

(1879) 12 AHC CK 0009

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Sabsukh and Others

RESPONDENT

Date of Decision: Dec. 5, 1879

Citation: (1880) ILR (All) 533

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

(After stating the facts and the question referred): In answer to the first of these questions, I am of opinion that a Revenue Court is a Civil Court within the meaning and intent of Sections 468 and 469, Criminal Procedure Code. The mischiefs against which these sections are directed are the giving of false evidence and using as genuine a forged document. By "Civil Court" here I understand any Court established for the administration of civil justice as distinguishable from a Criminal Court. To hold otherwise would be to give to Revenue Courts and their suitors unlimited powers of prosecution in such cases, for which no intelligible reason has been attempted to be offered, or could possibly be given, the essence of such offences being the perjury or false swearing and falsehood common to all Courts which act upon written or spoken evidence, and it could not for a moment be contended that a Revenue Court is not such a Court. My attention was directed to Section 435 * of the Criminal Procedure Code which provides for contempts of Court in certain cases, and in regard to which the Court before which the contempt has been committed is described as "any Civil, Criminal, or Revenue Court." But these words, so far from demonstrating that the term Civil Court in Sections 468 and 469, Criminal Procedure Code, was intended to be used in its restricted sense as distinguishable from a Revenue Court, to my mind, when attentively considered, lead to the very opposite conclusion. This will clearly appear if we read these two

sections along with Section 435, especially in regard to one of the offences mentioned in Section 435, namely, the offence defined in Section 228 of the Indian Penal Code. This offence is also included within the category of offences to be found in Section 468. It will thus be at once seen that, if we exclude the Revenue Court from Section 468, we bring that section into direct collision with Section 435.* Section 435 mentions the offences, including that u/s 228, Indian Penal Code, which it contemplates "as committed in the view or presence of any Civil, Criminal, or Revenue Court," and it goes on to provide that "the Court may cause the offender, whether he be a European British subject or not, to be detained in custody, and, at any time before the rising of the Court on the same day, may take cognizance of the offence, and adjudge the offender to punishment by fine not exceeding Rs. 200, and, in default of payment, by imprisonment in the civil jail for a period not exceeding one month, unless such fine be sooner paid. In every such case, the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence. If the offence is u/s 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered." Here we have provision made for all the three kinds of Courts, the Civil and Revenue as well as the Criminal, taking notice of, and punishing for, without complaint or commitment, the offence mentioned in Section 228, Indian Penal Code, while if the very same offence is prosecuted for u/s 468, there must be a "complaint," but the offence "shall not be entertained except with the sanction of the Court before which it was committed." This, however, is not inconsistent with Section 435, which provides for the case of the Court taking summary cognizance of, and punishing for, the offence committed before itself, for which purpose, it is obvious, no separate or express sanction is necessary, the Court showing its mind in that respect by the summary proceeding provided for. Now, quite consistently with this view, Section 468 contemplates the same offence being entertained, not in the summary form provided for by Section 435, but by complaint and commitment, in which the recorded sanction of the Court before which the offence was committed is necessary, because from the nature of the case that consent cannot otherwise be made to appear, and the same argument of course applies to all the other offences mentioned in Section 468, Criminal Procedure Code. This reasoning appears to my mind to be conclusive for holding that the term " Civil Court" in that section is meant to include those Civil Courts at least mentioned in Section 435 as distinguishable from Criminal Courts, and that therefore we are not driven to what I must call the incongruity, I might go the length of saying the mischievous incongruity, of holding that an offence that can be summarily entertained and punished by a Revenue Court, cannot be entertained or punished by the more deliberate procedure of complaint and commitment u/s 468. It is our duty to make the law as consistent and rational as we possibly can and not to leave its apparent contradictions and inconsistencies unsolved without every effort of explanation and reconciliation being used, and for that purpose to apply such principles of reasonable exposition

as will fairly remove these contradictions and inconsistencies, by showing that they are only apparent and not real. And in doing this we simply, in my opinion, fulfil the duty incumbent on us to give such a degree of just expansion to the letter of the law as will effectually satisfy its spirit and intendment, and we would not do that, in the case before us, if we excluded Revenue Courts from the provisions of s. 468, Criminal Procedure Code.

