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ascertained, the statement that the signed decree was not received from the Judges before the 8th August is correct. No doubt, it is possible that it had nevertheless been signed before the 30th July, in which event the time limited by law, even if calculated from the date of signing, would have expired before the present application was filed. But it is highly improbable that there was such delay, and, on the whole, the case seems to me to be one in which relief may, *pro hac vice*, properly be given under section 5 of the Act.

S. M.

CIVIL RULE.

Before Mr. Justice D. Chatterjee and Mr. Justice N. R. Chatterjee.

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 March 4.

RAM CHARAN CHANDA TALUKDAR

v.

TARIPULLA.*

Sanction for prosecution—Sanction refused by Munsif—Appeal—Sanction granted by Subordinate Judge—Jurisdiction—Code of Criminal Procedure (Act V of 1898), s. 195—Civil Courts Act (XII of 1887), ss. 21 and 22—Code of Civil Procedure (Act V of 1908), ss. 24 (1) (a) and 115.

A suit having been dismissed by the Munsif and, on appeal, by the Court of Appeal, the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss. 468 and 471 of the Indian Penal Code. This application was refused, but, on appeal, the Subordinate Judge granted such sanction :

Held, that the Court of the District Judge was the only Court to which such an appeal would properly lie.

Per N. R. CHATTERJEE J. For the purposes of s. 195 of the Criminal Procedure Code, a Munsif is not subordinate to a Subordinate Judge.

* Civil Rule, No. 5426 of 1911, against the order of Behari Lal Chatterjee, Subordinate Judge of Mymensingh, dated July 22, 1911.

RULE granted to the petitioners, Ram Charan Chanda Talukdar and others.

The plaintiffs, Ram Charan Chanda Talukdar and others, brought a suit on a bond in the Court of a Munsif, who dismissed the suit, and subsequently his judgment was upheld by the Appellate Court. Thereupon, the defendants applied to the Munsif to prosecute the plaintiffs for offences under sections 468 and 471 of the Indian Penal Code. The Munsif refused this application. On appeal to the District Judge, the case was transferred to the Subordinate Judge who, after hearing the appeal, reversed the order of the Munsif and sanctioned the prosecution of the plaintiffs. Thereupon, the plaintiffs applied to the High Court and obtained this Rule on the defendants to show cause why the order of the Subordinate Judge sanctioning the prosecution should not be set aside.

Babu Dwarka Nath Chuckerbutty and *Babu Kalinkar Chuckerbutty*, for the petitioners, in support of the rule. The Court of the Subordinate Judge, by which the appeal from the order of the Munsif refusing sanction was heard, was not the Court to which such an appeal properly lay. Section 195, clause (6) of the Criminal Procedure Code, enacts that the refusal to grant sanction may be set aside by any authority to which the authority refusing it is subordinate, and by clause (7) for the purposes of section 195 every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. By section 21 (2) of Act XII of 1887 it is declared that an appeal from an order of a Munsif shall lie to the District Judge. The Court of the District Judge, therefore, was the authority to which the Munsif was subordinate: *Sadhu Lall v. Ram Churn Pasi* (1).

(1) (1902) I. L. R. 30 Calc. 394.

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Under section 195, the District Judge could act on his own initiative, and it was an error to style the application to him as an appeal from an order of the Munsif. The Munsif furthermore, has decided this case rightly in holding that the plaintiffs having merely failed to prove their case, sanction under section 195 must be refused.

Babu Akhilbandhu Guha, for the opposite party, showed cause. The High Court, I submit, cannot interfere in this case under section 195 of the Criminal Procedure Code. This is not a case in which a question of jurisdiction is involved. It is only under section 115 of the Civil Procedure Code of 1908 that the High Court does interfere in matters of this kind, provided there has been gross injustice done to one of the parties: *Hamijuddi Mondol v. Damodar Ghose* (1), *Ram Proshad Malla v. Raghubar Malla* (2), *Randhin Bania v. Sewbalak Singh* (3), *Joy Narain Jana v. Upendra Narain Ray* (4), *Begu Singh v. Emperor* (5) and *Salig Ram v. Ranji Lal* (6).

Moreover, the District Judge has power to transfer to any subordinate Court under his administrative control any appeals pending before him from the orders of Munsifs: see section 22 of Act XII of 1887 and section 24 (1) (a) of the Civil Procedure Code of 1908.

I submit, therefore, that the Subordinate Judge had jurisdiction, that the sanction was properly granted.

Cur. adv. vult.

D. CHATTERJEE J. In this case a Munsif dismissed a suit on a bond, and the decree was upheld by the

(1) (1906) 10 C. W. N. 1026.

(2) (1909) 13 C. W. N. 1038.

(3) (1910) I. L. R. 37 Calc. 714 ;

14 C. W. N. 806.

(4) (1908) 13 C. L. J. 216.

(5) (1907) I. L. R. 34 Calc. 551.

(6) (1906) I. L. R. 28 All. 554.

Appellate Court. An application for sanction to prosecute the plaintiff for offences under sections 468 and 471 of the Indian Penal Code was refused by the Munsif. From this order an appeal was preferred evidently to the District Judge: this appeal was heard by the Subordinate Judge, who reversed the order of the Munsif and granted sanction. The plaintiff obtained this Rule for setting aside the order of the Subordinate Judge.

