

CRIMINAL REVISION.

Before Mr. Justice Crowe and Mr. Justice Aston.

IN THE MATTER OF GOVERDHANDAS MEGHJI.*

1902.

November 27.

Small Cause Court—Registrar of Small Cause Court—Sanction to prosecute granted by Registrar—Revocation of sanction—Chief Judge can revoke it as a public officer—Jurisdiction of Small Cause Court to revoke the sanction—Presidency Small Cause Courts Act (XV of 1882), section 35—Criminal Procedure Code (V of 1898), section 195.

The Registrar of the Court of Small Causes has authority, under section 195, clause (1) (a), of the Criminal Procedure Code (Act V of 1898), to grant a sanction for the prosecution of an offence under section 182 of the Indian Penal Code (Act XLV of 1860) as the public officer concerned.

It is competent to the Chief Judge of the Court of Small Causes, to whom the Registrar is by law subordinate, acting as a public servant, to revoke the sanction granted by the Registrar. But it cannot be revoked by the Small Cause Court composed of one or more Judges.

APPLICATION under section 435 of the Criminal Procedure Code (Act V of 1898) to set aside an order passed by a Full Court consisting of the Chief Judge and the Second Judge of the Presidency Small Cause Court at Bombay.

On the 12th July, 1902, the applicant, Goverdhandas Meghji, applied, under section 195 of the Criminal Procedure Code (Act V of 1898), to the Registrar of the Presidency Small Cause Court at Bombay for sanction to prosecute one Pragji Ramdas for the offence of giving false information to a public servant with intent to injure another person under section 182 of the Penal Code (Act XLV of 1860). The Registrar granted the sanction.

Pragji Ramdas applied on the 25th July, 1902, to the Chief Judge of the Presidency Small Cause Court at Bombay to revoke the sanction to prosecute granted by the Registrar. The Chief Judge caused a notice to be issued calling on Goverdhandas Meghji to show cause why this sanction should not be revoked.

On the 4th August, 1902, the notice came on before the Chief Judge for hearing, when Goverdhandas Meghji took the preliminary point that the matter was one for the Full Court and not for a single Judge to dispose of, relying upon sections 35 and 36 of the Presidency Small Cause Courts Act (XV of 1882).

* Criminal Application for Revision No. 141 of 1902.

The notice was accordingly argued before a Full Court consisting of the Chief Judge and the Second Judge on the 5th August, 1902. The Full Court revoked the order granting the sanction.

Goverdhandas Meghji thereupon applied to the High Court under its Criminal Revisional Jurisdiction to set aside the order of revocation.

P. N. Godinho for the applicant:—The Full Court had no power to revoke the sanction granted by the Registrar. It has no criminal revisional power. Its power is regulated by section 77 of the Presidency Small Cause Courts Act (XV of 1882). The Registrar of the Presidency Small Cause Court has judicial powers under sections 35 and 36 of the Presidency Small Cause Courts Act (XV of 1882). He has power to grant sanction under section 195 (1) (a) of the Criminal Procedure Code (Act V of 1898). The granting of sanction is a judicial act (*Queen-Empress v. Zorawar* ⁽¹⁾), and an application to revoke a sanction is a criminal proceeding in revision: *Queen-Empress v. Ganesh* ⁽²⁾; *Mahdi Husan v. Tota Ram* ⁽³⁾; *Zahur Ahmad v. Muhammad Husan*. ⁽⁴⁾

An application for a sanction must in the first instance be made to the Registrar: *In re Raja of Venkatajiri* ⁽⁵⁾; *Empress of India v. Sabzukh*. ⁽⁶⁾ That sanction having been given by him in his judicial capacity, neither the Chief Judge nor the Full Court of the Small Cause Court could interfere. It is only the High Court that has power to set aside the sanction under section 195 (7) (c) of the Criminal Procedure Code (Act V of 1898).

H. C. Coyaji for the opponent:—The sanction was rightly revoked. The Chief Judge has power to revoke a sanction granted by the Registrar. Section 13 of the Presidency Small Cause Courts Act (XV of 1882) shows that the Registrar is not a Judge but only the "Chief Ministerial Officer of the Court," and it enacts that "the Registrar . . . shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge may from time to time, by rule,

(1) (1890) All. W. Notes, 1890, p. 163.

(2) (1897) 23 Bom. 50.

(3) (1892) 15 All. 61.

(4) (1893) All. W. Notes, 1893, p. 147.

(5) (871) 6 Mad. H. C. R. 92.

(6) (1879) 2 All. 533.

