the estate of Golap Kumari, and, if that was so, it could not be said that the judgment-debtors had no saleable interest in the property.

It was contended for the respondents that one of the judgment-debtors, at any rate, namely, Bhabani Kumari, had no interest of any kind in the property sold upon any view of the case. That may be quite true, but that does not in any way improve the respondents' position; for though Bhabani Kumari, in the view we take of the case, had no interest in the property sold, Golap Kumari, the other judgment-debtor, owned the entire interest in it.

In this view of the case, it becomes unnecessary to consider the second contention raised on behalf of the appellants.

The order of the Court below, setting aside the sale, on the ground that the judgment-debtors had no saleable interest in the property sold, must be reversed, and the sale confirmed. The appellants are entitled to their costs.

S. C. G. *Appeal allowed.*

CRIMINAL REVISION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

DARBARI MANDAR (PETITIONER) *v.* JAGOO LAL (OPPOSITE PARTY).*

1895 *April* 8.

Sanction for prosecution—Criminal Procedure Code (Act X of 1882), sections 437, 438 and 195—Power of the Sessions Judge to interfere with orders passed by the District Magistrate—Fresh sanction, Grant of, after expiry of six months from the date of the first sanction.

Both the Sessions Judge and the District Magistrate are competent, under section 437 of the Criminal Procedure Code, to order a further enquiry; but the Sessions Judge has no jurisdiction to review an order made by the District Magistrate under that section refusing a further enquiry. It is open to the Sessions Judge to refer the matter to the High Court under section 438.

If six months expire after the grant of sanction under section 195 of the Criminal Procedure Code, and no prosecution is commenced under it within that time, it is not open to the prosecutor to procure a fresh sanction and to institute proceedings upon such fresh sanction. The words "six months

* Criminal Revision No. 85 of 1895, against the order passed by F. W. Badcock, Esq., Sessions Judge of Bhagulpore, dated the 15th of February 1895.

1895

DARBARI MANDAR v. JAGOO LAL.

from the date on which the sanction was given" must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order might have been repeated.

The Munsif, who tried the suit out of which the application for sanction arose, refused to sanction any prosecution; the Munsif, who originally sanctioned the prosecution, was a different officer; while the Munsif who gave the fresh sanction was neither the Munsif who tried the case nor the Munsif who sanctioned the prosecution originally.

Semble.—*Under these circumstances it is extremely doubtful whether the* sanction was such as is contemplated by section 195 of the Criminal Procedure Code.

ONE Jagoo Lal (opposite party), on behalf of Rajah Hurbullabh Narain Singh, applied, some time in the year 1893, to the Munsif of Madhepura, for sanction to prosecute the petitioner, Darbari Mandar, for offences under sections 193, 468 and 471 of the Indian Penal Code, alleged to have been committed by him in a suit tried by the Munsif some time in the previous year. He refused to grant the sanction, but upon appeal, a further enquiry was ordered, and sanction was ultimately granted by the Munsif's successor in office on the 10th of March 1894. Against this order an appeal was preferred to the District Judge, and on the matter coming up before the High Court, the order was affirmed, it being held by the High Court that, notwithstanding his original refusal, the Munsif had jurisdiction to grant sanction subsequently upon fresh materials. The order of the High Court was dated 16th August 1894, and on the 28th September Jagoo Lal instituted proceedings before the Deputy Magistrate of Madhepura against the petitioner, Darbari Mandar, but he was discharged on the 30th of October 1894, on the ground that, when the proceedings were instituted, more than six months had elapsed since the date of the sanction, *viz.*, 10th of March 1894.

Thereupon Jagoo Lal, on the 28th of November, applied to the successor of the Munsif who had granted the sanction on the 10th of March, for a fresh sanction, which was granted on the 1st of December. The Deputy Magistrate, however, who had discharged the petitioner, Darbari Mandar, on the 30th of October, was of opinion that he could not make further enquiry into the matter, unless he was ordered to do so by the District Magistrate, and

1895

DARBARI MANDAR v. JAGOO LAL.

accordingly he made a reference to that officer. The District Magistrate, on the 22nd of December, made the following order :— "I think it very doubtful that section 195 (Criminal Procedure Code) can be evaded by the grant of a fresh sanction. If this were permissible, the rationale of the limitation, *interest rei publicæ ut finis sit litium*, would disappear."

Against this order Jagoo Lal applied to the Sessions Judge, who, on the 15th of February 1895, directed the District Magistrate, by himself or by some other Magistrate, to make further enquiry into the matter. This rule was obtained to show cause why both the order of the Munsif granting fresh sanction on the 1st of December 1894 and the order of the Sessions Judge of the 15th of February 1895 directing further enquiry should not be set aside.

Mr. *P. L. Roy*, Babu *Amarendra Nath Chatterji* and Babu *Bidhu Bhusan Ganguli* appeared in support of the rule on behalf of the petitioner.

