

Bhajan Lal Vs. Chidda Lal

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Court : Allahabad

Decided On : Jun-23-1917

Reported in : (1917)ILR39All657

Judge : George Knox, A.C.J., ;Piggott and ;Walsh, JJ.

Appellant : Bhajan Lal

Respondent : Chidda Lal

Judgement :

George Knox, A.C.J.

1. The question which arises for decision in this application is, to what court, if any, can an application in respect of a sanction given or refused by a Court of Small Causes under Section 195 of the Code of Criminal Procedure be made for its revocation or granting, as the case may be?
2. In the present case the Judge of the Court of Small Causes at Agra granted sanction for the prosecution of Chidda Lal for offences falling under Sections 193 and 465 and 468 of the Indian Penal Code.
3. Chidda Lal went to the court of the District Judge of Agra and applied for the revocation of this sanction. The District Judge in view of the ruling in *Ajudhia Prasad v. Ram Lal* (1911) I.L.R. 34 All. 497 held, that no appeal lay to his court from the order of the Judge of the Small Cause Court.

4. The applicant has come here in civil revision and contends that the Small Cause Court of Agra is subordinate to the District Court of Agra within the meaning of Section 195, Clause (c). He took other objections, but the only one argued before us was that already mentioned and contained in plea No. 2,

5. The case has been most carefully and fully argued for and against the application. The facts of the case set out in *Ajudhia Prasad v. Ram Lal* (1911) I.L.R. 34 All. 497 show that the proceedings with which that court was concerned were proceedings in execution, and that they were in no way connected with Courts of Small Causes. The case is therefore no authority so far as the present case is concerned. But the learned Judge relies upon two other cases-*Ambica Tewari v. King-Emperor* (1916) 1 Patna L.J. 206 and *Sukhdeo Singh v. The District Magistrate of Muzaffarpur* (1916) 2 Patna L.J. 1. The former of these is undoubtedly in point. A Small Cause Court Judge was applied to for sanction to prosecute a plaintiff and a witness of the plaintiff for certain offences which come within Section 195 of the Code of Criminal Procedure. The application was rejected. An appeal was taken to the District Judge under Section 195, Sub-section (7), Clause (c), to revoke the sanction. The learned Chief Justice held that the District Judge had no jurisdiction to entertain either an appeal or application under Section 195 of the Code of Criminal Procedure. He went on to say that, apart from this, it appeared to him that 'this is certainly not a case in which an order should be made for the prosecution of the applicants. The prosecution cannot succeed except on proof that the hand-note is a forgery. The hand-note is not signed at all, but bears a thumb-impression said to have been made by Badri. The District Judge has referred to the evidence of experts on the subject, They disagreed with each other and one of them said that the, thumb-impression was so blurred that he could not express an opinion at all. There seems to be no doubt that the prosecution, if allowed, will end in an acquittal,'

6. In considering the question, I am of opinion that we need not go beyond the words of the section itself. They may have been somewhat inartistically drafted, but careful consideration of them leads to this conclusion that the intention of the Legislature in enacting Section 195 was, inter alia, to give authority to a certain, court for the giving or refusing sanction when sanction had been given or refused

under this section. Clause 7 was inserted to point out the authority to which such power was given; it was never intended to be a clause creating or dis-establishing any court. To guard against confusion which might arise round the use of the word 'subordinate' the term was limited for the purposes of this section and the interpretation was made to refer to three different classes of cases-(1) cases in which appeals lay to more than one court; (2) cases in which appeals lay to a Court of Revenue and a Civil Court: (3) cases in which no appeals lie. Broadly speaking, no appeal lies from the decision of Courts of Small Causes.

7. An attempt was made to argue that because in a few exceptional cases, orders of fines and the like passed by a Small Cause Court, appeals are granted to the court of District Judge therefore a Small Cause Court is not a court which decides cases where no appeals lie. But this argument loses sight of the word "ordinarily." With due respect to the learned Judges who decided the case of *Ambica Tewari v. King-Emperor* (1916) 1 Patna L.J. 206 this point has been overlooked. We are not construing Clause (c) to sub-section 7 of Section 195, as if it were an independent sub-section. We look to it only in order to find out what is the court to which an application should be made. The court is created by Clause 6. The principal court of original jurisdiction in the case of the Small Cause Court of Agra is the District Court of Agra. This appears apparent from Section 15 of the General Clauses Act of 1897. In confirmation of this may be cited Clause (4) of Section 2 of the Code of Civil Procedure of 1908 where the words 'principal court of original jurisdiction' are used and can evidently have no other meaning.

