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JAMSETJI MANEKJI v. HARI DAYAL.

plaintiff, of the land sought to be protected by the injunction, obtained in another suit an injunction to the effect now sought. Therefore it is said the plaintiff's remedy is not by way of suit but of execution of the former decree.

The Judge of the lower appellate Court appears to rely on sections 372, 647 and 244 of the Civil Procedure Code. Mr. Mehta has felt that he could not support the decree on that ground. So he has had recourse to section 232, but at the outset he is met with the difficulty that there has been no transfer of the decree.

An injunction does not run with the land and therefore there is, in our opinion, in the circumstances of this case, no bar to the plaintiff's suit.

The order must, therefore, be reversed and the case must be remanded to be heard on the merits.

The plaintiff must get the costs of the appeal to this Court and the lower appellate Court.

Order reversed. Case remanded.

G. B. R.

CRIMINAL REVISION.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

1907. *December 9.*

In re LAKSHMIDAS LALJI. *

Criminal Procedure Code (Act V of 1898), sections 195, 476—Indian Penal Code (Act XLV of 1860), sections 193, 210 - Sanction to prosecute—Refusal by Subordinate Judge—District Judge on appeal may institute proceedings under section 476—Court—Interpretation.

An application was made to a Subordinate Judge for sanction to prosecute L for offences punishable under sections 193 and 210 of the Indian Penal Code (Act XLV of 1860). The Subordinate Judge refused to grant the sanction. On appeal, the District Judge varied the order and directed the lower Court to prosecute L for an offence under section 210 of the Indian Penal Code.

Held, that the District Judge had jurisdiction to pass an order under section 479 of the Criminal Procedure Code (Act V of 1898); that it was not compe-

* Criminal application for Revision No 269 of 1907.

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tent to him to direct the Subordinate Judge to prosecute L for an offence under section 210 of the Indian Penal Code and that he should himself have proceeded according to clause (*b*) of section 195 read with section 476 of the Criminal Procedure Code.

The word "Court" in section 476 of the Criminal Procedure Code includes within its scope the other Courts to which such Court is subordinate referred to in section 195 of the Code.

Begu Singh v. *Emperor*(1) dissented from

THIS was an application under section 435 of the Criminal Procedure Code (Act V of 1898) to revise an order passed by A. C. Wild, Acting District Judge of Ahmedabad.

The facts were as follows:—

Lakshmidas Lalji (the applicant) obtained a decree against one Chunilal Velji, by which he was to recover Rs. 366-12-0 by two instalments of Rs. 183-6-0, one instalment being payable in January 1906 and the other in January 1907.

On the 7th February 1906 Lakshmidas filed an application to execute the decree for both the instalments. At this date the second instalment had evidently become not due. It was pointed out to the Subordinate Judge, who ordered the decree-holder (Lakshmidas) to execute his decree for the first instalment only.

On the 16th November 1906 the decree-holder again applied to execute his decree for the full amount. At this date also the second instalment had not become due. Under this *darkhast* Lakshmidas obtained a warrant of attachment against Chunilal's property.

For this action Chunilal applied to the Subordinate Judge for sanction to prosecute Lakshmidas for intentionally giving false evidence in a judicial proceeding (section 193 of the Indian Penal Code) and for fraudulently obtaining an order for a sum not due or for a larger sum than was due (section 210 of the Indian Penal Code).

The Subordinate Judge refused to grant the sanction applied for.

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On appeal the District Judge came to a defferent conclusion. He found it inexpedient to grant Chunilal a sanction to prosecute his creditor Lakshmidas, but in the interest of public justice he directed the Subordinate Judge to prosecute Lakshmidas for an offence punishable under section 210 of the Indian Penal Code.

Lakshmidas applied to the High Court.

Branson (with *G. S. Rao*), for the applicant:—Section 476 of the Criminal Procedure Code, did not authorise the District Judge to pass the order he did. Under section 195 of the Code his powers are limited to revoking or granting a sanction. Apparently, the District Judge did not proceed under this section.

Treating, then, his order as one passed under section 476, it is clear that he had no jurisdiction to pass the order. The word "Court" in that section means only the Judge before whom the civil proceedings were conducted; and neither his successor in office nor the appellate Court come within its meaning. See *Begu Singh* v. *Emperor*.[1]

L. A. Shah, for the opponent:—In this case the application for sanction was made under section 195 of the Criminal Procedure Code. The Subordinate Judge refused to grant the sanction. It was, therefore, competent to the District Judge on appeal either to grant the sanction or to refuse it. But his jurisdiction is not confined to either of these alternatives. He can lodge a complaint also under section 476.

