

ORIGINAL CIVIL.

Before Sir Stanley Batchelor, Kt., Ag., C. J. and Mr. Justice Heaton.

KRISHNA KERRING & Co., APPELLANTS (PLAINTIFFS), v. J. R. MILLER
RESPONDENT (DEFENDANT) AND *In re* JASRAJ KRISHNA, APPELLANT
(PLAINTIFF).^o

1916.

August 24.

*The Criminal Procedure Code (Act V of 1898), section 195, sub-section (6)—
Sanction to prosecute for the offence of giving false evidence—Prosecution stayed
at the instance of the party to be proceeded against, pending the disposal of the
appeal by the appellate Court—Expiry of six months' time—Power of the
High court to extend time nunc pro tunc.*

Under section 195, clause (6) of the Criminal Procedure Code of 1898, the High Court has the power to extend the time of a sanction to prosecute, even after the expiry of the original period of six months from its date.

Karuppana Servagaran v. Sima Gounden⁽¹⁾, followed. *Kali Kinkar Sett v. Dinobandhu Nandy*⁽²⁾, dissented from.

MOTION for extension of sanction to prosecute. The plaintiffs were a Marwari firm carrying on money-lending business at Lower Colaba, outside the Fort. The defendant was a European residing at Colaba and employed in Government service.

The plaintiffs sued the defendant to recover the principal sums of Rs. 1,200, 800 and 60 together with the balance of interest thereon, due at the foot of three promissory notes alleged to have been executed for full consideration by the defendant on 2nd May 1911, 12th May 1911, and 25th February 1913. The defendant averred that on the 2nd May 1911 when he was very hard pressed for money he approached one Jasraj Krishna, a member of the plaintiff's firm, who offered to advance Rs. 700 only, if the defendant passed in the plaintiff's favour two promissory notes for Rs. 1,200, and 800. The

C. C. J. Appeal No. 2 of 1916, Suit No. 818 of 1915.

⁽¹⁾ (1902) 26 Mad. 480.

⁽²⁾ (1905) 32 Cal. 379.

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defendant agreed under pressure to pass the said two promissory notes receiving however Rs. 700 only. The defendant pleaded that it was distinctly understood between the parties that the promissory note for Rs. 1,200 was to be considered a penalty bond, and that if the defendant paid back the sum of Rs. 700 actually advanced and interest thereon regularly, the plaintiffs were to receive the same in full discharge of the said two notes. The defendant admitted the execution of the third promissory note but said that he received Rs. 20 only from the plaintiff.

The defendant paid up to the date of the suit a considerably larger amount than Rs. 700 and interest thereon, Rs. 176.

In the course of the hearing, Jasraj Krishna, a member of the plaintiffs' firm, who had sworn to the plaint gave evidence in support of the plaintiffs' case. The suit was dismissed on the 3rd September 1915, by his Lordship Beaman J. who in the course of the judgment observed: "It is perfectly clear.....that the plaintiff has deliberately and gratuitously lied.....There was no point whatever in telling that falsehood; but apparently like most of his class this Marwari cannot tell the truth even when doing so would not injure his case.....The promissory note for Rs. 1,200 is quite clearly a penalty bond and I have not the very slightest doubt but that no cash consideration was given for it." On the 14th October 1915, the defendant applied to the trial Court for obtaining sanction to prosecute Jasraj Krishna for giving false evidence. Sanction was granted on the 6th December 1915.

The plaintiff appealed from the decree dismissing the suit on the 8th January 1916. During the pendency of the appeal, the plaintiffs arranged with the defendant for the stay of the prosecution until the appeal was

decided. The appellate Court dismissed the appeal on the 17th July 1916. The period of six months having elapsed from the date of the sanction, the defendant moved the appellate Court to extend the time to enable criminal proceedings to be taken against the plaintiff, Jasraj Krishna.