2. My answer to the second question is that the Collector's endorsement on the petition for sanction was not "sanction" within the meaning of Section 470, Criminal Procedure Code. On the contrary, it appears to me to be rather in the nature of a refusal to give sanction; for the Collector ends his endorsement with these words: "There is no need for sanction," and he must be taken therefore not to have given it.

3. As to the third question I entertain considerable doubts, although, if we have the power, I do not think we should under the circumstances be justified in giving sanction at this stage of the case. If the Revenue Courts were as a jurisdiction generally subordinate to this High Court, we of course could give sanction, but whether under the words "at any time" in Section 470 we could now give such sanction so as to validate the trial, conviction, and sentence before the Judge, is a question attended with considerable difficulty. I rather incline to the opinion that the words "at any time" were intended to mean at any time during the trial, seeing that it is for the purpose of such trial that the sanction is required, and without it the trial could not proceed, and that after conviction and sentence there is nothing to follow for which the sanction may be asked. The question, however, whether the Revenue Courts are, as a jurisdiction, legally and technically subordinate to this High Court is also a very difficult one. They may be subordinate in a certain sense, i.e., in those cases where there is an appeal to this Court within Section 189, 190 and 191 of the Rent Act XVIII of 1873, but in regard to all other cases there is no appeal and no subordination. This is shown by the plaint in the revenue suit which is included in the record before us, and from which it appears that the suit was to recover rent, Rs. 36, principal, and Rs. 5-1-0, interest, in all Rs. 41-1-0. It is, therefore, quite clear that so far as this case is concerned there is neither subordination on the part of the Collector nor control on our part. That, however, I quite admit is a different question from the general proposition I have indicated, viz., whether in the light of jurisdiction generally the Revenue Court is amenable to the High Court? I rather incline to the opinion that as a jurisdiction the Revenue Court is not subordinate to the High Court. The policy of the Act (upon which I express no opinion) was clearly to exclude all interference whatever by the Civil Courts, and especially by this High Court, for it was in consequence of judgments by this Court which were deemed inconvenient by the Revenue authorities that the Rent Act XVIII of 1873 was passed. Therefore, as a general question, I should hold that the Revenue Courts were not subordinate to this Court, and that conclusion lends considerable force to the case before us, seeing that it was not one which could by any means be brought under our appellate or revisional jurisdiction. Another difficulty has been stated, viz.,

whether u/s 15 of the High Courts" Act this Court has any control or superintendence over the Revenue Courts. That again depends upon whether the Revenue Courts are subject to our appellate jurisdiction within the meaning of the Act. But that again depends on what is there meant by "appellate jurisdiction." Does it mean appellate jurisdiction generally, or can it be held to be understood as appellate jurisdiction within the limited meaning and application of the Rent Act? The latter, as it appears to me, cannot be taken as the true construction. The kind of subordination and control given us in certain cases by the Rent Act is something different from, because less than, the "superintendence" mentioned in Section 15 of the High Courts" Act. By these remarks I have indicated the doubts and difficulties which appear to me to stand in the way of a distinct answer to Mr. Justice Straight's third question, although, under any circumstances, I should be opposed to giving sanction in the present case.

Pearson, J.

4. I entertain no doubt that a Revenue Court is a Civil Court within the meaning of the term "Civil Court" as used in Sections 468 and 469 of the Criminal Procedure Code. In those sections Civil Courts are broadly distinguished from Criminal Courts. There is no reason to suppose that by the terms "any Civil Court" only the ordinary Civil Court is meant. The object in view is to prevent wanton, groundless or malicious prosecutions of the offences therein mentioned, by requiring the sanction of the Courts in or before or against which those offences may be committed to the prosecution of them. It is impossible to suppose that the restriction thereby imposed on such prosecutions is applicable only to such offences committed in or before or against the ordinary Civil Courts, and not equally to similar offences committed in or before or against the Revenue Courts which, not less than the ordinary Civil Courts, try and determine suits of a civil nature.