8. This application will have to be allowed and the case sent back to the District Judge's Court of Agra with directions to place it upon his list of pending applications and dispose of it according to law. The attention of the learned District Judge is further called to the fact that an application of this kind is not an appeal and that the court which deals with it is not the Sessions Judge of Agra but the District Judge of Agra.

Piggott, J.

9. The question we are asked to determine is whether an application does or does not lie to the court of the District Judge, under Section 195 (6) of the Code of Criminal Procedure, for the revocation of an order of sanction, passed under the earlier provisions of the aforesaid section by the Judge of a Court of Small Causes exercising jurisdiction in the same district.

10. The sub-section in question 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.' The Judge of a Court of Small Causes is an 'authority' 'subordinate,' within the meaning of the word above-quoted, both to the High Court and to the District Court,' vide Section 3 of the Code of Civil Procedure, Act No. V of 1908. It is unnecessary to elaborate this point further by referring to such provisions as those of Sections 24, 25 and 28 of the Provincial Small Cause Courts Act, No. IX of 1887. The 'District Court,' for the purposes with which we are now concerned, is the court of the District Judge within the territorial limits of whose jurisdiction the Court of Small Cause in question has been constituted. This is clear from the definitions in Section 2, Clause (4), of the Code of Civil Procedure and Section 3, Clause (15), of the General Clauses Act, No. X of 1897. According to this sub-section, therefore, a person against whom an order giving sanction has been passed by the Judge of a Court of Small Causes would be entitled to apply for the revocation of the same, either to the District Judge, or to the High Court. It remains to be seen how far this right is modified or restricted by the concluding portion of Sub-section (7) of Section 195 but I desire to lay stress on the point, brought out by Mr. Justice Walsh in the course of the argument before us, that the right to apply to the District Judge is one conferred by Sub-section (6), and claimable under that sub-section, unless it can clearly be shown to have been taken away by the words which follow.

11. It may be worth while to set down the terms of Section 195, Sub-section (7), of the Code of Criminal Procedure at length:

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, that is to say:

(a) Where such appeals lie to more than one court the appellate court of inferior jurisdiction shall be the court to which such court shall be deemed to be subordinate;

(b) where such appeals lie to a Civil and also to a Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue Court, according to the nature of the case in connection with which the offence is alleged to have been committed;

(c) where no appeal lies, such court shall be deemed to be subordinate to the principal court of original jurisdiction within the local limits of whose jurisdiction such first mentioned court is situate.

12. These words appeared for the first time in the Code of 1808; they replaced a somewhat anomalous provision of the former Code of Criminal Procedure, by which a Court of Small Causes was made subordinate, in this matter of granting or refusing sanction, to the Court of Session. The apparent intention of the Legislature was to substitute the control of the District Judge, as the principal court of original jurisdiction in respect of 'all suits of a civil nature,' for that of the Sessions Judge. I am prepared to say with confidence that they were so understood and applied for a number of years by this Court and by all courts subordinate thereto. In his commentary on the Code of Criminal Procedure Mr. G. P. Boys refers to the provisions of Clause (7) (c) as governing the procedure in respect of sanctions granted or refused by Courts of Small Causes. He quotes no specific authority for this proposition, but his opinion as to the actual practice of the courts is entitled to much weight, and it entirely coincides with my own. In *Sundar Lal v. King-Emperor* (1909) 6 A.L.J. 796 a learned Judge of the Court held that the District Judge had jurisdiction under Section 195 (6) of the Code of Criminal Procedure in respect of a sanction granted or refused by a Village Munsif. The line of reasoning followed in this case would apply equally to a Court of Small Causes. The circumstances under which the principle came to be called in question deserve to be considered. In the year 1909 a case came before this Court in which a sanction had been granted by a Collector in connection with a matter which came before him in the exercise of his appellate jurisdiction, so that

