CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Shah.

In re PARVATRAO MHASKOJIRAO.*

1917. October 5.

Criminal Procedure Code (Act V of 1898), section 195—Sanction proceedings—Grant of sanction by first Court—Confirmation of sanction by Appellate Court—Revisional application against grant of sanction rejected summarily by High Court—Time cannot run from the date of summary rejection.

On the 24th July 1916, a sanction to prosecute was given by the first Court; it was confirmed on appeal by the District Court on the 23rd October 1916. An application to the High Court under its revisional jurisdiction against the grant of sanction was summarily rejected on the 1st February 1917. A complaint under the sanction was filed on the 10th July 1917. Upon an objection being raised that the complaint was time-barred under section 195, clause (6), of the Criminal Procedure Code 1898, as more than six months had elapsed since the grant of sanction :—

Held, upholding the objection, that the complaint was time-barred, for the summary rejection of the application by the High Court did not constitute a date from which the period of six months began to run.

THIS was an application under the criminal revisional jurisdiction from an order passed by Raja Shambusing, Special First Class Magistrate at Malegaon.

On the 19th December 1914, one Ganpati filed an application in the Court of the Civil Judge at Saswad for sanction to prosecute Parvatrao (applicant). The Court granted the sanction on the 24th July 1916. The applicant appealed against the grant of sanction to the District Judge of Poona, but the sanction was confirmed on the 23rd October 1916. The applicant next applied to the High Court under its criminal revisional jurisdiction ; the High Court summarily rejected the rest of the application and admitted it only on the question of costs on the 1st February 1917. On the 4th April 1917 the rule was made absolute as regards costs only.

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On the 10th July 1917, Ganpati filed a complaint against applicant for offences punishable under sections 193 and 209 of the Indian Penal Code, 1860. The applicant took a preliminary objection that as the complaint was filed more than six months after the date of the grant of sanction, the sanction had spent itself and the Magistrate had no jurisdiction to try the case. The trying Magistrate held that the complaint was filed in time as it was filed within six months of the passing of final orders by the High Court on the 1st February 1917.

The applicant applied to the High Court.

A. G. Desai, for the applicant:—Clause(6) of section 195 of the Criminal Procedure Code, 1898, is imperative. The word "given" in the clause means given by the Court which gives it in the first instance; it would also include the grant of sanction by the appellate Court after it was refused in the Court of first instance. When an appellate Court confirms an order passed by the first Court granting a sanction, it cannot be said to give a sanction. As soon as a sanction is granted, the person obtaining it should file proceedings under it in the Magistrate's Court, regardless of appeal if any in the sanction proceedings. Such proceedings can be stayed afterwards pending the decision of the appeal.

The case of the *Public Prosecutor* v. *Raver Unithiri*[1] is against me. It follows the earlier cases of *Audimulam* v. *Krishnayen*[2] and *Muthuswami Mudali* v. *Veeni Chetti*[3], but the principle of these decisions would seem to indicate that there might be two or even three appeals in sanction proceedings.

G. S. Rao and *S. M. Varde*, for the opponent:—The time should be computed from the date on which the High Court rejected the application. That is the final order

(1) (1914) 26 M. L. J. 511. (2) (1912) 22 M. L. J. 419 at p. 433.
(3) (1907) 30 Mad. 382.

in the case. It was no use filing a complaint under the sanction as long as it was exposed to appeal or application in revision. Under section 439 of the Criminal Procedure Code, the High Court has all the powers of an appellate Court. In any case, the High Court should extend the time.

HEATON, J. :—This application raises a point of difficulty about which there has been—and perhaps is likely to be—difference of opinion. A sanction to prosecute was given under section 195 of the Criminal Procedure Code and an appeal against the sanction was made to the superior Court and that appeal was dismissed. Then the applicant approached the High Court in its revisional powers asking it to interfere with the sanction and the High Court summarily rejected the application. Originally the sanction had been given on the 23rd of July 1916 and the order of the High Court was made on the 1st of February 1917. By this time therefore more than six months had elapsed since the date when the sanction was given by the original Court. But a further delay ensued. It was not until the 10th of July 1917, more than six months after the order of the appellate Court confirming the sanction and more than five months after the High Court had refused to interfere, that the complaint was presented to the Magistrate by the person who had obtained the sanction. The accused person, i.e., the applicant, then contended that the sanction by that time was spent in consequence of the latter part of clause (6) of section 195 which says: "No sanction shall remain in force for more than six months from the date on which it was given." The applicant urged this objection before the Magistrate who considered it and wrote a judgment disposing of it. He thought that the words which I have quoted must be construed so as to give the complainant six months from the date of the order of the High Court.