The *Advocate-General* (Sir *Charles Paul*) and Babu *Jogendro Nath Ghose* appeared to show cause on behalf of the opposite party.

Mr. *P. L. Roy*.—The order of the Sessions Judge is *ultra vires*. He had no jurisdiction under section 437 of the Criminal Procedure Code to review the order of the District Magistrate, who had refused to order a further enquiry. Under that section the Sessions Judge and the District Magistrate have concurrent powers, but that does not mean that where the parties have been to one of these officers and failed to obtain what they prayed for, they are at liberty to go to the other officer and appeal against that order. If the Sessions Judge thought that the District Magistrate's order was bad, he should have referred the matter to the High Court under section 438 : see *Queen-Empress* v. *Shere Singh* (1) and *Hiraman De* v. *Ram Kumar Ain* (2).

The Munsif had no authority to grant a second sanction after the expiration of six months from the date of the original sanction. There is no provision for such a course in section 195 of the Criminal Procedure Code. That section expressly says that a sanction under it shall remain in force only for six months, and the reason

(1) I. L. R., 9 All., 362. (2) I. L. R., 18 Calc., 186.

1895

DARBARI MANDAR v. JAGOO LAL.

for the rule is that a person shall not be at liberty to procure sanction from the Court, and then to keep it pending *in terrorem* over the head of the accused for an indefinite period. And this would be nullified, if a person were at liberty to apply for fresh sanction over and over again every six months. No explanation was given for the omission to commence proceedings within six months, nor any special grounds shown why a fresh sanction should be given: see *Jogdeo Singh* v. *Harihar Pershad Singh* (1).

The *Advocate General* (Sir *Charles Paul*) showing cause:—The Sessions Judge had power to order a further enquiry under section 437 of the Criminal Procedure Code, inasmuch as the District Magistrate had not passed any order, he merely expressed an opinion. The case of *Hiraman De* v. *Ram Kumar Ain* (2), referred to by the other side, has no application. In that case it was merely held that the District Magistrate was not competent to refer to the High Court under section 438 a case decided by the Sessions Judge on appeal.

It is competent for a Court which granted sanction for a prosecution under section 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by effluxion of time. It has been so held in the case of *Gulab Singh* v. *Debi Prasad* (3).

The judgment of the High Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows:—

The facts out of which this rule arises are as follows: One Jagoo Lal, on behalf of Rajah Hurbullabh Narain Singh, applied in the year 1893, to the Munsif of Madhepura, for sanction to prosecute the petitioner, Darbari Mandar, for perjury and forgery, alleged to have been committed by him in a suit tried by the Munsif in the previous year. Sanction was at first refused, but upon appeal to the higher authorities, a further enquiry was ordered, and sanction was ultimately granted by the Munsif's successor on 10th March 1894.

Against this order an appeal was preferred both to the District Judge and to this Court, but the order was affirmed, it being held

(1) I. L. R., 11 Calc., 577. (2) I. L. R., 18 Calc., 186.
(3) I. L. R., 6 All., 45.

1895

DARBARI MANDAR v. JAGOO LAL.

by this Court that, notwithstanding his original refusal, the Munsif had jurisdiction to grant sanction subsequently upon fresh materials.

The order of this Court was dated 16th August 1894, and on the 28th September Jagoo Lal instituted proceedings before the Deputy Magistrate of Madhepura. The petitioner, Durbari Mandar, was accordingly arrested, but was discharged on October 30th, on the ground that, when the proceedings were instituted (28th September), more than six months had elapsed since the date of the sanction (10th March).

Thereupon, on the 28th November, Jagoo Lal applied to the successor of the Munsif who had granted the sanction of 10th March, for a fresh sanction to prosecute; and fresh sanction was granted on 1st December. The Deputy Magistrate, however, who had discharged the present petitioner on 30th October was of opinion that he could not make further enquiry into the matter unless he was ordered to do so by the District Magistrate, and he accordingly made a reference to that officer on the 15th December.

On the 22nd December the District Magistrate made the following order: "I think it very doubtful that section 195 can be evaded by the grant of a fresh sanction. If this were permissible, the rationale of the limitation (*interest rei publicæ ut finis sit litium*) would disappear."

Jagoo Lal then made an application to the Sessions Judge, who, on the 15th February 1895, directed the District Magistrate, by himself or by some other Magistrate, to make further enquiry into the matter.

The present rule was then obtained from this Court to show cause why both the order of the Munsif granting fresh sanction on 1st December 1894 and the order of the Sessions Judge of 15th February 1895 directing further enquiry into the charges of perjury and forgery, should not be set aside.

It is contended, in the first place, that the Sessions Judge had no jurisdiction to override the District Magistrate's order made under section 437 of the Code, and, in the second place, that, under the terms of section 195, it was not competent to the Munsif to grant a fresh sanction to prosecute after the sanction had ceased to operate by effluxion of time.

1895

DARBARI MANDAR v. JAGOO LAL.

