(1910) 05 CAL CK 0014

Calcutta High Court

Case No: None

Ramdin Bania		APPELLANT
	Vs	
Sew Baksh Singh		RESPONDENT

Date of Decision: May 2, 1910

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: 6 Ind. Cas. 473

Hon'ble Judges: Pugh, J

Bench: Single Bench

Judgement

Pugh, J.

This is an application u/s 115 of the CPC for an order that what is described as a judgment but is really an order of the 5th Judge (now officiating 4th Judge) of the Calcutta Small Cause Court refusing sanction to prosecute the plaintiff in a certain case may be set aside, that the record should be sent for and such order as the Court may think fit and proper may be passed. The order actually asked for is that the 5th Judge, now the officiating 4th Judge, may be directed to hear and determine the application according to law. It is made by Sew Buksh Singh the defendant in the Small Cause Court suit, who is represented by Mr. Hume as his attorney who is in fact the Public Prosecutor and it is stated that this application is made by him officially--and not as a merely private attorney. It appears from the affidavit of Surya Pada Banerjee a pleader that he made the application on behalf of Sew Buksh but instructed by the Criminal Investigation Department and it was refused on two grounds; first, that if such an application was entertained there would be numerous similar applications every day, and, secondly, that the Court was not bound to go beyond its records, which, I take it, means there is nothing on the record to show that the case was false.

2. In my opinion neither of these grounds are valid grounds and I come to the conclusion that the Judge has declined to exercise a jurisdiction vested in him in that

he has refused to hear and determine the application, for rejecting an application on these grounds is not a judicial decision of the matter before him.

3. Certain points, however, arise (1) whether the application is properly made to me and (2) whether the application is a case within Section 115: if it is not, I certainly cannot deal with it: (3) whether the application to me is of a Civil or Criminal nature (4); whether there is in fact an appeal or a procedure so similar to an appeal as to provide an effective remedy and whether, in consequence an application in revision is excluded.

4. A rule was issued in the first instance, which has been served on the plaintiff in the Small Cause Court suit, and he has appeared in person and, of course, cannot assist me on the legal, question. All he says is that in fact the case was not false and that he only withdrew it because his witnesses were absent.

5. As to the first point the application is novel and of first impression, so far as this Court is applied to in respect of the giving or withholding of sanction by the Small Cause Court, but there have been a number of cases under the old Section 622 in which the question as to the proper bench for applications in respect of cases proper or suits, in the Small Cause Court, was considered and which afford some assistance on this point.

6. There has been a well established practice for at least 50 years that these applications should be made on the original side of this Court and it was considered settled that these applications should be made on the original side by Counsel.

7. For some short time prior to 1902, similar applications were successfully made on the appellate side by Vakils. This was, however, put an end to by a decision of Rampini and Pratt, JJ., in Shamsher Mundal v. Ganendra Narain Mitter 29 C. 498, who held that the Bench taking the Presidency Group had no-jurisdiction in Calcutta and, therfore, no jurisdiction over the Calcutta Small Cause Court. This question turned on the order of the Chief Justice allocating business to the various Benches and while this order gave the Presidency Group jurisdiction over cases from the 24-Pergannahs, the 24 Pergannahs is not Calcutta. However, another application, was made by a vakil in the case of Haladhar Maiti v. Choytonna Maiti 30 C. 588 to then Chief Justice Sir Francis Maclean and Mr. Justice Mitra. A preliminary objection was taken based on the last case, but it was overruled on tire ground that the learned fudges were not dealing with the matter as the Judges taking the Presidency Group but as a Bench constituted by the Chief Justice to deal with the case and there could be no question but that the Chief Justice had the power to constitute such a Bench and deal with the application. With regard to the practice he says: ''Applications have invariably been made to the Chief. Justice who can appoint and who does then and there appoint himself and the Judge who may be sitting with him to be the Bench to hear the application''.

