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SARAT CHANDRA GHOSE v. PRATAP CHANDRA GHOSE.

Attorney for the defendant, Pratap Chandra Ghose: *G. C. Dey.*

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Attorney for the defendants, Jayatsen Ghose and Ranatsen Ghose: *M. M. Chatterji (junior).*

Attorney for the guardian *ad litem* of the defendant, Kanchan Kumari Dassee: *B. B. Newgie.*

H. R. P.

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Carnduff.

POCHAI METEH

v.

EMPEROR.*

1912

Aug. 10.

Sanction for prosecution—Appeal, right of—Grant or refusal of sanction by a lower authority—Application to superior authority whether a matter of appeal or revision—Limitation of the period of such application—Criminal Procedure Code (Act V of 1898), s. 195 (6)—Limitation Act (IX of 1908), Sch. I, Art. 154.

Sub-section (6) of s. 195 of the Criminal Procedure Code does not confer a right of appeal to the superior authority, but only invests the latter with powers by way of revision.

Hardeo Singh v. *Hanuman Dat Narain* (1), *Muthuswami Mudali* v. *Veeni Chetti* (2) discussed and distinguished.

Hari Mandal v. *Keshab Chandra Manna* (3), *Mehdi Hasan* v. *Tota Ram* (4) approved. *Ram Charan Talukdar* v. *Taripulla* (5) referred to.

Where the question arises with reference to Article 154 of the Limitation Act (IX of 1908), it has merely to be stated that there is a doubt as to

* Criminal Revision, No. 983 of 1912, against the order of M. Yusuf, Sessions Judge of Burdwan, dated June 4, 1912.

(1) (1903) I. L. R. 26 All. 244.
(2) (1907) I. L. R. 30 Mad. 382.
(3) (1912) 16 C. W. N. 903.
(4) (1892) I. L. R. 15 All. 61.
(5) (1912) I. L. R. 39 Calc. 774.

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whether an appeal lies or not in such a case in order to give the applicant the benefit of the longer period. The High Court accordingly directed the Sessions Judge to hear an application to revoke a sanction made to him after the expiry of a month from its date.

In re North. Ex parte Hasluck (1), *Gopal Lal Sahai* v. *Bahorni* (2) followed.

THE facts were as follows. On 29th May 1911, the petitioner lodged an information at the thana that one Kali Churn Ta had been caught in the act of stealing some mangoes. Before the termination of the police investigation which followed in respect of the alleged offence, the petitioner presented an application to Moulvie A. Samad, Deputy Magistrate of Burdwan, impugning the conduct of the police, and praying for a summons and judicial inqury. After the receipt of the police report to the effect that the information was false, the Magistrate directed the issue of a notice on the petitioner to show cause why he should not be prosecuted under s. 211 of the Penal Code; whereupon the latter again prayed for a judicial determination of his complaint of theft, and the Magistrate appeared to have fixed a date for its hearing. On the 13th June 1911, Kali Churn Ta filed a cross complaint against the petitioner for wrongful confinement and assault, which the Court directed to be put up pending the theft case. The Magistrate, after examining several witnesses in the petitioner's case, dismissed the complaint on the 25th July, and accorded sanction to prosecute him, and then proceeded with the counter case.

On application by the petitioner to the District Magistrate, he directed a further inquiry into the complaint, and set aside the sanction by his order dated the 4th August 1911. Thereupon, Kali Charan moved the High Court and obtained a Rule on the District Magistrate to show cause why his order should not be

(1) [1895] 2 Q. B. 264, 270. (2) (1911) 15 C. L. J. 120.

quashed, which was made absolute, on the 10th January 1912, on the ground of want of jurisdiction. After the receipt of the High Court record, the case was put up on the 12th February before the Joint Magistrate in charge, who directed the petitioner to appear and answer the complaint against him, under s. 342 of the Penal Code, brought by Kali Charan. On the 24th February, the petitioner applied to the Sessions Judge of Burdwan for revocation of the sanction, and for confirmation of the order of the District Magistrate as to a further inquiry. The Sessions Judge, however, without entering into the merits of this application, rejected it, on the 4th June, on the ground that it was in the nature of an appeal, and therefore barred under Art. 154 of the Limitation Act.

Babu Manmatha Nath Mukherjee, for the petitioner.

Babu D. N. Bagchi and *Babu Raj Kumar Roy*, for the opposite party.

HOLMWOOD J. The question which arises upon this Rule is whether the provisions of Article 154 of the Limitation Act are applicable to proceedings under section 195 of the Code of Criminal Procedure or, in other words, whether that section grants a right of appeal as laid down in section 404 of the Code.