Sections 195 and 476 of the Criminal Procedure Code should be read together; and the word "Court" in section 476 must be construed to include the successor in office of the Subordinate Judge and also the Court to which the first Court is subordinate within the meaning of section 195. I submit section 476 has not been correctly construed by the Calcutta High Court in *Begu Singh* v. *Emperor*.[1]

There is no reason to suppose that the legislature while expressly providing for a complaint by the first Court as well as

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the appellate Court, wanted to restrict the meaning of the word "Court" in section 476, in which only the procedure to be followed by the Court in lodging such a complaint is laid down.

CHANDAVARKAR, J. :—This is a petition by Lakshmidas Lalji for a revision of the order passed by the District Judge of Ahmedabad, directing the Subordinate Judge of Godhra to prosecute the petitioner for an offence under section 210 of the Indian Penal Code.

The circumstances under which the order has been passed are shortly these :—

The opponent Chunilal Velji applied to the Subordinate Judge for sanction under section 195 of the Code of Criminal Procedure to prosecute the petitioner, Lakshmidas Lalji, for offences under sections 193 and 210 of the Indian Penal Code.

The Subordinate Judge having refused to grant the sanction, the opponent Chunilal Velji appealed to the District Court. That Court held a *primâ facie* case for prosecution to have been made out, but deemed it expedient, "in the interest of public justice," to direct the prosecution of the petitioner by the Subordinate Judge rather than grant a sanction to prosecute a private party.

On the authority of a Full Bench ruling of the Calcutta High Court (*Begu Singh* v. *Emperor*[1]) it is contended before us that the District Judge had no jurisdiction to pass such an order. It is argued that the order for the prosecution of the petitioner by the Subordinate Judge for an offence under section 210 of the Indian Penal Code could only be made under section 476 of the Code of Criminal Procedure, but that this latter sanction has been held by the Calcutta High Court in the case just cited to apply only where an order is passed under it by the very Judge who tried the case in the course of the trial of which the alleged offence was, in the opinion of that Judge, committed, but not where such an order is passed by the successor of that Judge who did not try the case. Accordingly it is contended that as here it was the Subordinate Judge who had tried the case in the

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course of which the petitioner is alleged to have committed the offences under sections 193 and 210 of the Indian Penal Code, and as he declined to grant any sanction, the District Judge, who did not try the case, had no jurisdiction to revove the Subordinate Judge's order and exercise or direct the Subordinate Judge to exercise the powers under section 476 of the Code of Criminal Procedure.

Caluse (*b*) of section 195 of that Code provides that no Court shall take any cognizance of any of the offences of the Indian Penal Code therein specified (of which section 210 is one), "when such offence is committed in, or in relation to, any proceeding in *any Court*, except with the previous *sanction*, or on the *complaint* of such Court, or *of some other Court to which such Court is subordinate.*" That is, if in the course of the trial of a case in a Subordinate Judge's Court, any of the offences specified in the clause is committed, it is open, not only to that Court but also to the District Court, to which that Court is subordinate, either to grant a sanction or prefer a complaint for the prosecution of the offender, although the District Court may have had nothing to do with the trial of the case itself. So far then as this clause of section 195 is concerned the Legislature has not confined the power to grant a sanction or to prefer a complaint only to the individual Judge before whom the trial of the case took place Hence the reasoning of the Full Bench of the Calcutta High Court as to the scope of section 476 of the Code cannot be held to apply to this clause.

Now, the clause prescribes two courses, one of which must be followed to initiate a prosecution for any of the offences specified in it. One of them is a *previous sanction*, the other is a *complaint*. Some of the subsequent clauses of the section show what a *sanction* is. It is permission given to a private party to initiate a prosecution by filing a complaint. But nothing is said in any of those clauses about a *complaint* which either of the Courts mentioned in clauses (*b*) and (*c*) is empowered to prefer. That is because the Code has in some of the earlier sections of the Code defined the word *complaint* and prescribed the mode in which it is to be preferred. But seeing that that mode may not

be convenient to a Court empowered to initiate a prosecution in the interests of public justice, a special procedure is provided in section 476, clause (*c*), for such Court to follow when it exercises that power. Hence clause (2) of that section provides that when a Court has exercised the power in the manner prescribed by clause 1 of section 476, the Magistrate to whom the accused person is sent by that Court "shall thereupon proceed according to law, and *as if upon complaint made and recorded under section* 200."

Section 476, clauses 1 and 2, therefore, define the form, scope and nature of *the complaint* mentioned in clauses (*b*) and (*c*) of section 195. And the two clauses of the former section must be read with the two clauses of the latter, when any question about a prosecution started *upon the complaint* of a court arises.

