

Queen-empress Vs. Shankar

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Court : Mumbai

Decided On : Dec-13-1888

Reported in : (1889)ILR13Bom384

Judge : Birdwood and; Jardine, J.

Appellant : Queen-empress

Respondent : Shankar

Judgement :

Birdwood, J.

1. The granting of a sanction under Clause (c) of Section 195 of the Code of Criminal Procedure to a private person does not, in our opinion, bar a Civil Court from proceeding under Section 478; nor can the dismissal by a Magistrate of a complaint made by the private person be held to be a bar, till set aside, to a proceeding under that section. A private person may never act on the sanction, or his sanction may fail, as in the present case. Is the Court, then, unable to take such further action as the interests of justice may demand? It seems to us that, even though a Court grants a sanction under Section 195, it is still at liberty to proceed under Section 478, especially under such circumstances as existed in the present case, where there was ground to suspect that the accused had induced the private complainant to withdraw from the prosecution. The Sessions Judge should therefore, proceed with the trial.

Jardine, J.

2. The two questions stated by the learned Judge relate to competency as a matter of law and not of discretion and ought, in my opinion, to be answered in the affirmative. On principle there appears to be no reason why the mere fact that a Court had, under Section 195 of the Code of Criminal Procedure, given a private person sanction to prosecute, should debar the Court itself from instituting proceedings under Section 478. The sanction under Section 195 leaves the private person free to exercise his own unfettered discretion as to whether he will proceed or not--In the matter of the petition of Girdhari Mondul I.L.R. Cal. 435. But when a Court proceeds under Section 478, the responsibility for the prosecution rests upon the Judge entirely; such a prosecution being a very different thing from a prosecution instituted on the complaint of a private party, and merely sanctioned by the Court - *The Queen v. Baijoo Lall* I.L.R. Cal. 450. The object of all prosecutions is the punishment of offences committed; but if the view taken by the Sessions Judge is correct this aim would, in many cases, be frustrated, as where the private person who has obtained the sanction compounds the offence, or wilfully delays so as to let the limitation of six months expire--*Empress v. Gauri Shankar* I.L.R. All. 450 . So great an interference with the ordinary right of the Crown to prosecute offences would require express statute. But I find no such rule in the Code of Criminal Procedure or elsewhere; and as to the authorities, those I have cited above appear to me adverse to the Sessions Judge's opinion. Similar reasoning applies to the effect of the dismissal of the private person's complaint under Section 203 of the Criminal Procedure Code. Section 403 declares that a dismissal is not an acquittal such as bars a fresh trial for the same offence; it cannot be pleaded by the accused as a valid objection to his trial on the commitment to the Sessions; it thus resembles a Bill preferred to a Grand Jury, who throw it out. This cannot be pleaded afterwards as an acquittal-- 2 H Pl. Cr. 246 . See also *Empress on the prosecution of Jogendronath Bose v. Thompson* I.L.R. Cal. 523. The case before us is not a summons case, and I do not wish my remarks to be taken as having any reference to the construction of Section 247 of the Criminal Procedure Code. The Sessions Judge leaves somewhat in doubt the question of fact, whether the complaint had been dismissed. Assuming now that it has not been dismissed, the sanction must have expired from lapse of time. In

Empress v. Nipcha I.L.R. Cal. 523 it was held that where the person to whom the sanction was given did not avail himself of it, the Magistrate of the district was competent, under Section 142 of the Criminal Procedure Code of 1872, to take up the case without complaint. The object of Chapter 85 of the Criminal Procedure Code is to enable the Courts to take prompt and effectual means to prosecute offences affecting the administration of justice. The cases already cited show that this aim of the Legislature would in many cases be delayed and frustrated if it were held, that when a Court grants the sanction to a private person, it transfers its own authority. Instead, therefore, of quashing the commitment to the sessions, we must direct the Sessions Judge to proceed with the trial.

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