

Behari Vs. Kure

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Court : Allahabad

Decided On : Feb-07-1917

Reported in : AIR1917All318(2); 38Ind.Cas.446

Judge : Walsh, J.

Appellant : Behari

Respondent : Kure

Judgement :

Walsh, J.

1. The point of law which in this revision has been argued seems to me to be based upon a misconception. The contention is that the sanction for prosecution lapses because the person who applied for it has died. There appears to be some ground for saying that some Courts have taken the view that a sanction is a grant to a particular individual. It has even been described as devolving upon heirs. I think it is nothing of the kind. I agree with Mr. Hamilton's contention that if you look at the section, all that it enacts is a bar to prosecution in certain cases until a sanction under the Section has been granted. Whether a person who applies for the removal of the bar is the proper person to apply is for the Court to decide to whom the application is made. If the Court is satisfied that sanction ought to be given, the bar is removed, and the sanction is in no way a grant to any individual. I agree entirely with the following observations from the Sessions Judge whose

judgment was upheld in *Thathayya, In re* 12 M. 47 : 2 Wok 181 : 4 Ind. Dec. (N.S.) 382: 'The sanction given by a Court under Section 195 is not a personal privilege granted to a petitioner, but a decision that the case is one suitable for magisterial investigation.' In this case sanction was granted, and, therefore, there is no bar to proceedings under Section 193 of the Indian Penal Code. I allowed Mr. Howard, although he had not raised the point, to argue the question of the propriety of the original grant of the sanction. It would appear that there is a great deal to be said for the accused person; but the failure of this application will not affect his position on the merits, and if he is right, he will succeed in his defence. It is impossible for this Court to come to a conclusion upon the materials now before it that the prosecution cannot possibly succeed, apart from, the fact that the question was really never raised by this application. I dismiss the application in revision.

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