no further appeal lay from his decision. Application was made under Section 195 (6) of the Criminal Procedure Code to the District Judge, who revoked the sanction. The matter was brought before this Court in revision, with the result to be found in the reported case of Wazir Muhammad v. Hub Lal (1909) I.L.R. 31 All. 313. It is to be observed that, so far from any question being raised in that case as to the jurisdiction of the District Judge in the matter of sanctions granted or refused by a Court of Small Causes, it was conceded on both sides that the provisions of Section 195 (7) (c) of the Criminal Procedure Code affirmed that jurisdiction. What was debated was whether the clause in question could apply, not merely to a sanction granted or refused by a court from whose decisions no appeal would "ordinarily lie," but also to questions of sanction arising in a court 'ordinarily' subject to the control of an appellate court, but where the particular proceeding in connection with which the question of sanction arose was one in which the order passed would be unappealable. The decision in Wazir Muhammad v. Hub Lal (1909) I.L.R. 31 All. 313 was in favour of the right of the District Judge to interfere with the sanction granted by the Collector; but when a similar question next arose, some two or three years later, the soundness of this decision was called in question. The result is to be found in the case of Ajudhia Prasad v. Ram Lal (1911) I.L.R. 34 All. 197. The referring order of Tudball, J., in that case shows that he did not question the general principle on which the decision in Wazir Muhammad v. Hub Lal (1909) I.L.R. 31 All. 313 had proceeded, but was of opinion that the actual decision was wrong, because the learned Judge of this Court had overlooked the fact that the words used in Section 195 (7) (c), Criminal Procedure Code, are 'the principal court of original jurisdiction' and not 'the principal court of original civil jurisdiction.' The Bench of two Judges before whom the reference came for disposal included the learned Judge who had decided the case of Wazir Muhammad v. Hub Lal (1909) I.L.R. 31 All. 313. They virtually affirmed the principle for which Tudball, J., was contending, and which is thus stated in his referring order: 'To find out which is the principal court of original jurisdiction within the meaning of this clause, one must look to the nature of the case. If it is a criminal case, in which no appeal lies, then the principal court of original jurisdiction will be the principal court of original criminal jurisdiction. If it is a suit in a Revenue Court, where no appeal lies, the principal court of original jurisdiction

within the meaning of this clause, will be the principal court of original revenue jurisdiction.' Obviously, nothing required to be decided in this case, or was in fact decided about the jurisdiction of the District Judge in respect of sanctions granted or refused by a Court of Small Causes. It would seem, however, that in the course of argument a point was raised as to the effect of Section 195, sub-section. (7), Clause (c), aforesaid, which was the very reverse of what had been conceded by both sides, and taken for granted by the Court, in *Wazir Muhammad v. Hub Lal* (1909) I.L.R. 31 All. 313. It was now suggested that this clause has no reference whatever to the case of courts from whose decisions no appeal would 'ordinarily lie' to any other court; but applies only to questions of sanction arising in the course of what I may call 'unappealable proceedings' before courts 'ordinarily' subject to appeal. This argument found favour with Chamier, J., and his opinion on this point, though scarcely more than an obiter dictum so far as the matter then before the court is concerned, is entitled to all the authority naturally attaching to the opinions of that very distinguished Judge. Our attention has been drawn to the fact that, in the higher sphere of usefulness to which he has since been promoted, Sir Edward Chamier, as Chief Justice of the Patna High Court, has re-affirmed the same view in *Ambica Tewari v. King-Emperor* (1906) 1 Patna L.J. 206, where he had the concurrence of another learned Judge of the same Court. In a later case, that of *Sukhdeo Singh v. District Magistrate of Muzaffarpur* (1916) 2 Patna L.J. 1, the same Court has not only re-affirmed this position, but has carried the principle a step further, holding that a Court of Small Causes is itself 'the principal court of original jurisdiction,' referred to in Section 195 (7) (c), Criminal Procedure Code, in respect of suits cognizable exclusively by such court. With all respect for the learned Judge who arrived at this conclusion, I can only say that, if it be indeed a necessary corollary from the proposition of law affirmed by the learned Chief Justice of the Patna High Court, then there must be something unsound about that proposition itself. The same reasoning by which it is sought to show that a Court of Small Causes may be in some matters 'the principal court of original jurisdiction within the local limits of whose jurisdiction' it is situated would justify, due regard being had to the provisions of Section 15 of the Code of Civil Procedure, the same proposition being affirmed about courts of Munsifs, if not about all other grades of Civil Courts. By this process of reasoning we might get quite a number of courts

within the same 'local limits,' each claiming to be 'the principal court of original' civil 'jurisdiction' for particular purposes.