5. I am of opinion that the Collector's order on the petition praying for sanction of prosecution in the case before us cannot be held to have given the sanction prayed for. On the contrary, under a mistaken view of the law, and under an impression that sanction was unnecessary, that officer distinctly declined to give his sanction, and left the petitioner to proceed in the matter of his own motion.

6. I am further of opinion that sanction cannot now be retrospectively given to the present proceedings, although fresh proceedings may be sanctioned by competent authority. Sanction is an essential preliminary to the institution of proceedings and the entertainment of a complaint.

7. The foregoing remarks embody my views on the three points referred to the Full Bench.

Spankie, J.

8. I confess that I entertain doubts in answer to the first question whether a Revenue Court is a Civil Court in the sense of Sections 468 and 469 of the Criminal Procedure Code. A Revenue Court has been defined in Clause (9), Section 3 of Act XIX of 1873. In Section 93(a) of Act XVIII of 1873 the Courts of Revenue are distinguished from other Courts, and certain suits are made cognizable by Courts of Revenue and no other Courts, and as Courts they have their own procedure, vide Section 104 of the Act.

9. In Section 204(a) if the presiding officer of a Revenue Court considers that any question or issue involving a point of law is more proper for the decision of a Civil Court, such officer is to act in the manner prescribed by the section. Here Civil Courts are distinguished from Revenue Courts. Again, in Section 205(a) on a question of a power to take cognizance in any suit instituted or on any appeal presented in a Civil or Revenue Court, the Judge or presiding officer may refer the matter to the High Court. Here again the two Courts are clearly distinguished. Section 435 of the Code of Criminal Procedure in chapter XXXII provides for certain cases of contempt committed in the view or presence of any Civil, Criminal, or Revenue Court. Here are three Courts clearly distinguished. But u/s 467^{*}, in all offences under chapter X of the Penal Code, not including those falling within Sections 435 and 436 of the Criminal Procedure Code, no complaint whatever (except where the proviso attached to the section applies) can be entertained without the sanction or except on the complaint of the public officer concerned, or of his official superior. When we come to the words of Section 468 of the Criminal Procedure Code, the reference is to the offences under the sections cited before or against a Civil or Criminal Court, and in such cases sanction is required, and it is the same with Section 469. If Revenue Courts are included in the word "Civil," why are the three Courts distinguished separately in Section 435? It may be asked why should sanction be necessary in Civil Courts and not in Revenue Courts? This I cannot explain: nor am I bound to explain the reason. But after the recognition by the Code of the Revenue Courts, something more appears to me to be intended than the use of the word "Civil" as opposed to Criminal. I admit that in Revenue 19^{*} of the Penal Code "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, &c. But a Judge is also a "public servant" (Section 21), and the definition is intended to apply to the sections in the Penal Code which relate to Judges and public servants, and "Civil" is doubtless broadly opposed to "Criminal." The reference in Section 2 of the Rent Act to this section of the Penal Code and the Illustration (a) makes the Collector a Judge for the purposes of the Penal Code and no further. I simply say that Section 435 recognizes the three Courts, and Sections 468 and 469 recognize two only. It may, however, be observed that Section 643 of the Civil Procedure Code, which replaces Sections 16, 17, and 19 of Act XXIII of 1861, provides the procedure in cases pending before any Court (to which of course the Code applies), when there appears to be sufficient

