occurrence to the Munsif, who, on the 8th August 1903 held an inquiry [665] under s. 476 of the Criminal Procedure Code, and having come to the conclusion that the accused had committed offences under ss. 183, 186, 352 and 353 of the Penal

\* Criminal Appeal No. 4 of 1904, made against the order passed by Suresh Chandra Das, Deputy Magistrate of Pabna, dated the 3rd November, 1903.

(1) (1857) 1 De G. & Jones, 566.

(2) (1885) I. L. R. 7 All. 871.

Code in connection with the execution proceedings in his Court, sent the case for trial with a copy of his order and the necessary papers to the District Magistrate of Pabna. The District Magistrate transferred the case to a Deputy Magistrate for disposal. The accused were tried under ss. 183 and 352 of the Penal Code. The Deputy Magistrate on the 3rd November 1903 without going into the merits of the case acquitted the accused under s. 245 of the Criminal Procedure Code on the ground that the proceedings were *ab initio* void, as the Court of the Second Munsiff of Pubna or the Court to which it was subordinate had not given any sanction either express or implied to the proceedings and had not complied with the provisions of s. 195 of the Code before sending the papers to the District Magistrate.

The Local Government appealed from this order of acquittal to the High Court.

The Deputy Legal Remembrancer (Mr. Douglas White) for the Crown. The Deputy Magistrate has taken a mistaken view of the law. There is no necessity for any sanction in this case, and the acquittal of the accused under s. 183 of the Penal Code for want of sanction is wrong. According to the provisions of s. 195, cl. (1) (a) of the Criminal Procedure Code no Court can take cognizance of certain offences except with the previous sanction or on the complaint of the public servant concerned, or of some public servant, to whom he is subordinate. The procedure adopted by the Munsiff was under s. 476, cl. (1) of the Criminal Procedure Code. He held a preliminary inquiry and sent the case to the District Magistrate for trial. That procedure constituted the complaint mentioned in s. 195 of the Code. See the Full Bench case of *Ishri Prasad v. Sham Lall* (1). The District Magistrate then transferred the case for disposal to the Deputy Magistrate under s. 476, cl. (2) of the Criminal Procedure Code. The Deputy Magistrate was bound under that clause to have proceeded with the case and to have decided it on its merits, just as if it had been [666] upon complaint made and recorded under s. 200 of the Code. The charge under s. 352 of the Penal Code was not of any offence mentioned in s. 195 of the Criminal Procedure Code and therefore no sanction was necessary with regard to it.

PRATT and HANDLEY, JJ. This is an appeal by the Local Government against an order of the Deputy Magistrate of Pubna, dated the 3rd November last, acquitting Arjan Pramanik and Nirjan Pramanik. The Deputy Magistrate, without considering the case on its merits, acquitted the accused on the ground that there was no sanction as required by law.

In the first place we may observe that the charges under sections 352 and 353 are not such as require any sanction and as regards the charge under s. 183 it is clear on the proceedings of the Munsiff, who initiated the prosecution, that he was expressly acting under s. 476 of the Code of Criminal Procedure. Therefore it was incumbent upon the Deputy Magistrate under clause (2) of that section to proceed with the case according to law as if upon a complaint made and recorded under section 200.

We accordingly set aside the order of acquittal in question and send the case back to the Deputy Magistrate to be disposed of upon the merits.

1903  
APRIL 27.  
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ORIGINAL  
APPEAL  
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31 C. 666—1  
Gr. L. J. 525.

(1) (1885) I. L. R. 7 All. 871.