1903
FEB. 13.

CRIMINAL REVISION.

30 C. 905=7 C. W. N. 494.

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[905] CRIMINAL REVISION.

PROFULLA CHANDRA SEN *v.* EMPEROR.*

[13th February, 1903.]

Sanction to prosecute—Public servant—Substantive offence—Abetment—Fresh sanction—Criminal Procedure Code (Act V of 1898) *ss.* 195, 197, 230—*Penal Code (Act XLV of* 1860) *ss.* 109, 468.

The Inspector-General of Registration, Bengal, wrote a letter to the District Registrar of Tippera, directing the prosecution of a Sub-Registrar on charges under ss. 417 and 468 of the Penal Code. The Sub-Registrar was tried and convicted under ss. $\frac{468}{109}$ of abetment of forgery for the purpose of cheating. At the trial it was contended on behalf of the accused that there could be no conviction for abetment when sanction had been given for prosecution for the substantive offence only :

Held, that the letter of the Inspector-General of Registration was a sufficient sanction to justify the conviction, and that no fresh sanction was necessary under s. 230 of the Criminal Procedure Code.

RULE granted to the petitioner, Profulla Chandra Sen.

This was a Rule calling upon the District Magistrate of Tippera to shew cause why the conviction of the petitioner should not be set aside on the ground that no sanction had been granted for his prosecution for the offence of which he had been convicted.

The petitioner, who was Sub-Registrar of Sarail in the district of Tippera, was in consequence of an inquiry made by the District Registrar suspended from his office. In July 1901 the Inspector-General of Registration, Bengal, wrote a letter to the District Registrar of Tippera, directing that the petitioner should be prosecuted on charges under ss. 417 and 468 of the Penal Code. The petitioner was tried by Deputy Magistrate of Comilla, who, having found that ten deeds registered on the 31st October [906] 1899 at the petitioner's office were forgeries, and that they were either forged by the petitioner himself or by his orders with the object of earning for him as Sub-Registrar an additional commission of Rs. 20, convicted the petitioner of three offences under s. 468 read with s. 109 of the Penal Code.

The petitioner appealed, but his appeal was dismissed by the Additional Sessions Judge of Tippera on the 8th July 1902.

Mr. *Pugh* (Mr. *P. L. Roy* and Babu *Jadu Nath Mandal* with him) for the petitioner. No sanction was granted in this case for the prosecution of the petitioner for the offence of which he has been convicted. The petitioner is a Sub-Registrar and a public servant. He was accused of having committed the offences as such public servant. Under s. 197 of the Criminal Procedure Code the sanction of the Government having power to order his removal, or of some Court or other authority to which he is subordinate, was necessary before the trying Magistrate could take cognizance of the case. The petitioner was convicted under s. 468 read with s. 109 of the Penal Code ; no sanction was granted by any authority for his prosecution under those sections, and therefore the Court had no jurisdiction to try and convict him.

Babu *Srish Chandra Chowdhuri* for the Crown. I submit that no sanction was necessary in this case, as the proceedings were instituted under the directions of the Inspector-General of Registration. That in

* Criminal Revision No. 1054 of 1902, against the order passed by B. K. Mallik, Additional Sessions Judge of Tippera, dated July 8, 1902.

1903 FEB. 13.

CRIMINAL REVISION.

30 C. 905=7 C. W. N. 494.

itself was a sufficient sanction. The letter written by the Inspector-General to the District Registrar directing the prosecution of the petitioner was a sufficient sanction for his prosecution under s. 468. The conviction under ss. $\frac{468}{109}$ was based on the same facts as those on which the sanction for prosecution under s. 468 was granted; no fresh sanction was therefore necessary. The sanction which had already been given was sufficient to justify the conviction under ss. $\frac{468}{109}$.

Mr. *Pugh* in reply. The letter of the Inspector-General, if it could be regarded as a sanction, could only be a sanction for the prosecution of the petitioner of the substantive offence under s. 468 of the Penal Code; there should be a fresh sanction before he could be tried for the abetment of that offence.

