**In Re: Nagu Servai**

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**SooperKanoon Citation** : sooperkanoon.com/818627

**Court** : Chennai

**Decided On :** Mar-23-1934

**Reported in** : 150Ind.Cas.773

**Judge** : Bardswell, J.

**Appellant** : In Re: Nagu Servai

**Judgement** :

**Bardswell, J.**

1. The Joint Magistrate of Devakottah made a complaint against two persons of an offence punishable under Section 188, Indian Penal Code for having disobeyed orders passed in proceedings under Section 145, Criminal Procedure Code. The present petitioner, who is one of the two persons complained against, applied to the District Magistrate of Ramnad to have the complaint withdrawn but the District Magistrate, without giving notice to the petitioner dismissed his petition summarily. It is contended by Mr. Jayarama Ayyar on behalf of the petitioner that the application to the District Magistrate for the withdrawal of the complaint was an appeal and that under the proviso to Clause (1) of Section 421, Criminal Procedure Code, it should not have been summarily dismissed without giving the petitioner or his Pleader an opportunity of being heard.

2. A number of decisions of this Court have been quoted with reference to Clause 6 of Section 195 of the Criminal Procedure Code, 1898. These decisions,

however, do not apply and are not of great importance as the present Code has very much varied the law under Section 195 and the connected sections from what it was formerly. Under Section 195 of the old Code, no Court could take cognizance of certain offences committed against a public servant except with the previous sanction or on the complaint of the public servant concerned or of some public servant to whom he was subordinate. This was provided for by Sub-section (1)(a). By Sub-Section (1)(b) and (c), no Court could take cognizance of certain other offences except with the previous sanction or on the complaint of a Court, and by Sub-section (6) it was provided that any sanction given or refused under Section 195 might be revoked or granted by any authority to which the authority giving or refusing it was subordinate. It was held in Palaniappa Chetty v. Annamalai Chetty 27 M 223 that under Sub-section (6) a party had the right to put in a petition by way of appeal aad in Muthuswzmi Mudali v. Veeni Chetty 30 M 382 a Full Bench case, the right of appeal in such a case was also declared, though in another Full Bench case, Bapu v. Bapu : (1912)22MLJ419 it was held that the powers under Section 195, sub-Section (6) were not part of the appellate and revisional jurisdiction conferred by Chaps. XXXI and XXXII, of the Criminal Procedure Code, but were by way of being a special power conferred by the sub-section. Under the present Code sanction to prosecute can no longer be given under Section 195, but there can only be a complaint either by public servant with reference to Section 195 (1)(a), or by a Court in the case of offences referred to in Section 195 (1)(b) and (c), the complaint having to be in writing in every case. In the case of complaints given under Section 195 (1)(b) and (c) it is now specifically provided by Section 476 (b) that there can be an appeal. Under the old Code in Section 195(6), which no longer exists the word 'appeal' was not at all used. Now a right which in definite language is a right of appeal is given in the case of a complaint made by a Court and the appeal has to be to the Court to which the Court that makes the complaint is subordinate within the meaning of Section 195(3), that is, the Court to which appeals ordinarily lie. It has been held by a Pull Bench of this Court in Janardana Row v. Prattipaty Lakshmi 147 Ind. Cas. 351 : 65 M.L.J. 873 : 38 L.W. 940 : 6 R.M. 330 : 35 Cri. L.J. 392 : A.I.R. 1934 Mad. 52 : (1933) M.W.N. 1476 : (1934) Cri. Cas. 52 : 57 M 177 that in dealing with appeals under Section 476-B the power of dismissal is derived from Chap. XXXI of the

Criminal Procedure Code. In that decision Section 423 was referred to, but it can equally be taken that there is a right of summary dismissal derived from Section 421. Mr. Jayarama Ayyar has argued with reference to the old decisions as to Section 195(6) that even an application to a superior authority for the withdrawal of a complaint made in accordance with Section 195(1)(a) is an appeal and that to it also must be applied the provisions of Sections 421 and 423 in Chap. XXXI. As I have said, however, the position is now very different from what it used to be. Under Section 195(6) of the old Code the superior authority might either grant a sanction or might refuse it, but now that subsection no longer exists, and instead of it we have Sub-section (5) which only allows the withdrawal of a complaint made by a public servant by another public servant to whom he is subordinate and does not allow a complaint to be made by a superior authority when a lower authority has declined to make one. Not only then is the word 'appeal' not used in Sub-section (5) as it is used in Section 476-B but also the powers given to a superior public servant have been very much restricted. I have been referred to two authorities on this point. One of these is a decision of the Patna High Court in Kantir Misser v. Emperor 117 Ind. Cas. 37 : 117 Ind. Cas. 37 : 30 Cr. L.J. 710 in which it was held that the withdrawal of a complaint under Section 195 (5) was an administrative act and one which could not be interfered with by a judicial tribunal. In that particular case, however, the complaint had been made by a Police Officer, and his complaint could hardly be regarded as a judicial act. In the case now under notice the sanction was given for disobeying an order passed by a Court under Section 145 and it has been held in Arunachalam Piliai v. Ponnuswami Piliai : (1918)35MLJ454 in the case of a sanction to prosecute for disobeying an order passed under Section 144, Criminal Procedure Code, that as the order disobeyed was that of a Court, the sanction to prosecute for disobedience of it must proceed from a Court, and was of the nature of a judicial act. Similarly in the case under notice I must take it that the filing of the complaint by the Joint Magistrate was a judicial act and that any application to the District Magistrate to have the complaint withdrawn was asking the District Magistrate to exercise his judicial discretion. The view taken by the High Court of Rangoon in P.J. Money v. Emperor 111 Ind. Cas. 672 : 6 R 529 : 29 Cri. L.J. 912 : A.I.B. 1928 Rang. 296 is that a petition for withdrawal of a complaint made under Section 195(1)(a) is not by way of appeal

but is one by way of revision. With this view I would with all respect agree. I take it then that the application by the petitioner to the District Magistrate was an application in revision. The dismissal of it was to the prejudice of the petitioner, one of the persons complained against under Section 439(2), such an order should not have been passed to his prejudice without his. being heard either personally or by Pleader. The order of the District Magistrate summarily dismissing the petition of the petitioner for withdrawal without giving notice was therefore improper. It is set aside and the District Magistrate will restore the petition to file and dispose of it after giving notice of it to the petitioner.

3. A question has been raised as to whether the petition for withdrawal should have been made to the Sessions Judge or to the District Magistrate. An appeal was presented to the Sessions Judge of Ramnad against the order of the Joint Magistrate that a complaint should be filed. The Sessions Judge dismissed the appeal holding that no appeal lay. In the light of what I have stated above I am of opinion that the order of the Sessions Judge was correct and that the proper procedure was to petition to the District Magistrate to make use of his powers in revision.

4. Criminal Revision Case No. 245 of 1934 against the decision of the Sessions Judge is, therefore, dismissed.