The first point was taken before the Sessions Judge, but that officer was of opinion that he had jurisdiction, inasmuch as the District Magistrate had not made any order under section 437 of the Code. We think it clear, however, that the District Magistrate did decline to order a further enquiry, and that his doing so must be taken to be an order under that section. Both the District Magistrate and the Sessions Judge are competent, under section 437, to order a further enquiry, but when a further enquiry has been refused by one of these officers, we think it would be an unseemly proceeding, to say the least, that it should be ordered by the other; if the Sessions Judge was of opinion that the order of the District Magistrate was wrong, it was open to him to refer the matter to this Court under section 438, but we are clearly of opinion that he had no jurisdiction himself to review an order made by the District Magistrate under section 437.

As, however, it would have been competent to the Sessions Judge to report the District Magistrate's proceeding for the orders of this Court, and as it is open to him to do so now, we are of opinion that we ought to decide the second point raised in the rule, namely, whether, when a sanction granted under section 195 has expired by effluxion of time before any prosecution under it has been commenced, it is open to the prosecutor to procure a fresh sanction and to institute proceedings upon such fresh sanction. In the case of *Jogdeo Singh* v. *Harihar Pershad Singh* (1) this contention was raised before a Bench of this Court, but that Bench thought it unnecessary to express any opinion upon the point, because, even assuming that the Munsif who granted the fresh sanction in that case had power to grant it, the Court held that he had not exercised a sound discretion in granting it. In the matter of the petition of *Gulab Singh* v. *Debi Prasad* (2) Straight, Officiating C. J., sitting alone, expressed the opinion that a fresh sanction could be given, if that already granted had expired by effluxion of time, but that opinion was a mere *obiter dictum*, as it was held that the proceedings under the first sanction given in that case were still pending. The point has, therefore, not been decided, so far as we are aware, and it is,

(1) I. L. R., 11 Calc., 577. (2) I. L. R., 6 All., 45.

1895

DARBARI MANDAR v. JAGOO LAL.

therefore, necessary to consider the terms and the intention of the section.

Section 195 is included in Chapter XV of the Code, headed *Of the Jurisdiction of the Criminal Courts in Inquiries and Trials*, and it falls under the heading *B, Conditions requisite for Initiation of Proceedings*. Omitting those portions which are irrelevant to the present question, it runs as follows :—

"No Court shall take cognizance . . . . . (b) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court or of some other Court to which such Court is subordinate ; (c) of any offence described in section 463 or punishable under section 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court or of some other Court to which such Court is subordinate "

. . . . . .

"Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate ; *and no such sanction shall remain in force for more than six months from the date on which it was given.*"

. . . . . .

Now what this section expressly says is this : That in respect of the offences described in clauses (*b*) and (*c*), no Criminal Court shall take cognizance of them, unless the Court concerned in the offence shall either itself institute the proceedings or sanction their institution, and that where the Court does not itself institute the proceedings but sanctions their institution, the proceedings must be instituted within six months from the date of the sanction. As regards a complaint by the Court itself, no period of limitation is prescribed, and it is clear that the Court may proceed, either by way of complaint or under the provisions of Chapter XXXV at any time. But where the Court delegates the duty of prosecuting to another, when it merely sanctions the prosecution,

1895

DARBARI MANDAR v. JAGOO LAL.

then the plain intention of the section seems to be that the proceedings must be initiated within six months from the date of sanction; and the reason of this rule seems to be the very wholesome one that a private prosecutor shall not be at liberty to procure sanction to prosecute from the Court and then to keep the sanction pending *in terrorem* over the head of the accused indefinitely.

Now, if this is the true meaning of the section, it seems to us that this wholesome provision of the law is entirely nullified, if a person is at liberty to apply for fresh sanction over and over again every six months. If that were to be allowed, the Court would, in our opinion, be lending its sanction to enable a private prosecutor to do the very thing which the law is intended to prevent. And this, moreover, can only be effected by a fictitious use of the word sanction. If the Court sanctions a prosecution, it sanctions it once for all; there may be a fresh order written on another piece of paper after six months, but that is not a fresh sanction, it is only the repetition of the original sanction; and when the section speaks of "six months from the date on which the sanction was given," we think it must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order may have been repeated.

That being our view of the section, the rule must be made absolute to set aside the order of the Sessions Judge and any proceedings that may have been taken under the so-called fresh sanction.

Another important point arises in this case, but as it has not been argued, we feel it unnecessary to do more than notice it. It is to be observed that the Munsif who actually tried the suit out of which the application for sanction arose, refused to sanction any prosecution; the Munsif who originally sanctioned the prosecution was a different officer; while the Munsif who gave the fresh sanction was neither the Munsif who tried the case nor the Munsif who sanctioned the prosecution originally.

Under the circumstances, we think it extremely doubtful whether the sanction was such as is contemplated by section 195, Criminal Procedure Code.

S. C. B. *Rule made absolute.*