If they must be so read, it follows that the power under section 476 may be exercised either by the Judge, who tried the case, in the trial of which the alleged offence was committed, or by the Judge to whom he is subordinate And if having regard to the plain language of clauses (*b*) and (*c*) of section 195, the latter can exercise the power under section 476 though the trial of the case was not before him, why should the Legislature be held to have intended that a successor of the former Judge *in the same Court* shall not similarly exercise the same power?

With great respect for the learned Judges who constituted the Full Bench of the Calcutta High Court in the case above-mentioned, we are unable to concur in their decision, because we do not find in those judgments any discussion of the relation of clauses (*b*) and (*c*) of section 195 to clauses 1 and 2 of section 476. It humbly appears to us that there is a close relation between the two and that the former throws light upon the scope and meaning of the latter. Clauses (*b*) and (*c*) of section 195 empower a Court to initiate a prosecution of its own motion by means of *its own complaint*. How that *complaint* may be preferred is not stated in that section, but it is stated in section 476, clause 1, because clause (2) of this section says that the proceedings adopted by a Court under clause 1 shall be treated as being in the nature of a *complaint*.

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The Full Bench of the Calcutta High Court have proceeded in support of their view upon certain words in section 476 and other grounds which either relate to the policy of the law embodied in the section or other extraneous considerations. In their opinion, when a Judge, after he has tried a case, is succeeded by another Judge in the same Court, the latter is not "the Court" contemplated by the Legislature for the purposes of the power exercisable under section 476. In support of that view they lay stress upon the language of the section that the offence to be inquired into "must have been committed before" *the Court* or "brought under its notice in the course of a judicial proceeding." This is taken to mean *the Judge* who constituted "the Court" when trying the case. But if the "Court," taking the word in its ordinary signification, remains the same throughout, though the individual Judge constituting it and performing its function may vary from time to time, we fail to perceive, with due deference, how an offence committed before that Court or brought under its notice in the course of a judicial proceeding before it ceases to be such because the individual Judge, who tried the case or heard the proceeding, ceases to be the presiding Judge of that Court. Then it is pointed out in the judgment that there is a distinction between the powers exercisable under the provisions as to *sanction* under section 195 and those exercisable under section 476—that the latter are summary and must be exercised at or immidiately after the close of the trial of a case. As to this also, with great respect, we fail to find anything in the language of section 476 which makes it incumbent upon a Court acting under it to exercise the power within any period or at any particular time. Such a construction necessitates the importing into the section of words which are not there; and for which there is no necessary implication from the language used by the Legislature. No doubt the procedure under section 476 seems summary as distinguished from the procedure in a prosecution started upon a sanction granted to a private party, because it empowers the Court to send the accused in custody to a Magistrate for trial. But the distinction is more apparent than real. When a private party files a complaint on the strength of the sanction granted

to him by a Court under section 195, it is open to the Magistrate who receives the complaint to order at once that the accused be brought before him in custody. In such a case, as soon as there is a complaint there is an arrest of the accused. Similarly, when the same Court, instead of granting a sanction to a private individual, itself moves under section 476, that Court is empowred to do what the Magistrate alone can do in the other case. That is the only difference between the two cases, but it does not follow that the one power is more summary than the other, because in one case the Court preferring the complaint can order arrest and in the other the arrest can be made at the instance of the Magistrate moved by the private individual. Another ground of the Full Bench is that "if months after the trial" of a case before a Court, that Court may act under section 476, it is difficult to appreciate the necessity of section 195. The necessity, we venture to think, is this An offence may be committed in the course of a trial before a Judge, and no one may know anything about it. It may be discovered long after the trial has ended; the Judge or his successor may come to know of it in the course of some other trial or in some other way. No private party may think it worth his while then to apply for a sanction to prosecute; and yet in the interests of public justice it may become necessary that there should be a prosecution. In such cases section 476, as distinguished from section 195, becomes useful. To put a concrete case, a decree-holder applies for execution and in his application deliberately and fraudulently overstates the amount recoverable from the judgment-debtor. The latter being illiterate, does not know of the fraud, and the decree is executed as applied for. Six months afterwards the decree-holder *in another case* admits before the same Court consisting of the successor of the Judge of that Court who had tried the case relating to the execution proceedings that the execution was fraudulent. He has clearly committed an offence under section 210 of the Indian Penal Code. But no one, not even the judgment-debtor, applies for sanction to prosecute. If the reasoning of the Full Bench of the Calcutta High Court is correct, then in such a case, in spite of the plain admission by the decree-holder that he has

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committed an offence the Court is powerless, because it cannot proceed against him under section 476 and there is no one to move it for a sanction under section 195; and public justice must suffer. It is impossible to suppose that such a construction of section 476 of the Code of Criminal Procedure could have been intended by the Legislature. There is no doubt this distinction between section 476 and section 195 that an order under the former is not but an order under the latter, is appealable. But does it necessarily follow from that that the power under section 476 was intended by the Legislature to be exercised only by the Judge who tried the case but not by his successor? One reason for the distinction may be that when a Court is acting under section 476 it knows its responsibility and will not act unless the offence appears clearly to have been committed. There is no reason to suppose that the Court is actuated by any motive in initiating the prosecution. It may be otherwise when a private individual applies for sanction to prosecute. He may be impelled by personal considerations and the application may not be *bonâ fide*. In the former case, no right of appeal is given because it is the Court moving in the matter upon its own responsibility; in the latter the right is given to prevent any abuse of the process of a Court by private persons.