[907] HARINGTON, J. In this case a Rule was granted calling upon the District Magistrate to shew cause why the conviction and sentence passed on one Profulla Chandra Sen should not be set aside on the ground that no sanction had been granted for his prosecution for the offence of which he had been convicted.

Profulla Chandra Sen was Sub-Registrar of Sarail, in the district of Tippera; he has been convicted of three offences under sections $\frac{468}{109}$ of the Indian Penal Code. It has been found by the Deputy Magistrate that ten deeds registered on October 31, 1899, at the appellant's office were forgeries, and that they were either forged by the appellant himself or by his orders with the object of earning for him as Sub-Registrar an additional commission from the Government of Rs. 20. On appeal the conviction was upheld, but the sentence altered. In support of the Rule it is contended :—

(*i*) That the Sub-Registrar is a 'public servant' and that he is accused of an offence as such public servant, and that under the provisions of section 197 of the Criminal Procedure Code the sanction of the Government having power to order the removal of the accused, or of some Court or other authority to which the Sub-Registrar is subordinate, is necessary before any Court can take cognizance of the case;

(*ii*) That no sanction has been granted by any such authority for the prosecution of the accused under sections $\frac{468}{109}$, and therefore the Court had no jurisdiction to try and convict the accused.

It is contended by the learned vakil, who shewed cause against the Rule, that no sanction was necessary, that the institution of proceedings by the sanctioning authority was sufficient sanction, and that in any case a letter, which has been produced, written by the Inspector-General of Registration, Bengal, to the Registrar of Tippera, directing that the accused should be prosecuted, as advised by the Legal Remembrancer, on charges under sections 417 and 468 of the Indian Penal Code, was sufficient sanction to justify a conviction under sections $\frac{468}{109}$. It is contended by the learned counsel, who appeared in support of the Rule, that if the letter be regarded as a sanction, it is only a sanction to prosecute for a substantive [908] offence under section 468, and not for abetment of such offence under sections $\frac{468}{109}$. In my opinion, it is unnecessary to discuss the question whether sanction was necessary under section 197 before the appellant could be prosecuted for the offence disclosed by the facts to which I have referred; because if sanction be necessary, the letter

1903
FEB. 13.

CRIMINAL
REVISION.

30 C. 905=7
C. W. N. 494.

of the Inspector-General of Registration is, in my opinion, a sufficient sanction to justify a conviction under sections $\frac{468}{109}$. That letter directs a prosecution under section 468, and it was of a charge under section 468 that the Court took cognizance. On the same facts as those on which the charge under section 468 was founded, the Magistrate convicted the accused of an offence under sections $\frac{468}{109}$. In my opinion, this state of things is provided for by section 230 of the Code of Criminal Procedure, which enacts that if an offence stated in a "new, altered, or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge was founded." Here it cannot be suggested that the charge under sections $\frac{468}{109}$ was founded on any but the same facts as those on which the sanction for a prosecution under section 468 was granted. That being so, no fresh sanction was necessary under section 230 of the Code. The sanction already given was quite sufficient to justify the conviction of the appellant under sections $\frac{468}{109}$. It is unnecessary therefore to discuss the question whether, on the facts disclosed, a sanction under section 197 was necessary. On the ground that the sanction granted was sufficient, the Rule must, in my opinion, be discharged.

We direct that the petitioner be called upon to surrender to his bail and serve the remainder of his sentence.

BRETT, J. I agree that the Rule must be discharged.