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I think the Magistrate was wrong. The matter presents difficulties in two phases. The first is whether the six months begin to run from the date of the order of the appellate Court where there has been an appeal. For the moment I will assume that it is so. Then the second phase which is to be considered is this: Does the period of six months similarly run from the date of the order of the High Court when there is a revisional application made to the High Court and that application is summarily rejected?

As regards the second phase of the case I do not myself feel any doubt. It is quite clear to my mind that an order by the High Court summarily rejecting an application such as was made in this case does not constitute a date from which the period of six months begins to run. My reason for so thinking is this: The words which I have already quoted and the relevant words of the rest of section 195 show conclusively to my mind that the six months must run from either the time the original sanction was given or from the date of some subsequent order made by a competent Court which confirms the giving of the sanction or itself specifically gives a sanction. In other words, there must be an order which definitely either approves and confirms or itself gives a sanction. But, as I understand, an order of this Court summarily rejecting an application in revision does not approve or confirm the order of the Court below. It is a refusal of the High Court to interfere and nothing more. In practice—and here I am speaking from a good many years' experience of this Court—a great many revisional applications are summarily rejected, certainly not because this Court affirms or even approves the order against which the application in revision is directed, but because this Court will not permit the law as to appeals to be violated. That law would be most seriously violated,

in my opinion, if this Court exercised its revisional powers in such a way as to permit every applicant to obtain from this Court a consideration of the merits of his case and a decision of this Court upon those merits. The reason is that such a method would be to introduce a most elaborate and comprehensive system of what would in reality be appeals where the Criminal Procedure Code declares that no appeal shall be allowed. I am therefore satisfied that in this case the Magistrate's order is wrong, because the latest order from which the period of six months could run is either the original order or the order in appeal. This sanction is long since spent and cannot be made the basis of a prosecution.

I think therefore that the correct order for the Magistrate now to make is to dismiss the complaint before him.

SHAH, J. :—In this case the original sanction was granted by the trial Court on the 24th of July 1916. The application made to the District Court of Poona for the revocation of that sanction was dismissed on the 23rd of October 1916. Against that order there was an application to this Court in revision, which was summarily rejected on the 1st of February 1917, on the main point as to the revocation of the sanction, and a rule was granted only for the limited purpose of considering the order made by the lower Courts as to costs. The subsequent order on this revisional application was made on the 4th April 1917. We are not concerned now with that order. The present complaint was filed on the 10th of July 1917.

The point that arises on the present application is whether the complaint made on the sanction thus granted can be entertained or in other words, whether the sanction had not become inoperative at the date of

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the complaint in consequence of the lapse of time. Undoubtedly the complaint was made more than six months after the date of the original sanction given by the trial Court. It was also made more than six months after the order was made by the District Court of Poona. But it is within six months from the date of the order of this Court rejecting the application on the main point.

The point urged on behalf of the applicant is that the date contemplated by section 195, clause (6), of the Criminal Procedure Code is the date on which the sanction is given, i.e., in this case the date on which it was granted by the trial Court, and that the order made by the District Court of Poona in October 1916 was merely an order refusing to revoke the sanction granted by the trial Court. It is not necessary for the purposes of this application to express any opinion as to whether the date mentioned in clause (6) is the date of the original sanction or the date of the order of the District Court of Poona, as the complaint was filed more than six months after either of these dates. It seems to me that there is considerable force in the argument urged on behalf of the applicant that the word "given" must refer either to the sanction given by a Court of the first instance or to a sanction granted by the superior Court though refused by the subordinate Court in the first instance and that it cannot refer to an order by the superior Court refusing to revoke a sanction granted by the subordinate Court. It is not necessary, however, to decide the point in this case. It is clear that the mere fact that there was an application in revision made to this Court and that it was rejected on the 1st of February 1917 does not give the present complainant a fresh starting point for the six months provided in sub-clause (6) of section 195. I do not think that the provision in section 195, sub-clause (6), as to the six months

from the date on which the sanction is given can apply to an order made by the High Court in revision under section 439 of the Criminal Procedure Code rejecting the application. The sanction "given" must refer either to the sanction granted by the first Court or by the superior Court in appeal. The question whether any order by the High Court on an application under section 439 of the Criminal Procedure Code for the exercise of the powers under section 195 of the Criminal Procedure Code made after issuing a rule and after hearing both parties will have the effect of making the time run from that date does not arise in this case, and I express no opinion on that point. We are only concerned with the case of an application in revision which is rejected summarily.

On behalf of the complainant, however, an oral application is made in the course of the argument that we should extend the time under the powers given to this Court under clause (6). But there is no affidavit explaining the delay; and there is no attempt made to show any good cause for the extension of time. I do not think that under the circumstances the time could be extended.

I am clearly of opinion that the sanction was not in force at the date of the complaint, and that the Magistrate cannot take any cognizance of the complaint.

I therefore agree that the Magistrate should now dismiss the complaint.

Order accordingly.

R. R.