Under these circumstances we are constrained to dissent from the Full Bench ruling of the Calcutta High Court.

We must, therefore, hold in the case before us that the learned Judge of the District Court had jurisdiction to pass the order under section 476. The form of the order which he has actually passed, however, is not, strictly speaking, in conformity with that section, with which, as we have said, clauses (*a*) and (*b*) of section 195 must be read. The District Judge has directed the Subordinate Judge to prosecute the petitioner for an offence under section 210 of the Indian Penal Code instead of himself proceeding according to clause (*b*) of section 195 read with section 476. In order that the District Judge may follow that procedure we amend his order and direct that he proceed accordingly.

KNIGHT, J.—I entirely concur in the reasoning and conclusions of my learned colleague. If I may venture to offer a respectful criticism of the grounds upon which the decision in *Begu Singh* v. *Emperor* [1] proceeds, I would commence by observing that each of the three judgments delivered in that case is based upon a separate and distinct reason. In the first it is argued that sections 476 and 195 deal with different subject-matters, the one contemplating a summary proceeding by the Court of its own motion, and the other a prosecution by a private individual based upon a sanction: and it is pointed out that while there is an appeal from an order under section 195, there is none from one under section 476. No reference, however, is made to the fact that under section 195 a prosecution may be instituted, not only on the sanction of the Court, but also upon its complaint: the words *or on the complaint* being reiterated in each of the three enabling clauses of the section. It is difficult to understand how an appeal could lie from an order under this section directing a complaint to be filed. The jurisdiciton of the appellate Court is confined to those cases in which sanction has been granted or refused and this Court has explicitly ruled that no appeal lies from an order under section 195 directing the institution of a complaint: *Queen-Empress* v. *Rachappa* [2]. I can, therefore, find no valid distinction between the two sections on this ground: nor, with all deference to the high authority in favour of the contrary view, can I detect anything more summary in the action of a Court which sends a case for inquiry or trial to the nearest Magistrate under section 476 than in one which directs a complaint to be instituted under section 195, although no doubt the former course is the speedier. The main effect of section 476, in my humble opinion, is to relieve the Magistrate from the necessity of observing the formalities prescribed by sections 200 and 204: formalities obviously superfluous in such cases as these. In this connection reference may be made to the opening words of section 200.

In the second of the three judgments the *ratio decidendi* appears to be that the officer before whom the offence is committed

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alone is in a position to say whether it is or is not a case for proceeding under section 476, and that if the powers conferred by the section are to be exercised by an officer devoid of personal knowledge of the circumstances of the case, not only is the accused person deprived of a valuable safeguard, but there is no corresponding responsibility placed upon the private complainant as there would be under section 195. Here again it seems sufficient to point out that these are the precise objections, if objections they be, that could be raised to a prosecution under section 195 on the complaint of "some other Court to which such Court is subordinate," and that the law does not recognise their validity. It is a mistake, I think, to read that section as conferring a special protection upon a special class of offenders. Any person offending against the provisions of the Penal Code is liable to prosecution forthwith, be he perjurer or be he thief; but it is manifestly undesirable in the public interests that prosecutions of the particular classes dealt with in section 195 should be instituted on mere private initiative. The law has therefore provided a bar that must be removed before private complaints of such offences can be entertained: but the bar is one imposed in the interest of the public, not in that of the offender and does not hamper or delay the institution of prosecutions by the public authorities concerned.

In the third judgment the view taken is that in the intention of section 476 the desirability of a prosecution should be expressly present to the mind of the Court during the proceedings in the course of which the offence was committed or brought to notice. The suggestion is, I think, sufficiently answered by the considerations on which I have dwelt; and for the rest I do not clearly apprehend how, when the officer originally presiding over the Court has been removed by death, transfer, or other causes, it is to be determined what may or may not have been expressly present to his mind during the proceedings.

I am therefore of opinion that the word *Court* in section 476 includes within its scope the other Courts to which such Court is subordinate referred to in section 195. I concur in the order proposed by my learned colleague for the reasons which he has given.

R. R.