ground for sending for investigation to any Magistrate charges of certain offences under the Penal Code. As the Courts have the power to act thus conferred upon them by Section 643 of Act X of 1877, it may be that it was thought desirable that sanction should be given in those cases of complaint in which the Court itself had not taken action, and this with a view to check baseless complaints. But I cannot find any such power given by the procedure in Revenue Courts to the presiding officers of those Courts. In the draft of the new Code of Criminal Procedure as amended, I find that Section 196 amends Sections 467 and 468, by Clauses (b) and (c), so as to prevent any possible doubt arising on the point referred to us, because it refers to offences committed before or "against any Court," and therefore all recognized Courts are included, and sanction of the Court or of some other Court to which it is subordinate is required. In Section 476 of the amended draft Bill the words "any Court" again are used, and any Court is empowered to send an accused to the Magistrate. If this were the wording of the present Code, and Section 467 included all the sections in Section 196 of the proposed amended Act, then we would have easily disposed of the present reference, as any Court could have sent the accused to the Magistrate for inquiry on a charge of giving false evidence. But u/s 478 the words "any Civil Court" are used, and a larger power is given to such Court in cases in which the offence is triable by the High Court or Sessions Court exclusively. Here it may be that, although all Courts may send an accused person to the Magistrate for inquiry into offences, only the regular Civil Courts may in certain cases actually themselves commit the offenders. I may also add that in Section 480, which is to replace Section 435 of the present Code, in respect of certain cases of contempt, the words "Revenue Court" are not used. It is sufficient that the offence is committed in the view or presence of "any Court." I think, therefore, I have shown that there is some room for doubt whether, under the wording of Sections 468 and 469 of the Criminal Procedure Code now in force, any sanction is required before a prosecution for giving false evidence in a Revenue Court is entertained. I say room for doubt, for it does seem anomalous that no provision has been made for such a case as that referred to us in the Eevenue, when full provision for similar offences has been made in regard to the Civil Courts. I should have been glad if it had been otherwise and to have concurred with my honourable colleagues on this question as on the others referred to us.

10. In reply to the second question I do not find that the Collector's endorsement on the petition for sanction amounts to, or can be considered, a sanction within the meaning of Section 470 of the Criminal Procedure Code.

11. In answer to the third question, I consider that, if sanction is necessary, it is too late for this Court at this stage of the case to grant it. The blot occurs at the outset. There was no jurisdiction to entertain the complaint in the first instance, if sanction was necessary. The error too was not one that occurred after the complaint was entertained, and therefore might be condoned under the terms and subject to the proviso of Section 283 of the Code of Criminal Procedure.

12. I may add that I cannot find that the Board of Revenue has ever made any rules u/s 211 of Act XVIII of 1873 and Section 256 of Act XIX of 1873 for the practice and procedure of Revenue Courts on complaints of the nature before me.

Straight, J.

13. In reply to the first question submitted by me to the Full Bench for its opinion, I have to say that, in my judgment the Revenue Court is a Civil Court in the sense of Sections 468 and 469, Criminal Procedure Code. I think that the alternative expressions "Civil or Criminal Court" are intended to include all tribunals concerned in the administration of Civil or Criminal justice, before which "judicial proceedings" are held, as defined in the interpretation clause of the Criminal Procedure Code. I have in vain sought to discover any intelligible reason why a distinction should have been drawn by the Legislative authorities between Revenue Courts on the one hand and Civil and Criminal Courts on the other. Sanction appears to be just as desirable and necessary in either case. Moreover by Section 2 of the Rent Act (XVIII of 1873) it is specifically provided that Illustration (a) of Section 19 of the Penal Code shall be read as if it applied to that Act, the effect of which is to declare that a Collector exercising powers under Act XVIII of 1873 (as in this case) is a Judge. Therefore you have a "Judge" and a "judicial proceeding," which it must be admitted is of a Civil character. It is true that the Rent Act draws a distinction between Revenue and Civil Courts, but that is merely for convenience of expression and to avoid confusion, and in no way interferes with the Revenue Court falling within the generic term Civil Court, as used in Sections 468, 469 of the Criminal Procedure Code. Consequently I think the Collector's sanction to the institution of the prosecution ought to have been given, and that without it the whole of the proceedings before the Magistrate and the Court of Session are void.

14. In answer to the second question, I am very clearly of opinion that the order endorsed by the Collector on the complainant's petition can by no twisting of terms or distortion of language be construed into a sanction.

