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Court : Kolkata

Decided On : Aug-10-1921

Reported in : AIR1922Cal412,65Ind.Cas.570

Judge : Teunon and ;Suhrawardy, JJ.

Appellant : Dulloo Singh and ors.

Respondent : The Deputy Inspector General of Police, C.i.D. Bengal

Judgement :

1. This Rule is directed against an order by which the Judge of the Small Cause Court of Sealdah has granted to a responsible officer of Government sanction for the prosecution of the five petitioners on charges under Sections 204, 193, 471, and cognate sections, of the Indian Penal Code.

2. The suit out of which the application arose was one brought by the first petitioner against one Lakhia Chamarin and her minor son, Biswa Nath, as the heirs and representative of Gajan Chamar and his wife, Ukia, to recover a sum of money said to be due on a hand note. In this suit Dukharan, the father of Biswanath represented his minor son, and the suit eventually terminated in a compromise by which the plaintiff gave up all claims against the defendants on the execution by Dukharan of a promissory-note for the sum of Rs. 200 in favour of

the plaintiff. On the order-sheet the final order reads 'decreed on compromise,' but this is obviously a mistake, as, in view of the statements made in the petition, there could be no decree against the defendants and the suit was in fact dismissed.

3. The grounds on which the Rule was issued are three, namely, (1) that the suit having been compromised the application for sanction is not maintainable, (2) that the sanction is not in proper form and (3) that the examination of witnesses on commission in the course of enquiry which resulted in the grant of sanction is not warranted by law.

4. In our opinion none of these objections can be sustained.

5. On the first point it is sufficient to refer to the case reported in Emperor v. Molla Fuzla Karim 33 C. 193 : 3 Cr. L.J. 365, wherein it has been held that the existence of a decree not set aside is no bar to a prosecution.

6. The order granting the sanction embodies by reference the application made and in the several paragraphs of the said application all the essential particulars are to be found. Thus, as to form, there has been a substantial compliance with the requirements of the law.

7. The woman, Lakhia, and certain other witnesses reside in the State of Benares and were examined on commission. For the purposes of an enquiry made by a Civil Court under the provisions of Section 195 of the Criminal Procedure Code, their examination on commission was, in our judgment, permissible and sufficient.

8. We accordingly discharge this Rule.