

## CRIMINAL REVISION.

*Before Mr. Justice Chandavarkar and Mr. Justice Knight.*

*IN RE GOPAL SIDDESHWAR DE HPANDE.\**

1908.

January 16.

*Criminal Procedure Code (Act V of 1898), section 195—Application for sanction to prosecute—Dismissal of the application for default—Appellate Court cannot grant sanction on appeal—Dismissal of application for default not permissible—Review of order not permissible under the Code.*

An application was made by the Public Prosecutor of Belgaum to the Subordinate Judge of Gokak for sanction to prosecute G for offences committed in his Court. The Public Prosecutor failed to appear in the Court on the day and at the hour fixed for the hearing of the application. The Subordinate Judge dismissed the application as for default. On an application being made to review this order, the Subordinate Judge declined to do so. On appeal however the District Judge granted the sanction under section 195 of the Criminal Procedure Code (Act V of 1898) :—

*Held*, that the District Judge had no jurisdiction to accord the sanction on appeal, under section 195 of the Criminal Procedure Code (Act V of 1898) inasmuch as there was no sanction given or refused by the Subordinate Judge. The only jurisdiction which the District Judge had under the circumstances was to revise the order passed by the Subordinate Judge dismissing the application as for default.

*Held*, further, that there was no provision in the Criminal Procedure Code (Act V of 1898) which warranted the Subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for dismissal. The Subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court.

*Held*, also, that the Subordinate Judge had no power to review his order because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it.

THIS was an application made to revise the order passed by T. Walker, District Judge of Belgaum.

The facts were that the Public Prosecutor of Belgaum applied to the Subordinate Judge at Gokak for sanction to prosecute Gopal Siddeshwar Deshpande for offences punishable under sections 463, 466 and 471 of the Indian Penal Code which were

\* Criminal application for Revision No. 297 of 1907.

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alleged to have been committed in the course of a suit pending in his Court.

On the day and at the time fixed for hearing of the application the Public Prosecutor was not present. The application was therefore dismissed for default.

The Public Prosecutor later on applied to the Subordinate Judge for restoring his application to the file and deciding it on the merits, but it was rejected on the ground that the Subordinate Judge had no power to review his order under the Criminal Procedure Code (Act V of 1898).

The Public Prosecutor appealed to the District Judge who granted the sanction.

Gopal Siddeshwar applied to the High Court.

*Robertson* (with *C. A. Rele*) for the applicant.

*M. B. Chaubal* (Government Pleader) for the Crown.

CHANDAVARKAR, J.—This is an application for revision by this Court of the order of the District Judge of Belgaum granting sanction to the Public Prosecutor under section 195 of the Criminal Procedure Code for the prosecution of the petitioner for offences punishable under sections 463, 466 and 471, Indian Penal Code, or such other sections as may be applicable.

The sanction was accorded by the District Judge under the following circumstances. An application was made by the Public Prosecutor to the Subordinate Judge of Gokak in the first instance, for sanction, because the offence, in respect of which it was applied for was alleged to have been committed in the course of a suit in his Court. On the day and at the hour fixed for the hearing of that application the Public Prosecutor having failed to appear, the Subordinate Judge dismissed the application as for default. The Public Prosecutor appeared shortly after the dismissal and explained the circumstances under which he had been prevented from appearing in time to support the application. But the Subordinate Judge held that he had no power to review his order, because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it. So far the Subordinate Judge was right; but on

the other hand, it is equally the case that there is no provision in the Criminal Procedure Code which warranted the Subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for dismissal. The Subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court.

After the Subordinate Judge had declined to review his order upon the ground mentioned above, the Public Prosecutor applied to the District Court and the District Court has accordingly accorded sanction. Now, the objection to that is, first, that the District Court has not gone into the details of the application, and, secondly, to give that Court jurisdiction under section 105, clause (c), there ought to have been a sanction given or refused by the Subordinate Judge. Here there was no sanction given or refused by the Subordinate Judge. The only jurisdiction which the District Judge had under the circumstances was to revise the order of the Subordinate Judge dismissing the application as for default.

We think, therefore, that for the reasons we have given, both the order of the District Judge and that of the Subordinate Judge ought to be set aside and the application made to the Subordinate Judge ought to be sent back to him with a direction that he should dispose of it according to law.

R. R.

## APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.*

NATHUBHAI MOTILAL (ORIGINAL PLAINTIFF), APPELLANT v. BAI UJAM, WIFE OF BHAVANIDAS HARGOVANDAS (ORIGINAL DEFENDANT), RESPONDENT.\* 1908  
January, 20.

*Transfer of Property Act (IV of 1882, sections 67, 99 and 100—Execution of decree—Attachment—Application in execution.*

Section 99 of the Transfer of Property Act (IV of 1882) contemplates attachment of property by a judgment creditor (even if he be a mortgagee), and he is entitled to attach the property by an application in execution of the decree.

\* Second Appeal No. 605 of 1907.