CIVIL RULE.

Before Mr. Justice Mookerjee and Mr. Justice Holmwood.

1907
April 9.

JADU LAL SAHU
v.
LOWIS.*

Sanction for prosecution—Revocation of the sanction—Appeal, pendency of—Prejudice to appellant—Doubtful prosecution—Criminal Procedure Code (Act V of 1898) s. 195—Practice.

Where the prosecution of a person for giving false evidence, forgery, and using as genuine a forged document in a suit, pending an appeal from the judgment passed therein, would delay and possibly defeat the appeal, and where the lower Appellate Court had declared that the evidence on which it was proposed to proceed was unsatisfactory to a great extent :—

Held, that it was neither necessary nor desirable to grant sanction in such a case pending the appeal, but that the proper course would be to await the conclusion of the litigation and then to move the higher Courts to take action, if necessary, in the ends of public justice; and that the present sanction should, therefore, be revoked.

In re Shri Nana Maharaj(1), *In re Devji valad Bhavani*(2), *Rex* v. *Ashburn*(3), and *In re Muthukudam Pillai*(4) referred to.

In the matter of the petition of Ramprasad Hazra(5) distinguished.

RULE granted to Jadu Lal Sahu and others, petitioners.

The petitioners 1 to 3, and other members of their family purchased certain shares in mehal Motihari, towji No. 644, on the 25th July 1904, from Musammat Barkatunnessa of Gaya, part of the consideration being an amount of Rs. 13,967 on account of four promissory notes alleged to have been executed by her. On the 7th March 1905, the Maharani of Bettiah filed a suit for pre-emption of the said shares, and obtained a decree on the 17th September, 1906, in the Court of the Subordinate Judge of Mozufferpore who found these four notes to be forgeries put forward for the sole purpose of increasing the price which the

* Civil Rule No. 647 of 1907.

(1) (1892) I. L. R. 16 Bom. 729.
(2) (1893) I. L. R. 18 Bom. 581.
(3) (1837) 8 C. & P. 50.
(4) (1902) I. L. R. 26 Mad. 190.
(5) (1866) B. L. R. Sup. 426.

1907

JADU LAL SAHU v. LOWIS.

Maharani would have to pay for pre-empting. On the 7th November 1906, she filed eleven applications for sanction to prosecute criminally the three defendants, petitioners 1 to 3, and their relatives, petitioners 4 to 11. The Subordinate Judge fixed the 24th for the hearing of the matter, but the defendants, in the meantime on the 21st, filed an appeal against his judgment and decree in the High Court. They then applied to him for stay of the sanction proceedings pending the appeal, but he refused to do so and granted sanction on the 4th December.

On appeal the District Judge of Tirhut, by his order of the 6th February 1907, declined to revoke the sanction, though he found that the evidence, on which the lower Court relied for a conviction, was of a very doubtful character.

Mr. Jackson, *Babu Dasharathy Sanyal* and *Babu Manomohan Dutt*, for the petitioners.

Mr. Hill, *Babu Ram Charan Mitter* and *Babu Nolini Ranjan Chatterjee*, for the opposite party.

MOOKERJEE AND HOLMWOOD JJ. This is a Rule calling on the respondent, Maharani of Bettiah, through the manager under the Court of Wards, to show cause why the order of the District Judge of Tirhut, dated the 6th February 1907, refusing to revoke the sanctions granted by the Subordinate Judge of Mozufferpore by his orders, dated the 29th November and the 4th December 1906, should not be set aside in respect of the prosecution of the petitioners, who are eleven in number, under sections 193, 465, 467, 471 and 109 of the Indian Penal Code.

It appears that the petitioners 1 to 3 purchased, together with the other members of their family, certain shares in mehal Motihari, towji No. 644, from Musammat Barkatunnessa of Gaya on the 25th July 1904. The consideration of the said deed of sale was stated to be Rs. 19,214 in cash and currency notes, Rs. 6,286 by way of paying off old bond debts, and Rs. 13,967 on account of four promissory notes executed by the said Musammat Barkatunnessa; total Rs. 39,467.

1907

JADU LAL SAHU v. LOWIS.

In a suit brought by the Maharani of Bettiah for pre-emption of the said shares filed on the 7th of March 1905, the Subordinate Judge, who tried the case, held that the four promissory notes for Rs. 13,967 were forgeries put forward for the sole purpose of increasing the amount the Maharani would have to pay in the exercise of her right of pre-emption.

The Maharani's suit was decreed on the 17th September 1906. On the 7th November the Maharani filed eleven petitions for sanction to prosecute the three defendants and their relatives, 4 to 11, who had given evidence for them at the trial in support of the promissory notes, under the sections stated above.

