

## CRIMINAL REVISION.

Before Mr. Justice Norris and Mr. Justice Beverlay.

MADURAY PILLAY AND ANOTHER (PETITIONERS) v. H. T. ELDERTON  
(OPPOSITE PARTY).<sup>a</sup>

1895  
February 12.

*Sanction to Prosecution—Criminal Procedure Code (Act X of 1882), section 195—Subordinate Court, What is a—Jurisdiction of the High Court to revoke or grant sanction in cases in which appeal lies to “Her Majesty in Council” from the Court of the Recorder of Rangoon.*

In matters relating to the grant of sanction to prosecute under section 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as “subordinate” to another Court where the latter is the Court to which appeals from the former ordinarily lie, *i. e.*, lie in the majority of cases.

Though the decrees in the present instance was appealable to “Her Majesty in Council,” still, as appeals from the Court of the Recorder of Rangoon ordinarily lay to the High Court, the former was held to be subordinate to the latter Court within the meaning of the section.

*In re Anant Ramchundra Lollikar* (1) followed.

THIS was an application to revoke the sanction granted by the Additional Recorder of Rangoon to prosecute the petitioners under section 193 of the Indian Penal Code for giving false evidence. The facts of the case are these: The petitioners were charged with aiding and abetting one Gool Mahomed, who was charged with assaulting a person of the name of Elderton (opposite party). They were tried before the City Magistrate of Rangoon, who convicted them. All three appealed to the Recorder of Rangoon, and the conviction of Gool Mahomed was upheld, and that of the two petitioners was set aside. Then Elderton filed a suit in the Recorder’s Court in which he claimed 20,000 rupees damages against the two petitioners for assault. The two petitioners gave evidence on their own behalf in the civil suit. The result of the suit was that on the 22nd day of

<sup>a</sup> Criminal Revision Nos. 571 and 572 of 1894, against the order passed by H. T. Aston, Esq., Additional Recorder of Rangoon, dated the 13th of September 1894.

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August 1894, the Recorder passed a decree in favour of the plaintiff for damages to the extent of 4,000 rupees. The petitioners preferred an appeal against this decree to the High Court, being under the impression that an appeal lay to that Court. But the High Court decided that, under the provisions of section 40 of the Lower Burma Courts Act (XI of 1889), an appeal lay direct to Her Majesty in Council, because the value of the subject-matter was more than 10,000 rupees, though the amount decreed was only 4,000 rupees.

On the 23rd day of August 1894 Elderton applied, under section 195 of the Criminal Procedure Code, to the Additional Recorder of Rangoon, for sanction to prosecute the two petitioners for perjury in respect of their statements in the evidence given by them on their own behalf in the civil suit for damages, and the sanction was granted on the 13th day of September 1894.

Mr. *Henderson* appeared on behalf of the petitioners in support of the rule.

Mr. *M. Sandel* appeared on behalf of the opposite party.

Mr. *Henderson*.—The question arises whether this Court has any jurisdiction to set aside, if it should be disposed to, the sanction which has been granted by the Additional Recorder of Rangoon. The High Court has power to revoke the sanction, because appeals “ordinarily” lie to this Court from the Recorder’s Court. Section 40 of the Lower Burma Courts Act (XI of 1889) says that an appeal shall lie to the High Court from an original decree or order passed by the Recorder in any suit or other civil proceeding of which the amount or value of the subject-matter is less than 10,000 rupees, and in the majority of cases the value of the subject-matter does not exceed 10,000 rupees. See section 195, para. 7 of the Code of Criminal Procedure and the case of *In re Anant Ramchundra Lotlikar* (1).

Mr. *Sandel* was not called upon.

The judgment of the Court (NORRIS and BEVERLEY, JJ.) was as follows:—

The facts out of which these rules arise are these: One Gool Mahomed was charged with assaulting a person of the name of Elderton, and Maduray Pillay and Soobramoney Pillay were

(1) I. L. R., 11 Bom., 438.

charged with aiding and abetting Gool Mahomed in the assault. They were tried before the City Magistrate of Rangoon, who convicted them. All three appealed to the Recorder of Rangoon, and the conviction of Gool Mahomed was upheld, and that of the two Pillays was set aside; and we are told by the learned counsel who has just addressed us on behalf of the petitioners that practically the Government Advocate withdrew the case as against these two persons, or at any rate intimated that in his opinion the evidence was not sufficiently strong to support the conviction. Subsequently Elderton filed a suit in the Recorder's Court in which he claimed 20,000 rupees damages against the two Pillays for assault. That case was tried, and the two Pillays, who were of course unable to give evidence on oath on their own behalf in the criminal case, availed themselves of their right to give evidence on their own behalf in the civil suit. The result of the suit was a decree in favour of the plaintiff for damages to the extent of 4,000 rupees. The defendants desired to appeal, and they were under the impression that an appeal lay to this Court. A Division Bench of this Court has decided that an appeal lies direct to Her Majesty in Council. These rules were granted in September 1894 by Mr. Justice Banerjee and Mr. Justice Sale in these terms: "Let a rule issue calling upon the opposite party to show cause why the order of the Recorder of Rangoon complained of and mentioned in the within petition should not be set aside," and the first question that arises is whether this Bench has any jurisdiction to set aside, if it should be disposed to, the sanction which has been granted by the Additional Recorder of Rangoon for the prosecution of the two Pillays for giving false evidence in the civil suit.

The decision of that question depends upon the construction of section 195 of the Criminal Procedure Code, which, *inter alia*, says that "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." "For the purpose of this section any Court other than a Court of Small Causes shall be deemed to be subordinate to the Court to which appeals from the former Court *ordinarily* lie." The question is, do appeals from the Recorder or Additional Recorder of Rangoon

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*ordinarily* lie to this Court? Upon the construction to be placed upon this section we are not left without authority. In the case of *Anant Ramchandra Lotlikar* (1) the facts were these: A decree-holder applied to the First Class Subordinate Judge for sanction to prosecute his judgment-debtor under sections 206 and 424 of the Indian Penal Code for fraudulent concealment of certain moveable property worth about Rs. 10,000 awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere, on the ground that the decree being appealable to the High Court, the High Court alone could deal with the application under section 195 of the Criminal Procedure Code. Mr. Justice West and Mr. Justice Birdwood held that, though that decree was appealable to the High Court, still as appeals from the Court of the First Class Subordinate Judge ordinarily (that is, in the majority of cases) lay to the District Court, the former (that is, the First Class Subordinate Judge) was subordinate to the latter Court (that is the Court of the District Judge) within the meaning of section 195 of the Criminal Procedure Code.

Appeals from the Recorder of Rangoon, in the majority of cases, lie to this Court; and, if for "the Court of the District Judge" we read "the High Court of Judicature at Fort William in Bengal" and for "the High Court" (that is, the High Court of Bombay) we read "Her Majesty in Council," the cases are exactly parallel. This decision commends itself entirely to our judgment, and we follow it and hold that we have jurisdiction to revoke this sanction if we thought that it was a case in which we ought to do so. But having heard Mr. Henderson upon the whole case, we do not think that it would be a proper exercise of our discretion to interfere with the sanction which has been accorded by the Additional Recorder of Rangoon.

Therefore these rules must be discharged.

S. C. B.

*Rule discharged.*

(1) I. L. R., 11 Bom., 438.