

Emperor Vs. Jagrup Shukul

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Court : Allahabad

Decided On : Aug-07-1917

Reported in : (1918)ILR40All21

Judge : Pramada Charan Banerji, J.

Appellant : Emperor

Respondent : Jagrup Shukul

Judgement :

Pramada Charan Banerji, J.

1. This application for revision was made under the following circumstances. A suit was filed in the court of the Munsif of Jaunpur which was dismissed on the 19th of November, 1914. An application was made to the Munsif of Jaunpur by the Government Pleader for sanction to prosecute the applicant under various sections of the Indian Penal Code, these being some of the sections mentioned in Section 195 of the Code of Criminal Procedure. The application purported to be one under Section 195, paragraph (1), Clause (b), of the Code of Criminal Procedure. It was not an application under Section 476, as is erroneously stated in the order of the learned Munsif. The matter was taken up by the successor in office of the Munsif who had dismissed the suit. He took some additional evidence and came to the conclusion that there was not sufficient reason for sanctioning the prosecution of the present applicant, and he accordingly rejected the application.

Thereupon a petition was presented in the court of the Sessions and Subordinate Judge of Jaunpur, purporting to be an application under Section 195, paragraph (6), of the Code of Criminal Procedure. Mention was made in the application of the fact that the Munsif had refused sanction and the prayer was that 'sanction might be granted for the prosecution of the present applicant. I may mention that the officer called Sessions and Subordinate Judge of Jaunpur is Subordinate Judge of Jaunpur as regards civil matters and Additional Sessions Judge as regards criminal cases. He took some further evidence and came to the conclusion that there was a prima facie case against the present applicant and accordingly granted the sanction asked for. It is this order of which revision is sought, and the main arguments upon which the application for revision is founded are that the court (sic) fellow had no jurisdiction to grant the sanction asked for, and that on the merits its order was not a proper one. It is, clear from the provisions of Section 195 of the Code of Criminal Procedure that an original application for sanction may be made under Clause (b) of Sub-section (1) of that section either to the court in which the proceedings in connection with which the alleged offence is said to have been committed were held or to some other court to which that court is subordinate. Under paragraph (6) any sanction given or refused may be revoked or granted by any authority to which the authority giving or refusing sanction is subordinate. If, therefore, the Munsif of Jaunpur was subordinate to the Subordinate Judge of Jaunpur, within the meaning of Section 195 of the Code of Criminal Procedure, an original application for sanction could be made to that officer, or that officer could be moved to grant the sanction which had been refused by the Munsif. It is, therefore, immaterial whether the application made to the Sessions and Subordinate Judge of Jaunpur was an original application under Clause (b) of paragraph (1) or an application under paragraph (6) of Section 195. The real point for consideration is whether the Munsif of Jaunpur is to be deemed to be subordinate to the Subordinate Judge. Paragraph (7) of the section provides that for the purposes of the section every court shall be deemed to be subordinate to the court to which appeals from the former court ordinarily lie. As I have stated above, the position of the Subordinate Judge of Jaunpur is somewhat different from the position of ordinary Subordinate Judges; he is Additional Sessions Judge and he is Subordinate Judge for civil cases. Under orders issued by the High

Court under Section 21 (4) of the Bengal, Agra, and Assam Civil Courts Act, 1887, (vide notification no. 1708/15-114, dated the 25th April, 1913) appeals from the court of the Munsif of Jaunpur are preferred to his court and 'ordinarily lie' to his court. Therefore the Subordinate Judge must be deemed to be the authority to which the Munsif of Jaunpur is subordinate within the meaning of Section 195, and he was competent to entertain the application made to him, whether that application be regarded as one under paragraph (6) or as an original application under Clause (b) of paragraph (1). As to the merits of the case, the Subordinate Judge was, I think, competent to take and consider additional evidence for the purpose of satisfying himself whether sanction should or should not be granted. This is the view which was taken by a learned Judge of this Court in *Rahmatullah v. The Emperor* (1). The learned Judge of the court below has not, it is true, set forth at length the reasons for the conclusion at which he arrived, but having regard to the additional evidence, which was produced before the Munsif and also before the Subordinate Judge, it cannot be said that there was no prima facie case against the applicant. I am therefore of opinion that the present application is without force and I accordingly reject it. The order staying proceedings is discharged and it is directed that the record be sent back to the court below.