It is contended by the learned Vakil for the petitioner that the Subordinate Judge had no jurisdiction to make the order that he has made, and on the merits that the order of the Munsif refusing sanction was a proper one and should not have been set aside as the Courts which decided the bond suit went upon the failure of the plaintiff to prove his case. The learned Vakil for the opposite party contends that we cannot go into the second question, as we have no jurisdiction to interfere under section 195 of the Criminal Procedure Code and the rule must be discharged, unless we uphold the first contention, in which case we may have jurisdiction under section 115 of the Civil Procedure Code. I shall deal with the first question first. Section 195, clause (6) of the Criminal Procedure Code, provides 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." Clause (7) provides that "every Court shall be deemed subordinate only to the Court to which appeals from the former Court ordinarily lie." Chapter III of the Civil Courts Act, which is headed as dealing with ordinary jurisdiction, contains section 21, of which clause (2) says that, "save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge." The saving is in respect of any provision to the contrary in any other

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Act, and is not material in this case, as there is no suggestion that there is any such special enactment applicable to it. Clause (4) of section 21 provides that the High Court may under certain circumstances allow appeals lying to the District Judge to be preferred to the Court of a particular Subordinate Judge. That also is not material, as there is no suggestion that there is any such special order applicable to the present case. No appeal lay to the Subordinate Judge, and he was, therefore, not the authority which could grant or revoke a sanction refused or granted by the Munsif. It is true that under section 24, clause (a) of the Civil Procedure Code, the District Judge can transfer any suit, appeal or proceeding pending before him to any subordinate Court competent to try it, but the Subordinate Judge was not competent to try this appeal, as he was not the authority to which the appeal lay. The order of the Subordinate Judge was, therefore, incompetent.

As regards the second question, there is some conflict of authority. The Allahabad High Court has held that under section 195, clause (6), there can be only one proceeding by way of appeal from an order giving or refusing a sanction, and as soon as the Appellate Court makes an order either way, there is no further appeal: see *Emperor v. Serhmal* (1), *Kanhai Lal v. Chhadammi Lal* (2). The Madras High Court has decided that an appeal lies to the High Court not only in cases where the first Court refuses sanction and sanction is granted by the Court to which that Court is immediately subordinate, but also in cases where the first Court grants sanction and the sanction is revoked by the Court to which that Court is immediately subordinate: see *Muthuswami Mudali v.*

(1) (1908) All. W. N. 102.

(2) (1908) I. L. R. 31 All. 48.

Veeni Chetti (1). The learned Judges differ from the Calcutta ruling in *Hamiuddi Mondol v. Damodar Ghose* (2) and agree with two subsequent Calcutta rulings, *Habibur Ra aman v. Munshi Khodabur* (3), *Girija Sankar Ray v. Binode Sheikh* (4). The same point was raised in the case of *Ram Proshad Malla v. Raghubar Malla* (5), but the learned Judges, whilst expressing an inclination in favour of the Madras view, supported as it was by some of the Calcutta cases, preferred to interfere under section 622 of the old Civil Procedure Code. It is not necessary, however, to pursue this question further, as our view on the first question is sufficient to dispose of this Rule.

The Rule is accordingly made absolute. We make no order as to costs.

N. R. CHATTERJEA J. I agree with my learned colleague in making the Rule absolute.

Under section 21, sub-section (2) of the Bengal, North-Western Provinces and Assam Civil Courts Act, an appeal from a decree or order of a Munsif ordinarily lies to the District Judge, and not to the Subordinate Judge. There is no suggestion in this case that there is any special order as provided for in sub-section (4) of that section, under which appeals could have been preferred to the particular Subordinate Judge who passed the order on appeal in the present case. Under section 22 (1) a District Judge no doubt may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs. When an appeal transferred under section 22 (1) is withdrawn by the District Judge, he may either dispose

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(1) (1907) I. L. R. 30 Mad. 382.

(3) (1906) 11 C. W. N. 195.

(2) (1906) 10 C. W. N. 1026.

(4) (1906) 5 C. L. J. 222.

(5) (1909) I. L. R. 37 Calc. 13 ; 13 C. W. N. 1038.

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of it himself or transfer it to a Court under his administrative control—competent to dispose of it. The question of competency to dispose of an appeal does not arise when an appeal is transferred in the first instance to a Subordinate Judge under section 22 (1), and it seems, therefore, that a Subordinate Judge is competent to dispose of any appeal pending before the District Judge and transferred by him to the former.

But under section 195, sub-section (6) of the Criminal Procedure Code, the power of revoking or granting any sanction given or refused is given to the authority to which the authority giving or refusing it is subordinate, and sub-section (7) provides that *for the purposes of this section* every Court shall be deemed to be subordinate *only* to the Court to which appeals from the former Court ordinarily lie. There is no doubt that the District Judge is the only Court to which appeals from an order of a Munsif ordinarily lie. For the purposes of section 195 of the Criminal Procedure Code, therefore, a Munsif is not subordinate to a Subordinate Judge. A Subordinate Judge can dispose of any appeal transferred to him by the District Judge under section 22 (1) of the Civil Courts Act, but the power of revoking or granting sanction is given only to the Court to which an appeal lies. The power, therefore, cannot be exercised by a Subordinate Judge to whom an appeal does not lie, but who can only dispose of an appeal transferred to him by the District Judge.

In this view of the matter, the other questions raised in this Rule need not be considered.

O. M.

Rule absolute.