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Court : Allahabad

Decided On : May-21-1920

Reported in : AIR1920All177(2); 58Ind.Cas.250

Judge : George Knox, J.

Appellant : Musammat Choti

Respondent : Khecheru

Judgement :

1. Khecheru presented an application to the Court of Mr. Nathu Ram, a Magistrate of the First Class of Meerut, asking for sanction to prosecute Mummmat Choti for an offence under Section 211, Indian Penal Code, on the 28th October 1919. The exact section is not given in this application but it appears in the cognate application filed on the same day. On the 21st November 1915 the Court of the First Class Magistrate of Meerut accorded sanction as applied for. It was brought to his notice that the sanction, so it was contended, should have been applied for from another Magistrate. In connection with this in his order granting sanction he writes: it was just yesterday, 30th of November, I was relieved of the charge of the Sub Division of Sardhana and placed in charge of the Sub-Division of Hapur." The learned Magistrate referred Counsel to the ruling of Dalip Singh v. Nawal 38 Ind. Cas. 335 : 18 Cr. L.J. 303 : 16 A.L.J 161 : 39 A. 297, which he appears to have found in what he describes as the Criminal Law Journal, Vol. 18; page 303. Choti then went to the District Judge of Meerut and applied under provisions of Section

195 of the Criminal Procedure Code that the order dated the 21st of November 1919 might be set aside because the sanction had not been properly granted. The petition is beaded as an appeal. This is a mistake. I am aware that a learned Judge of this Court in Bhadesar Tewari v. Kamta Prasad 18 Ind. Cas. 274 : 11 A.L.J. 11 : 14 Cr. L.J. 47 : 35 A. 90 has laid down that proceedings of this kind should be registered as appeals. But with all due respect it must be remembered that an appeal can only lie from an order when provided by the Criminal Procedure Code or by any other law for the time being in force. No suggestion has been made that any other law' has provided an appeal in this class of cases. We are thrown back upon the Code. The Chapter in the Criminal Procedure Code which deals with appeals is Chapter 31 and nowhere within the bounds of that Chapter has an appeal been provided from an order passed by a Criminal Court under Section 195.

2. It is true that in Section 195, Clause (6), a sanction given may be revoked by any authority to which the authority giving it is subordinate. Clause 7 lays down that for the purpose of this section every Court should be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. The word 'only' contained in this clause is an important limitation and cannot be overlooked. It would be obviously incorrect to say that Section 195, Clauses 6 or 7, create an appeal from the Criminal Court giving sanction I have dealt with this matter fully in Saligram v. Ramji Lal 3 A.L.J. 394 at p. 403 : A.W.N. (1906) 103 : 3 Cr. L.J. 400 : 1 M.L.T. 219 : 28 A. 554. The other learned Judges who were members of the Full Bench in which this decision was given did not dissent and may be taken to have agreed with the view taken by me, and I have had no reason since to be doubtful that the view which I then took was other than the right view. The Calcutta High Court in Ramadhin Bania v. Sewbalak Singh 6 Ind. Cas. 473 : 37 C. 714 : 11 Cr. L.J. 357 : 14 C.W.N. 806. and again in Hari Mandal v. Keshab Chandra Manna 14 Ind. Cas. 760 : 40 C. 37 : 13 Cr. L.J. 296, 16 C.W.N. 903 : 16 C.L.J. 515 has held that an application under Section 195, Clause (6), to the superior Court is not an appeal. In this Court a learned Judge held that the right conferred by the sixth Clause of Section 195 is not exactly a right of appeal but is strongly analogous to such right; Ram. Raja Bat v. Sheo Dayal 3 A. 563 : A.W.N. (1881) 37 : 2 Ind. Dec. (N.S.) 343. The learned Judge of Meerut had ground for

dealing with the application as though it were an application in revision but passed upon it only the order 'rejected.' Now in more than one case this Court has pointed out that an order of this kind is not sufficient and should not have been made, and the learned Sessions Judge should bear this in mind and not content himself with writing merely the word 'rejected.' The Magistrate, however, was thoroughly cognizant of the facts of the case and has gone very fully into them in his judgment.