Now section 404 of the Code states very precisely that no appeal shall lie from any judgment or order of the Criminal Court, except as provided for by this Code or by any other law for the time being in force.

In order, therefore, to give a right of appeal, section 195 must contain, in our opinion, within itself a distinct declaration that there is a right of appeal, and we can find no such declaration either expressly or by implication. It is true that a Full Bench of the Allahabad Court in the case of *Hardeo Singh* v.

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Hanuman (1) held, in answer to an academic question, that the expression in section 439 giving certain powers to a Court of appeal raised an inference that the Legislature in referring to a "Court of appeal" in connection with section 195 sub-section (*6*), regarded the application to be made under that sub-section as an application made to a Court of appeal, and, therefore, in the nature of an appeal. But the Full Bench went on to say: "It does not appear, however, to us at all material by what name the application is called in pursuance of which the Appellate Court sets aside an order for sanction, and gives sanction under the provisions of section 195."

The Allahabad Court had not before it this question of limitation, and this question is the only question upon which the designation of the proceeding under section 195 could be of any importance whatever, and it is, therefore, solely in connection with this point of limitation that we are concerned with it.

There is another ruling, to which we have been referred, in *Muthuswami Mudali* v. *Veeni Chetti*(2) in Madras. This is also a ruling of a Full Bench of that Court in which the question was decided whether on revocation of a sanction by a lower Appellate Court the party aggrieved could proceed to the High Court in the same way as it could if there had been a refusal of sanction: and the Full Bench held that the revocation of sanction was precisely the same thing as a refusal of sanction, and that the same right of proceeding to the authorized Appellate Court, as laid down in section 195, was given to the party aggrieved. In coming to this decision the Full Bench has somewhat loosely made use of the expression "right of appeal," and this has been used throughout the judgment; but it does not touch the point before us, and for

(1) (1903) I. L. R. 26 All. 244. (2) (1907) I. L. R. 30 Mad. 382.

the purposes of that decision it did not in the least matter whether the Full Bench made use of the words "right of appeal" or right of petitioning for sanction or revocation of sanction.

The only case reported which deals with the matter directly is the case of *Hari Mandal* v. *Keshab Chandra Manna*(1) to which one member of the present Bench was a party. It is there laid down that, inasmuch as an application under sub-section (*6*) of section 195 of the Criminal Procedure Code is not an appeal, within the meaning of sub-section (*2*) of section 22 of the Bengal Civil Courts Act, the Court to which an application to revoke a sanction or grant a sanction is made cannot transfer the case to a Subordinate Judge. This case perhaps does not cover the whole ground, but it certainly s authority for the view that an application under section 195 is not an appeal within the meaning of section 404. It had already been decided in a sense by another Bench of this Court in *Ram Charan Talukdar* v. *Taripulla* (2), and I may mention that the Criminal Bench of this Court, over which I have had the honour to preside for the greater part of the last two years, has decided, on more than one occasion, that an application under section 195 is not an appeal, although that was not decided with regard to this question of limitation. But as this is a question of limitation, it has merely to be stated that there is a doubt as to whether this is an appeal or not to give the applicant the benefit of the longer period. That is a rule which has been laid down by Lord Esher in the case of *In re North. Ex parte Hasluck* (3), and it is a rule which has always been followed in this Court and is cited in *Gopal Lal Sahai* v. *Bahorni* (4).

(1) (1912) 16 C. W. N. 903.
(2) (1912) I. L. R. 39 Calc. 774.
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Speaking for myself, I think that the considerations set out by Knox J. in the case of *Mehdi Hasan* v. *Tota Ram* (1) are of extreme force and lay down the correct view of the law, but it is only necessary to hold, although we do not so hold, that there is any doubt on the subject, to give the applicant the benefit of the law of limitation. While, therefore, we have no doubt in our own minds that there is no appeal under section 195 and that it is a matter of revision, we have no hesitation in making the Rule absolute, and directing that the learned Judge in the Court below should deal with the matter as if there was no limitation at the time of hearing the application.

The stay of the charge under section 342 is no longer necessary, and may be discharged, but stay of the trial under section 211 will, of course, abide the result of these proceedings. The Rule is made absolute, and the case remanded to the lower Court.

CARNDUFF J. I agree. Sub-section (*6*) of section 195 of the Code of Criminal Procedure, 1898, provides that any sanction given or refused under that section may be revoked or granted by the higher authority indicated. I think that this language is such as to confer, not a right of appeal on the person aggrieved by the grant or refusal to the higher authority, but a discretionary power of interference on the higher authority. What is given is not a right of appeal from below, but power to intervene, if thought advisable, from above.

E. H. M. *Rule absolute.*

(1) (1892) I. L. R. 15 All. 61.