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direct." The Chief Judge has also the power to suspend the Registrar, and even to remove him, subject to the orders of the Local Government. Section 14 empowers the Local Government to invest the Registrar with the powers of a Judge under this Act "for the trial of suits in which the amount or value of the subject-matter does not exceed 20 rupees." When he is invested with the powers of a Judge under section 14 he exercises those powers only in suits specified in that section. For all other purposes he is merely "the Chief Ministerial Officer of the Court." For the purpose of the present case, however, section 14 need not be considered at all, as the Local Government has not invested the present incumbent with the powers referred to therein. Reliance is placed on section 35, and it is contended that in execution proceedings the Registrar sits as a Judge. The section no doubt confers on him the power to "make any order in respect thereof which a Judge of the Court might make under this Act," but it does not for that reason constitute him a Judge: *Queen-Empress v. Tulja*.⁽¹⁾ That was a case of a Registrar appointed under the Indian Registration Act (III of 1877), "as if he were a Court." The Registrar's proceedings under section 35 are of the "non-judicial or quasi-judicial" nature referred to in section 33.

Assuming that the Registrar had power to grant a sanction, the case falls under section 195 (1) (c) of the Criminal Procedure Code. The Chief Judge is the authority to whom the Registrar is subordinate, and therefore under section 195 (6) of the Code it is competent to the Chief Judge to revoke the sanction.

On the merits, we submit that the sanction was granted improperly, without notice to us and without any inquiry, and should be revoked. In *In re Bal Gangadhar Tilak* ⁽²⁾ their Lordships held: "It is true that notice is not legally necessary but it is desirable (and is generally so recognized) that notice should be given before sanction is granted."

PER CURIAM:—This is an application to set aside an order purporting to be passed by a Full Court of the Small Causes Court, consisting of the Chief Judge and the Second Judge,

(1) (1887) 12 Bom. 36 at p. 42.

(2) (1902) 4 Bom. L. R. 750 at p. 753.

revoking a sanction granted by the Registrar of the Court of Small Causes to prosecute one Pragji Ramdas for an offence under section 182 of the Indian Penal Code.

It is contended that the Registrar in granting the sanction acted in a judicial capacity, being authorized under section 35 of the Small Cause Courts Act to make any order in respect of the committal and discharge of judgment-debtors which a Judge of the Court might make under the Act, and that the order granting sanction was passed while acting as a Judge, that under the provisions of section 195, sub-section (6), of the Criminal Procedure Code a sanction given under that section can only be revoked by any authority to which the authority giving it is subordinate, that under sub-section (7) of the same section a Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, and that under clause (c) of the same sub-section, where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate. It was further urged that the Full Court had no appellate jurisdiction over the acts of the Registrar purporting to be done under section 35 of the Small Cause Courts Act and that it had no revisional criminal jurisdiction, that the only Court which could have revoked the sanction was the High Court under section 195, sub-section 7, clause (c), of the Criminal Procedure Code.

Assuming that the order was made by the Registrar in his judicial capacity, it seems to our minds quite clear that the Small Cause Court, whether presided over by a single Judge or by two Judges, had no jurisdiction to revoke the sanction, having regard to the provisions of section 195 of the Criminal Procedure Code. But it is unnecessary to discuss that question any further, because we are of opinion that the order granting the sanction must be held to have been passed by the Registrar as a public servant. Section 35, as well as certain other sections of the Small Cause Courts Act, refers to what a Judge of the Court may do, but there is no mention throughout the Act of any powers being conferred on a single Judge of the

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Court. With the exception of certain duties which are specifically imposed on the Chief Judge or his *locum tenens*, there appears to be no provision regarding the powers which may be exercised by a single Judge, and no rule has been pointed out to us under section 9 of the Act providing for the exercise by one or more of the Judges of any of the powers conferred on the Small Cause Court by the Act. The Act all along speaks of the powers of the Small Cause Court. We hold that the Registrar had authority under section 195, sub-section 1, clause (a), to grant a sanction for the prosecution of an offence under section 182, Indian Penal Code, as the public servant concerned. It was also equally competent to the Chief Judge, to whom the Registrar is by law subordinate, acting as a public servant, to revoke the sanction.

The difficulty in the case has arisen from the confusion which apparently existed in the mind of the Chief Judge as to the capacity in which he was by law empowered to act, and he was in error in treating the matter as one for decision of the Small Cause Court, as he appears throughout to have done, both in the proceedings, in his letter (No. 72 of 9th September, 1902) to the Registrar of the Court, and his subsequent statement of the case dated 19th September, 1902. We notice that in the final paragraph of that statement he observes: "The Registrar has never, during the twenty years since his office was created, granted a sanction to prosecute, and I have now issued an order to him that he should not do so again." It would be as well if the legality of such an order were reconsidered.

We are of opinion that the Small Cause Court had no power to revoke the sanction, and that the Full Court had no jurisdiction to do so, but that such power is vested in the Chief Judge to whom as a public servant the Registrar is subordinate. We therefore set aside the order, and return the case to the Chief Judge for passing such order as may seem to him proper in the circumstances of the case.

Order reversed.