13. While I am on the question of authorities, I may as well note that the Calcutta High Court is certainly against the view taken at Patna, vide *In re Ram Prasad Malta* (1907) I.L.R. 87 Calc. 13 and *Budhu Lal v. Chattu Gope* (1915) I.L.R. 43 Calc. 597. In the latter of these cases the Presidency Small Cause Court was held to be subordinate to the High Court, by a process of reasoning which would clearly apply to the subordination of a Provincial Court of Small Causes to the District Judge, which subordination is indeed taken for granted in the earlier of the two rulings.

14. I now return from this review of the authorities to the words of the statute itself. I do not understand that Sir Edward Chamier really differs from the opinion I have expressed as to the intention of the Legislature in passing Section 195 (7) of Act No. V of 1898. He thinks that the sub-section is badly drafted and fails to give effect to the presumed intention of the Legislature. The drafting of the section is certainly open to criticism. The words 'that is to say' apparently purport to introduce some equivalent to, or elucidation of, the expression 'the court to which appeals from the former court ordinarily lie,' but they obviously do nothing of the sort. The sub-section itself requires to be read with a definite emphasis on the word 'only,' and it is to this word that the expression 'that is to say' must be referred back. The effect of Sub-section (6), standing alone would be to confer a general power of control in the matter of granting or refusing sanction upon all courts to which the court granting or refusing sanction was 'subordinate.' The object of Sub-section (7) is, first, to limit this power to one single court of superior jurisdiction in each particular case; secondly, to define what the single court in question shall be. If the subordination imposed by Sub-section (6) was intended to be taken away in respect of all orders granting or refusing sanction passed by any court from whose decisions no appeal would 'ordinarily lie,' this would surely have been done in plain language. The view of the Patna High Court, as I understand it, is that this is in fact done by the use of word 'only.' Obviously, there is no court to which appeals from a Court of Small Causes 'ordinarily lie,' and if, 'for the purposes of this section,' a Court of Small Causes could 'only' be deemed to be

subordinate to such nonexistent court of appeal from its decisions, then there is no court left to which it can be 'deemed to be subordinate.' To complete the argument, it is contended that the provisions of Clause (7) (c) cannot be read so as to affect the above result, because they form part of the same sub-section and are governed by the words 'that is to say.' Apparently the difficulty would not have been felt if only Clause (c) could be read as a separate sub-section, and so removed from the fatal influence of the expression 'that is to say.' I do not deny the ingenuity of the argument, it is worthy of the keen and subtle intelligence of the learned Judge who is responsible for it. To my mind the real answer is that the courts must read Sub-section (7), along with Sub-section (6) and must endeavour to place a reasonable construction on all the words of the Statute. Let any one omit Clauses (a) and (b) of Sub-section (7), and try to read straight on as if Clause (c) immediately followed upon the words 'that is to say' :the inappropriateness of these words to the provisions of Clause (c) at once becomes apparent. It must be remembered also that the 'such appeals' spoken of in Clauses (a) and (b) are the appeals which 'ordinarily lie.' In my opinion, therefore, the use of the word 'only' in Sub-section (7) does not operate so as to take away altogether the subordination imposed upon any court by Sub-section (6) but merely to limit that subordination to one single court, whereas it might otherwise have extended to two or more. The words 'that is to say' must be interpreted loosely as equivalent to 'I will make my meaning clear by the following explanations.' If these words are so interpreted, no real difficulty arises as to the position of Clause (e) as part of Sub-section (7). The effect is that the subordination of a Court of Small Causes to the local High Court, which would otherwise be imposed by Sub-section (6), is 'for the purposes of this section' done away with; but the subordination of the Court of Small Causes to the District Judge, as the principal court of 'original jurisdiction,' in suits of a Civil nature, 'within the local limits of whose jurisdiction' the said Court of Small Causes 'is situate,' remains and is affirmed.

15. I 'would therefore allow this application, set aside the order of the learned District Judge, and return the file to his court, with directions to hear the application against the order of sanction passed by the Court of Small Causes and to dispose of it according to law.

Walsh, J.

16. I have read the two judgments of the Court and entirely agree.

17. The application is allowed, the order of the District Judge of Agra is set aside and the case is sent back to the District Judge with directions to place it upon his list of pending applications and dispose of it according to law.

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