The main contention advanced in support of the Rule is that the sanction given by the Inspector-General of Registration was for the prosecution of the petitioner for offences under sections 468 and 417 of the Indian Penal Code, and not for the abetment of those offences ; and that as section 197 of the Criminal Procedure Code contains no sub-section corresponding to sub-section 3 [909] of section 195 of the Code, there could be no conviction for abetment where sanction had been given for prosecution for the substantive offence only. In this argument there appears to be some misunderstanding of the meaning of sub-section 3 of section 195 of the Code. That sub-section lays down that sanction for the prosecution for the abetment of an offence is necessary in the same way as sanction for prosecution for the substantive offence, and the omission of the sub-section from section 197 of the Code of Criminal Procedure cannot have the effect suggested. The sanction given by the Inspector-General of Registration was for the prosecution of the petitioner for certain acts, that is to say, for fabricating false documents and for cheating by means of fabricated documents. This sanction would, in my opinion, cover the abetment of the fabrication of the false documents if that offence was committed for the purpose of cheating by means of those documents. The finding of the Joint-Magistrate is that the ten deeds which were registered on the 31st October 1899 were forgeries, and that they were either forged by the accused himself or by his orders with the object of cheating the Government and obtaining an additional commission of Rs. 20 to which he was not entitled.

The sanction undoubtedly covered the new charge, as it was based on the same facts, and under the provisions of section 230 of the Code of Criminal Procedure, no additional sanction was required.

Rule discharged.

1903
FEB. 13.

CRIMINAL REVISION.

30 C. 905=7 C. W. N. 494.

30 C. 910 (=8 C. W. N. 17.)

[910] FULL BENCH.

TARA PROSAD LAHA *v.* EMPEROR.* [23rd May, 1906.]

"*Complaint,*" *meaning of—Prosecution for adultery or enticing away a married woman—Criminal Procedure Code (Act V of 1898), ss. 4, cl. (h), 199.*

The word "complaint," referred to in s. 199 of the Code of Criminal Procedure means a "complaint" as defined by s. 4, cl. (*h*) of that Code.

Jatra Shekh v. *Reazat Shekh* (1) distinguished.

[Foll. 12 Cr. L. J. 50=8 I. C. 1160=32 P. R. 1910 Cr.=32 P. L. R. 1911=51 P. W. R. 1910 Cr.]

REFERENCE to a Full Bench in Criminal Appeal by Tara Prosad Laha and others.

On the 7th December 1902, one Doyal Chand Mandal laid an information at the Mograhat police station to the effect that he had some five or six days before the occurrence complained of, gone to Charmaria Abad to cultivate his land, leaving at home his grandmother, father, and his wife, who was 17 years of age. While away from home he received information that his wife had been carried away from the house. On his return home he found his wife on the roadside, and she told him that on the previous night, after taking her meal, as she came out of the house, the accused caught hold of her, gagged her by putting a cloth into her mouth, and carried her to a jute-field lying to the north of the house, where they forcibly ravished her. She was detained in the jute-field that night and the whole of the next day.

Doyal Chand Mandal charged the accused with the offence of forcibly committing rape upon his wife. The case was sent up by the police under ss. 342, 352 and 354 of the Penal Code, and came before a Deputy Magistrate who committed the accused to take their trial at the Sessions on charges framed under ss. 376, 497 and 498 of the Penal Code. The accused were placed upon their trial before the Additional Sessions Judge of the 24-Perganas and a jury, and at the trial a further charge was added under s. 366 of the Code.

[911] The jury acquitted the accused on the charges under ss. 366, 376 and 497, but convicted them under s. 498. The accused appealed to the High Court.

At the hearing of the appeal, it was contended on behalf of the appellants that as the husband had only laid an information to the police and had not made a complaint as required by s. 199 of the Criminal Procedure Code, the Court could not take cognizance of the case; the conviction was therefore illegal and must be set aside. It was also contended that if the information was a 'complaint' within the meaning of s. 199 of the Code, it was a complaint of offences under

* Reference to Full Bench in Criminal Appeal No. 991 of 1902.

Full Bench: Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Ghose, Mr. Justice Rampini, Mr. Justice Henderson and Mr. Justice Geidt.

(1) (1892) I. L. R. 20 Cal. 483.