CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Handley.

JHALAN JHA

v.

BUCHAR GOPE.*

1904
April 13.

Sanction—Sanction to prosecute, power of Appellate Court to grant—Rule on District Magistrate to show cause—Right of opposite party to be heard—Criminal Procedure Code (Act V of 1898) ss. 195, 439.

The power of granting sanction by an Appellate Court ought to be exercised carefully, especially when sanction is refused by the Court of first instance.

Where sanction had been granted by the Sessions Judge to prosecute the petitioner for the purposes of public justice, and a Rule had been issued by the High Court upon the District Magistrate only, to show cause why the sanction should not be set aside, it was held at the hearing of the Rule that the opposite side had no *locus standi* and should not be heard.

RULE granted to the petitioner, Jhalan Jha.

This was a Rule calling upon the District Magistrate of Bhagalpore to show cause why the sanction to prosecute the petitioner granted by the Sessions Judge should not be set aside on the ground;

(i) that it was refused by the Magistrate, who had tried the case previously and heard all the evidence, and

(ii) that upon the circumstances appearing from the judgment of the Sessions Judge, the case was not a fit and proper one for the granting of such sanction.

A charge under s. 406 of the Penal Code was brought by one Ramadhin Singh against Buchar Gope. That case was tried by the Deputy Magistrate of Bhagalpore, who acquitted the latter, declaring the case to be false, and directed the prosecution of the complainant in that case under s. 211 of the Penal Code. The petitioner Jhalan Jha was examined in that case as a defence witness, and it was argued in Buchar's defence that Ramadhin

* Criminal Revision No. 265 of 1904, made against the order passed by W. H. Vincent, Sessions Judge of Bhagalpore, dated the 18th January 1904.

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had been set up under the petitioner's instructions. In his judgment the Deputy Magistrate commented severely on the alleged connection of the petitioner with Ramadhin. His impression at the time being that the petitioner was at the bottom of the prosecution. Buchar Gope then made an application to the Deputy Magistrate under s. 195 of the Criminal Procedure Code for sanction to prosecute the petitioner under ss. 211 and 193 of the Penal Code, and a notice was issued upon him to show cause, why he should not be prosecuted. In showing cause on the 19th March 1903, the petitioner stated that Ekradeswar Singh, a zemindar with whom he was on bad terms, was helping Buchar Gope and that the application for sanction by the latter was due to the ill-feeling, which existed between Ekradeswar Singh and the petitioner. On the 31st July 1903 the Deputy Magistrate in a careful and considered judgment came to the conclusion that it was not a case in which he should grant sanction for the prosecution of the petitioner as he found that Ekradeswar Singh had put up Buchar Gope to make the application and procured the witnesses to satisfy his old grudge against the petitioner. An application was thereupon made on behalf of Buchar Gope to the Sessions Judge of Bhagalpore, who refused sanction under s. 211 of the Penal Code, but granted sanction to prosecute the petitioner under s. 193 of the Code for having given false evidence in respect of one particular matter, namely, that he did not know Ramadhin Singh.

Mr. Jackson (*Babu Lal Mohan Ganguli* with him) for the petitioner. This is not a proper case for granting sanction. The Deputy Magistrate before whom the application for sanction was made in the first instance, who had heard all the evidence and who had started with a prejudice against Jhalan Jha, inasmuch as he had expressed himself strongly against the latter in a previous case, upon a careful consideration of the whole evidence in the case, refused to grant sanction. The Sessions Judge should not under the circumstances have granted the sanction. The whole case had been got up by an enemy of Jhalan Jha in order to satisfy an old grudge.

Mr. Hill applied to be heard on behalf of the opposite party.

Mr. Jackson. I object to Mr. Hill being heard. The sanction was granted by the Sessions Judge in the interests of public justice,

The Rule was issued on the District Magistrate only, and not on the opposite party, who has no *locus standi* in the matter.

Their Lordships thereupon declined to hear Mr. Hill.

AMEER ALI AND HANDLEY JJ. It appears that a charge under section 406 of the Indian Penal Code was brought by one Ramadhin Singh against Buchar Gope. That case was tried by Moulvi Mohammed Abdul Kadir, the Deputy Magistrate of Bhagalpore. He discharged the accused Buchar Gope under section 258 of the Code of Criminal Procedure, declaring the case to be a false one, and directed prosecution of the complainant in that case under section 211 of the Indian Penal Code. The present petitioner Jhalan Jha was examined in that case as a defence witness, and the Deputy Magistrate says that it was argued in Buchar's defence that Ramadhin had been set up by Jhalan Jha's tehsildar Pradip Roy under Jhalan Jha's instructions. The Deputy Magistrate in his judgment commented severely upon the evidence for the prosecution and also on the alleged connection of Jhalan with Ramadhin. His impression at that time apparently was that Jhalan Jha was at the bottom of that prosecution. Application was made to him under section 195 of the Code of Criminal Procedure for sanction to prosecute, under sections 211 and 193 of the Indian Penal Code, Jhalan Jha, Ramadhin and others. The Deputy Magistrate in a careful and considered judgment, in which he reviewed the entire evidence with extreme discrimination came to the conclusion that it was not a case, in which he should grant sanction for the prosecution of Jhalan Jha, and he expressed himself thus: "I therefore refused to accord sanction, and discharged the Rule with the remark that Ekradeswar Singh put up Buchar Gope to make the application and procured the witnesses to satisfy his old grudge against Jhalan Jha, who has already been put to much trouble and expense." Bearing in mind the fact that in his previous judgment he had expressed himself strongly on the alleged connection of Jhalan Jha with the complainant in the criminal breach of trust case, it appears to us that in dealing with the application under section 195 of the Code of Criminal Procedure he approached the case with an open and fair mind to consider upon its merits the application for sanction.

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Sanction being refused by the Deputy Magistrate, application was made to the Sessions Judge ostensibly on behalf of Buchar Gope. The learned Sessions Judge has refused sanction under section 211. But he has come to the conclusion that sanction may be given to prosecute Jhalan Jha for having given false testimony in respect of one particular matter, *viz.*, that he did not know Ramadhin Singh.

We have gone through the judgments of both the Deputy Magistrate and the Sessions Judge, and after a careful consideration we have come to the conclusion that this is not a fit case in which the sanction granted by the Sessions Judge should be maintained. The Deputy Magistrate, who had the witnesses before him and who was in a position to observe their demeanour and to weigh their testimony upon a careful analysis of the facts and weighment of their statements, thought it inexpedient in the ends of justice to grant the sanction. The learned Sessions Judge did not have the same advantage. Upon a small residuum of the case he thought that sanction may be given for the prosecution of Jhalan Jha under section 193 of the Indian Penal Code. We are of opinion that such sanction would lead to no result excepting harassment and become the means of satisfying what the Deputy Magistrate called an "old grudge." The power of granting sanctions possessed by Appellate Courts ought in our opinion to be exercised carefully, especially when sanction is refused by the Court of first instance.

For these reasons we are of opinion that the Rule ought to be made absolute, and we accordingly make it absolute.

The opposite party appeared by learned Counsel and wanted to be heard. The Rule was issued upon the Magistrate of the district, and sanction having been granted by the Sessions Judge for purposes of public justice, Buchar Gope as the opposite party has no *locus standi*. We do not feel disposed to vary the practice of this Court by hearing Mr. Hill on behalf of Buchar Gope.

Rule made absolute.

D. S.