15. As to the third question, I do not think that the words "at any time" in Section 470, Criminal Procedure Code, give the Court power, after conviction and upon appeal or revision, to grant a sanction, and so to validate proceedings otherwise invalid from their inception to their close. It Appears to me that, for the purpose of determining what those words mean Sections 468, 469, and 470 must be read together, and so treating them, the construction seems to be that a complaint for any of the enumerated offences shall not be entertained, except when the sanction of the Court before or against which an offence has been committed is previously obtained. In other words, if I take the correct view, the required sanction is a condition precedent to the very first commencement of the prosecution. The term "complaint," as used in the Criminal Procedure Code, has a perfectly intelligible meaning and requires no definition on my part. Apart from this, it appears to me there is a provision of the Code that places any question upon the point I am now

discussing almost, if not entirely, beyond dispute. I refer to Section 142, which enacts that nothing in that or the preceding section shall "authorize a Magistrate to entertain a complaint of an offence without sanction, where such offence by any law in force may not be entertained without sanction." I may also point out that in Section 466, * Criminal Procedure Code, the sanction there provided must be given "before the commencement of the proceedings." Underall the circumstance salready adverted to, and endeavouring to place a reasonable and practical construction on the words "at any time," I cannot bring myself to give them the enlarged interpretation contended for by the Junior Government Pleader. To do so would appear to me to open the door to the very mischief the Act was intended to guard against namely, the indiscriminate institution of prosecutions by private persons for offences against public justice committed in contempt of and against Civil or Criminal Courts, for their own ends and objects, without any check. If my view of the section is incorrect, then there is nothing to prevent a person, except the watchfulness of the Magistrate, from putting the criminal law in motion to harass or oppress another with whom he has been unsuccessful in litigation, and to defer obtaining or attempting to obtain the sanction of the Court before which his suit has been tried until the latest possible moment. To my mind prosecutions for the offences enumerated in Section 468 and 469 must have the stamp and countenance of the offended Court, otherwise they fall to the ground. My answer therefore to the third question submitted is in the negative. Upon receipt of the decision of the Full Bench, I will dispose of the appeal.

Oldfield, J.

16. I quite concur in the view of the law taken by Mr. Justice Straight.

17. The case having been returned to the Judge making the reference, the following Order was made:

Straight, J.

18. The practical effect of the decision of the Pull Bench, upon my reference of this case, is that the whole of the proceedings against the appellants from the commencement must be quashed; the investigation before the Magistrate and the trial in the Sessions Court being invalid by reason of the absence of the Collector's sanction to the institution of the prosecution. The charge is of so serious a character that the matter cannot be allowed to rest, and in the interest of public justice it is essential that the accused, who seem to have been most properly convicted on the facts, should not escape by reason of the technical difficulty that has arisen. There must, therefore, be a retrial, and I accordingly order that the record be remitted to the Magistrate of the District through the Sessions Judge. Application must be made to the Collector for his sanction to the proceedings, and his attention must of course be called to the judgment of this Court as to the legal necessity for its being given. "When the sanction has been obtained the prosecution must be continued in

ordinary course to committal, and after that to trial before the Court of Session. Of course should the accused be again convicted the Sessions Judge will, in inflicting punishment, have regard to the length of time during which they have already undergone imprisonment.

*Procedure in certain cases of contempt.

[Section 435:--When any such offence as is described in sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, or two hundred and twenty-eight of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he be a European British subject or not, to be detained in custody and, at any time before the rising of the Court on the same day, may take cognizance of the offence; and adjudge the offender to punishment by fine not exceeding two hundred rupees, and in default of payment, by imprisonment in the civil jail for a period not exceeding one month, unless such fine be sooner paid.

In every such case the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence.

If the offence is u/s two hundred and twenty-eight of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered,]

*Prosecution for contempts of the lawful authority of public servants.

[Section 467:--A complaint of any offence described in chapter X of the Indian Penal Code, not falling within section four hundred and thirty-five or four hundred and thirty-six of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in sections one hundred and eighty-nine and one hundred and ninety of the Indian Penal Code.]

*"Judge."

[Section 19:--The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, Civil or Criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.]

*Prosecution of Judges and public servants.

[Section 466:--A complaint of an offence committed by a public servant in his capacity as such public servant, of which any Judge or any public servant not removable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve. No Such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty unless with the sanction of Government.

Sanction when to be given.

Power of Local Government.

The sanction must be given before the commencement of the proceedings.

The Local Government may. limit the person by whom, and the manner in which, the prosecution is to be conducted, and may specify the Court before which the trial is to be held.]