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Strangman, for the plaintiff to show cause:—Six months having elapsed, the time cannot be extended, for there is nothing to extend: see the dicta of the Calcutta High Court in *Kali Kinkar Sett v. Dinobandhu Nandy*⁽¹⁾, and see sub-section (6) of section 195 of the Criminal Procedure Code. Criminal Statutes ought to be construed strictly, and in favour of the accused. Whenever the Legislature intend to give the power to extend time, it is explicit: see Indian Arbitration Act, section 12, and Civil Procedure Code, Schedule II, para. 8.

**F. S. Taleyarkhan*, for the defendant:—There was no delay on the part of the defendant to institute criminal proceedings. The plaintiff himself got the prosecution stayed until the decision of the appeal filed by him. The plaintiff cannot turn round and say that the sanction having become null and void by the expiry of six months, time cannot be extended. Section 195 of the Criminal Procedure Code should be construed liberally, otherwise great inconvenience would result in practice: see *In re Muthukudam Pillai*⁽²⁾ and *Karuppana Servagaran v. Sinna Gounden*⁽³⁾.

BATCHELOR, AG. C. J.:—This is an application to extend the time for the prosecution of the appellant in respect of an offence of giving false evidence said to have been committed during the hearing of a suit before Mr. Justice Beaman. Sanction was granted under section 195 of the Criminal Procedure Code on

(1) (1905) 32 Cal. 379.

(2) (1902) 26 Mad. 190.

(3) (1902) 26 Mad. 480.

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the 6th December 1915, and by virtue of sub-section (6) of that section, the sanction could not remain in force for more than six months from the date on which it was given. Consequently the period of the currency of the sanction has expired several months ago. It is, I think, clear that if we have the power now to extend the time, we ought to extend it, seeing that the responsibility for the delay which has occurred does not rest with the present respondent, but with the appellant himself. But it is contended that, under section 195, it is not competent to this Court to make an order extending the period, when in fact the six months' time has elapsed. When that time has elapsed, it is said, there is nothing to extend, and support for this contention is found in the observations of the Calcutta High Court in the case of *Kali Kinkar Sett v. Dinobandhu Nandy*⁽¹⁾. Those observations were, however, admittedly *obiter*, and the contrary view appears to have been accepted by the Madras High Court: see the decision in *Karuppanna Servagaran v. Sinna Gounden*⁽²⁾. I am conscious of the weight of Mr. Strangman's argument that the words of section 195 of the Criminal Procedure Code may be contrasted, to his advantage, with the words of section 12 of the Arbitration Act (IX of 1899), and paragraph 8 of the Second Schedule of the Code of Civil Procedure. In these two latter provisions power is given in express terms to extend the original period at any time even after the lapse of that period. In the Criminal Procedure Code it must be admitted that the power is not so expressly conferred, and the words are susceptible of the narrower construction for which Mr. Strangman presses. At the same time, as it seems to me, there is nothing in the words which requires that construction, and

⁽¹⁾ (1905) 32 Cal. 379 at p. 385.

⁽²⁾ (1902) 26 Mad. 480; see also a case reported in 18 M. L. J. 16 (Notes of recent cases).

they are equally patient of the more liberal reading. I am in favour of the more liberal reading, because, in my opinion, the contrary view, not being imposed by the words of the Act, would tie the hands of the Court very inconveniently, would produce inequality and even caprice in actual results, and would lead to graver inconveniences in practice than it is likely that the Legislature could have contemplated. It is not denied that if the application to extend the time, though made during the currency of the sanction, were heard and decided after the expiry of the original period, the Court would have power to grant it; and I do not think that the Court is necessarily deprived of jurisdiction merely because the six months had expired before the application was made. I think, therefore, that we have the power now to extend the time *nunc pro tunc*, and I would extend it by a further period of one fortnight from this date. Notice absolute. No order as to costs.

HEATON, J.:—I agree.

Notice absolute.

Solicitors for the plaintiffs : Messrs. *Dikshit, Dhunjishah & Purushottamrai.*

Solicitor for the defendant : Mr. *M. B. Chothia.*

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