The 24th November was fixed by the Subordinate Judge to show cause, and on the 21st November (the High Court having re-opened after the vacation on the 18th November) the defendants filed an appeal against the judgment and decree of the Subordinate Judge. They then applied for a stay of the proceedings for sanction pending the appeal, but the Subordinate Judge found there was no ground for any such stay, and on the 4th December 1906, granted the sanctions complained of. On appeal to the District Judge, that Officer declined to revoke the sanctions, although he found that the evidence upon which the respondents and the Subordinate Judge relied as likely to secure a criminal conviction was more than shaky.

It is against this order of the District Judge that the petitioners have obtained this Rule, and it is contended by their learned counsel that on the findings of the District Judge no sanction should have been given at this stage of the proceedings, and that the action taken by the respondents is merely directed to delay and hamper the petitioners in their appeal.

On the other hand, it is urged by learned counsel for the respondents that the appeal of the petitioners was apparently filed to avoid these criminal proceedings, and that, on the authorities, criminal indictments for perjury and forgery should not be indefinitely stayed pending appeals to the Civil Courts that may have been preferred in connection with the original suit. In this connection the rulings *In re Shri Nana Maharaj*(1), *In re Devji*

(1) (1892) I. L. R. 16 Bom. 729.

valad Bhavani(1), *Rex* v. *Ashburn*, *Rex* v. *Simmons*(2), also *In re Muthukudam Pillai*(3), and *In the matter of the petition of Ramprasad Hazra*(4) were referred to.

The first ruling, following the two English rulings, lays down that ordinarily criminal proceedings should not go on during the pendency of civil litigation. The ruling *In re Devji valad Bhavani*(1) points out that this is not an invariable rule, and that where a Subordinate Judge had himself taken cognizance of the offence under section 478, Act X of 1882, corresponding to section 476 of the present Code, it would not be right to quash the commitment merely because the civil litigation was going further.

The Madras case decides that there is nothing to prevent a sanction to prosecute being put in action pending an appeal against the sanction, though, as a general rule, it would be reasonable to grant a stay.

The Full Bench of this Court in *In the matter of the petition of Ramprasad Hazra*(4) merely decided that, under the old Code, the High Court sitting as a Court of civil appeal had no power to direct that criminal proceedings ordered by a Civil Court be stayed. There is nothing in these cases that in any way affects the matter now before us.

The cases cited are with one exception cases where the Court ordered a prosecution after inquiry. The question before us is whether the respondents in civil appeal should be allowed to act as private prosecutors when their so doing will certainly delay, and possibly defeat the appeal of the petitioners, and when the lower Appellate Court has declared that the evidence on which they propose to proceed appears to it to be unsatisfactory to a great extent. It is in vain to say that the Court of Wards is an impartial and *quasi*-public body. It is to the Maharani's interest to prevent an appeal, and so save further expenditure in this litigation, and she cannot claim any higher position than an ordinary suitor merely from the fact that her affairs are being managed by officials whose motives are above suspicion.

We have only to read the judgment of the lower Appellate Court to be convinced how ill-advised a private prosecution would

(1) (1893) I. L. R. 18 Bom. 581.
(2) (1837) 8 C. & P. 50.
(3) (1902) I. L. R. 26 Mad. 190.
(4) (1866) B. L. R. Sup. 426.

1907

JADU LAL SAHU v. LOWIS.

be at this stage. The learned Subordinate Judge who granted the sanctions found that the probabilities were strong of the prosecution ending in a conviction on the evidence as it stood, and he did not, therefore, as in our opinion he should have done, think it necessary to make an inquiry under section 476. But the learned District Judge has shown that on the evidence, as it stands, there is very little case at all against the eleven petitioners.

It seems that the lady who allowed these promissory notes to be sealed with her own seal must have been aware of their fictitious character, if they were fictitious, and is not in a position to deny that she is liable under them except by her own unsupported averment that she got no consideration for them. The amount nominally paid for the shares was admittedly their fair market value which goes to directly negative the theory that the notes were got up to enhance the price of the property against pre-emption.

The agent who conducted the negotiations and who may alone be responsible for the alleged fictitious transactions is repudiated by the prosecution. The corroborative evidence is declared by the learned District Judge to be neither independent nor satisfactory.

It, therefore, appears to us that the proper procedure in a case of this kind is to await the conclusion of the litigation and then to move the higher Courts to take action, if necessary, in the ends of public justice.

We do not think it either necessary or desirable to grant sanction to one of the parties in this litigation to pursue a very doubtful criminal prosecution pending the decision of the appeal which has been ordered to be expedited, and might be even now before us but for the delay which has already taken place in connection with these proceedings for sanction.

We accordingly make the Rule absolute, and, discharging the orders of both the Courts below, direct that the sanctions given to the Maharani of Bettiah, through her agents, to prosecute the petitioners under sections 193, 465, 467 and $\frac{471}{109}$ be revoked.

We make no order as to costs.

Rule absolute.

E. H. M.