

**CRIMINAL REVISION.***Before Holmwood and Chapman JJ.*1913*Feb. 20.*

DURGA PROSAD PATHAK

*v.*

LACHMAN BANIA.\*

*Sanction for Prosecution—Second sanction—Criminal Procedure Code (Act V of 1898), s. 195—Subsequent order, only a repetition of the first order—Revival of proceedings—Penal Code (Act XLV of 1860), ss. 193, 471—Limitation.*

Where there are two orders purporting to grant sanction to the same prosecution, the later order will ordinarily be taken to be merely a repetition of the first, and the period of limitation will begin to run from the date of the first order.

*Darbari Mandar v. Jagoo Lal* (1) referred to.

THE facts of the case are briefly these. One Durga Prosad Pathak instituted a suit in the Calcutta Court of Small Causes against Lachman Bania for recovery of Rs. 350 on a bond. The learned Judge, holding that the alleged signature of the defendant on the bond was a forgery, dismissed the suit on the 30th of April, 1912. Thereupon, Lachman Bania applied for and obtained from the learned Judge an order sanctioning the prosecution of the plaintiff under s. 471 of the Penal Code. On obtaining the order he, on the 29th of July, 1912, applied for process before the Chief Presidency Magistrate, who called for witnesses and the record of the case in the Court of the Calcutta Court of Small Causes, and fixed the hearing of the application for the 6th of August 1912.

\* Criminal Revision No. 1 of 1913.

(1) (1895) I. L. R. 22 Calc. 573.

In the meantime Durga Pathak moved the High Court and obtained a stay order of the proceedings against him in the Police Court pending the hearing of the Rule, which was subsequently discharged.

Then Durga Pathak made a fresh application to set aside the sanction granted by the Calcutta Court of Small Causes, but the Divisional Bench, on the 27th of July, 1912, rejected his application.

On the 29th of July, Lachman Bania obtained a summons against Durga Pathak under ss. 193 and 471 of the Indian Penal Code. The summons was made returnable on the 30th of August, 1912.

While this case was pending before the Chief Presidency Magistrate, Lachman Bania applied to the learned Judge of the Calcutta Court of Small Causes to pass a formal order of sanction in the manner prescribed by law, and the learned Judge granted his application on the 6th of September, 1912.

On the 11th of September, 1912, Lachman Bania applied to the Chief Presidency Magistrate that he might be permitted to withdraw the case then pending against Durga Pathak, with liberty to apply for process afresh, and the Chief Presidency Magistrate, on the 16th of September, 1912, passed the following order:—"Summons withdrawn. Application dismissed."

On the 16th of September, Lachman Bania applied for fresh process against Durga Pathak on the basis of the order of the learned Judge of the Small Cause Court, passed on the 6th of September, 1912, and obtained summons under ss. 471 and 193 of the Indian Penal Code.

Against this order of the learned Chief Presidency Magistrate Durga Pathak moved the High Court, and obtained this Rule.

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*Mr. Asghur and Babu Tarakeswar Pal Chowdhry* for the petitioner, submitted that it was not competent to the Chief Presidency Magistrate to issue process on the basis of the order of sanction granted by the learned Judge of the Court of Small Causes on the 6th of September. It was contended that that was a second sanction, and as such it was inoperative, proceedings under the first sanction having terminated on the 16th of September in the dismissal of the application of Lachman Bania; and that so long as the dismissal of the 16th of September was not set aside by this Court, the Magistrate was not empowered under the law to proceed under the second sanction.

*Darbari Mandar v. Jagoo Lal* (1) relied upon.

*Mr. P. L. Roy, Mr. Khuda Bukhsh and Babu Chandra Sekhar Banerjee*, for the opposite party, were not called upon.

HOLMWOOD AND CHAPMAN JJ. This Rule was issued upon four grounds: *first*, that the Small Cause Court had no power to grant a subsequent sanction, one having already been granted on the 27th July, 1912, which sanction had not been cancelled by a higher Court; *secondly*, that the Small Cause Court had no jurisdiction in granting a second sanction without giving any notice to the petitioner; *thirdly*, that the Small Cause Court Judge acted without jurisdiction in granting a second sanction, inasmuch as a prosecution was started and was pending in the Police Court upon the first sanction; and, *fourthly*, that the second sanction was illegal, inasmuch as it extends the period of limitation, which is to be calculated from the original date of sanction.

As regards the first three grounds, it is only necessary to point out that there was no second sanction,

and all the rulings which have been cited to us by the learned counsel, of which we need only refer to that in the case of *Darbari Mandar v. Jagoo Lal* (1), clearly lay down that there can be no second sanction, and that any subsequent order purporting to be a second sanction must be taken to be nothing more than a repetition of the first, and that the period of limitation will run from the date of the first sanction.

The fourth ground is that by this alleged second sanction the period of limitation is extended; but as we have just pointed out it is not extended in any way. But the question does not arise in this case, because, as a matter of fact, the revival of proceedings in the Criminal Court took place within two months of the original sanction. As regards the question of the propriety of the revival of the Criminal Court, that was considered by the learned Judges who issued the Rule. It formed the fifth ground of the petition, and the learned Judges, after considering, rejected it and did not issue any Rule. That question, therefore, can not be raised again.

We are bound to hold that the Presidency Magistrate was within his jurisdiction in reviving these proceedings, as it appears clear on the record that he was, and the Rule must be discharged simply on the ground that there was no second sanction, and that the proceedings were taken within the period of limitation.

S. K. B.

*Rule discharged.*

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