3. Musammat Choti has come here in revision. The grounds set out are (1) that the learned Magistrate who gave sanction had ceased to be the Sub-Divisional Magistrate of Sardhana on the date Le granted sanction and the matter should have been dealt with by his successor, (2) that the learned Magistrate should not have granted sanction under the circumstances of this case, (3) the judgment of the learned Sessions Judge is not in accordance with law. All these grounds are in my opinion entitled to little or no weight. As regards the third I have pointed out above. As regards toe second ground I hold, after careful consideration, that this Court has no authority to revoke or to grant sanction in this case. The Court of the First Class Magistrate of Meerut is not in the words of Section 195 subordinate to this Court Appeals from Courts of the First Class Magistrates of Meerut do not ordinarily he to this Court. I was referred to the words used in Section 439 of the Code of Criminal Procedure. It was argued that the words any of the powers conferred on a Court of Appeal by Section 195 clearly lead to the opposites conclusion. I here may be case s in which this Court would have such authority. As for instance if sanction had been given by the Sessions Judge of Meerut and this Court held that the sanction was not for any reason expedient or regular, it could, acting under Section 439 in exercise of the power granted by Section 195, revoke that sanction. But it does not follow that because it can exercise this power under one set of circumstances., it can exercise that power when such exercise would be in defiance of the limitation prescribed by Clause (7) of Section 195.

4. The question raised in ground No. 1 remains to be considered. The plea is that the Magistrate, having been relieved of the charge of Sardhana, could not pass the order he did. In this plea a 'Sub-Divisional Magistrate' is spoken of as a Court Section 5 of the Criminal Procedure Code shows that under that Code there are

only 5 Classes of Criminal Courts in British India. The ' Sub Divisional Magistrate 'is not entered as being one of those five classes of Courts. The Court in this case was the Court of a Magistrate of the First Class of Meerut, and by Section 12 the local area o Sirdhana was de6ned as the local area within which that First Class Magistrate might exercise all or any of the powers with which he was invest-ed under the Code. But except as other-wise provided by such definition, the jurisdiction and power of the First Class Magistrate extended throughout the District of Meerut. See Section 12, Clause (2). The mere fast that Mr. Nathn Ram was relieved of the charge of the local area or Tehsil of Sardhana did not take away from him the jurisdiction and power of granting sanction under Section 195.

5. I had occasion to deal with this point in Mithani v Emperor 14 Ind. Cas. 203 : 9 A.L.J. 448 : 13 Cr. L.J 203 and in that case I held that the contention that all case s pending on the file of a Magistrate who. had been relieved of the charge of a subdivision did not necessarily pass automatically into the hands of his successor, merely because the former had been transferred to another local area in the same district. I then pointed out that such procedure was obviously inconvenient. That Section 12 of the Code of Criminal Procedure did not lay down any such automatic rule. To hold otherwise would be to overlook the provisions of Section 40 of the Criminal Procedure Code. The present case was not a ease of an officer transferred from the District of Meerut to another distrust, Furthermore to grant sanction was inherent in him as a Court of a Magistrate of the First Class. It was not a power with which he had to be specially invested and by both Section 12 and Section 40 his powers continued although he was relieved of the Sub-Division of Sardhana and placed in charge of the Sub-Division of Hapur. The language of his order shows that the application for sanction was instituted in his Court long before he was relieved of the charge of Sardhana, it was pending and had been pending for sometime, I hold that he was under the circumstances fully empowered to pass the order he did. I was referred to the case of Empress of India v. Anand Sarup 3 A. 563 : A.W.N. (1881) 37 : 2 Ind. Dec. (N.S.) 343, but in that case the Magistrate was under transfer from the original district in which he was to another and a different district. The case of Shaik Fakrudin, In re 9 B. 40 at p. 41 : 5 Ind. Dec. (N.S.) 27 is also not in point and can be at once distinguished and is no authority in the present case .

6. Over and above all this, granting sanction is not the trial or punishment of the offence charged To make snob a proceeding drag through several Courts is a mistake and in my opinion, the Procedure Code has very properly confined this matter to two Courts .and two Courts only-- the Court applied to and that Court to which it is immediately subordinate.

7. I fully agree with what was laid down in Baran Barai v. Mata Prasad 25 Ind. Cas. 528 : 12 A.L.J. 821 : 36 A. 469 : 15 Cr. L.J. 616. It is true that that was a care in which a Civil Court had granted sanction, but the underlying principle is the same and I am quite prepared to extend it to case s in which sanction was granted by a Criminal Court.

8. On every ground I dismiss the application. As the six months during which the sanction can remain in force expires to-day, under Section 195,Clause (6), I extend the time up to the 30th of June 1920.

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