The Public Prosecutor Vs. Raver Unithiri, Marvather Vittil and Ambumarar

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Court : Chennai

Decided On : Apr-16-1914

Reported in : AIR1914Mad50; 24Ind.Cas.145; (1914)26MLJ511

Appellant : The Public Prosecutor

Respondent : Raver Unithiri, Marvather Vittil and Ambumarar

Judgement :

Wallis, J.

1. These are appeals from acquittal by the Sessions Judge setting aside the conviction of the accused on the ground the complaint was not filed within six months from the grant of sanction in the first instance as required by Section 195 of the Criminal Procedure Code. It is argued by the Public Prosecutor that the terms of the section as interpreted by the decisions of two Full Benches of this Court, Muthuswami Mudali v. Veeni Chetti I.L.R. (1907) Mad. 382 Babu alias Adimulatn Pillai v. Babu alias Krishinayan : (1912)22MLJ419 were sufficiently complied with as the complaint was filed within six months of the order of the High Court confirming the sanction. It has been held in these decisions that the confirmation or revocation of a sanction by the appellate authority pursuant to the sub-section is a fresh giving. or refusing of sanction within the meaning of the sub-section so as to give the Court to which the Appellate Court is subordinate, jurisdiction to entertain an appeal from such order. This point was expressly raised

in the recent case in (1902) 2 Weir 202 and was decided by 5 Judges in the affirmative. If this be correct-and it is our duty to bow to it whatever our own views may have been, it seems difficult to give the word 'given ' in the further portion of the section which provides that no sanction sh ill remain in force for more than six months from the date on which it was given a different meaning, and to hold that it refers to the grant of sanction in 'the first instance. We are therefore constrained to hold that the complaint was filed in time.

2. It is unnecessary to consider whether the Judgment of the Appellate Court should not also be set aside as contravening the express provisions of Section 537 (6). The respondents' vakil has not taken the objection that the High Court in this case was not the proper court to entertain the appeal from the Additional District Magistrate's order ; and we do not think we are at liberty to go behind the Order of the High Court confirming the sanction.

3. In the result the Judgment of the Appellate Court acquitting the accused is set aside and the Sessions Judge is directed to take the cases again on his file and dispose of them according to law.

Spencer, J.

4. I concur,

Sadasiva Iyer, J.

5. I take it that in these cases, the High Court confirmed the sanction granted by the Additional District Magistrate acting under Section 195 Criminal Procedure Code as the authority to which the District Magistrate was subordinate and not under Section 439 Criminal Procedure Code. They could not have acted in revision under Section 439 Criminal Procedure Code, as the Full Bench decision of Audimulam Pillai v. Krishnayan (1912) 212 M.L.J.419 (F.B.) :c 1912. M.W.N. 499 says that interference with an order granting or refusing sanction is not in the exercise of Appellate or Revisional jurisdiction.

6. It may be that the High Court in acting under Section 195 Criminal Procedure Code in this present case overlooked the fact that the application under Section 195 should have been made to the Sessions Judge as the, authority to which the District Magistrate was subordinate (see Clause 7 of Section 195) and not to the High Court, skipping the Sessions Court. However, the High Courts's decision is final as between the parties.

7. It has been finally decided by the above Full Bench decision that the word 'given' in the first portion of Clause (b) of Section 195 includes the meaning 'confirmed by a Superior Court.' I do not think that in construing the same word 'given' in another part of the same Clause (b) which relates to the period of six months for which the sanction 'given' is to be in force, it is advisable to place a different construction.

8. The Sessions Judge's order acquitting the respondents on the ground that the sanction 'given' had expired must be set aside as there was a sanction 'given' in this case by the High Court within six months before the charge though the sanction given by the Magistrate expired more than six months before the charge.

9. The Sessions Judge's order being thus set aside, the next question is whether to deal with the merits of the case ourselves or direct the Sessions Judge to rehear the appeals before him. Whether such a direction is competent to an appellate Court acting under Section 423 Clause (a) or not, it is competent to to the High Court acting under Section 439 read with Clauses (a), (c) and (d) of Section 423.

10. I think that the decision in Chinnakaruppa Goundan v. Muthu Goundan (1902) 2 Weir 202 which seems to be against the express provision of Section 537 Clause (b) requires reconsiderati on but the question has not been raised in the appeal grounds in these cases and it is unnecessary to rely on Section 537(b) in support of our order reversing the Appellate Court's order.