8. There is a different statement as to the practice in the case of Sarat Chandra Singh v. Brojo Lal Mukherjee 30 C. 986, made by Mr. Justice Sale as follows: "It is a remarkable fact that the jurisdiction of a Judge sitting on the original side to exercise revisional powers over the Presidency Small Cause Court, which is now challenged for the first time, has been exercised ever since the establishment of the High Court over 40 years ago as its records abundantly show. Within this period innumerable applications have been heard and determined by single Judges, sitting on the original side of this Court." This decision was called for in consequence of a claim by a Vakil to make such an application on the original side for the exclusive jurisdiction of the original side had been in the meantime and between the decision of these two cases settled by a rule made by the High Court on the appellate side on the 12th June 1903--Rule 1VA is as follows: Applications u/s 622 of the CPC for revision of orders of the Calcutta Presidency Small Cause Court shall be heard by a single Judge sitting on the original side of the High. Court. Having regard to the fact that the statement in the later case was made by Mr. Justice Sale shortly after the rule in question was passed, when no doubt the whole question had been fully considered by all the Judges, there can be little doubt that the later statement as to the practice with regard to these applications is the more authoritative and there can also be little doubt (hat the practice was incorrectly presented to the Chief Justice; but the matter is now merely academical because of the rule in question.

9. In practice since then, the Chief Justice has never constituted a Bench to hear such applications and they are no longer made to him. It follows from this and the decision in Shamsher Mundal v. Ganendra Narain Mitter 29 C. 498 that no other Bench h as jurisdiction to hear the ordinary application in revision from the Small Cause Court.

10. This rule is in the widest terms and it seems to me by process of elimination of any other bench to vest in a single Judge on the original side the jurisdiction in all such revisional applications.

11. It remains, however, to consider whether the application for sanction is a case u/s 115 and whether it is of a Criminal nature so as to oust this jurisdiction that I would otherwise have and whether the applicant has another and more proper remedy.

12. The first two of these points are covered by a Full Bench decision of the Allahabad High Court, Saligram v. Bamji Lal 28 A. 554 : 3 A.L.J. 394 : A.W.N. (1906) 103 : 3 Cr. L.J. 400 : 1 M.L.T. 219, following another Full Bench decision In the matter of a petition of Bhup Kunwar 26 A. 249. The point is shortly dealt with by Sir John Stanley, C.J., and Sir W. Burkitt, J., but very fully and completely by Sir George Knox, J., in which he reviews the whole legislation on the subject and holds that the High Court on the Criminal side has no jurisdiction u/s 439 of the Criminal Procedure Code to interfere with an order of a Civil Court passed u/s 195 but that the High Court has such power u/s 622 of the Cede of Civil Procedure and that a Civil Court

when acting u/s 195 is not in any way exercising Criminal jurisdiction. The reasoning in this judgment seems to me conclusive and I follow it. It is not, therefore, necessary for me to discuss the matter further beyond mentioning that it appears that Ram Prasad Roy v. Sooba Roy 26 A. 249 was a case where a sanction granted by a Civil Court was revoked under the Civil Revisional jurisdiction and that in Guru Churn Sahu v. Girija Sundari Dasi 7 C.W.N. 112 an application of this kind was dealt with on the Civil side of High Court, while in Kali Prasad Chatterjee v. Bhuban Mohini Dasi 8 C.W.N. 112, following Eranholi Athan v. King-Emperor 26 M. 98, it was held that the Criminal Revision Bench had no power to interfere with an order of a Civil Court under, Section 476 of the Criminal Procedure Code, though there have been some earlier cases collected In the matter of petition of Bhup Kunwar 26 A. 249, in which a different conclusion was arrived at. However much difference there may have been as to whether a Criminal Bench had the power or not, I do not find any reported decisions in which the power u/s 622 to interfere has been questioned except a reference in Sanjiva Rao''s Notes on the CPC to a case in the Punjab Chief Court, which. I am unable to discuss as I have not access t& '' the report but which does not commend itself to me and is contrary to the Allahabad Full Bench case to which I have referred and with which I agree. I notice also that Mr. S.P. Roy in his work on Sanction to Prosecute, pages 127, 128, mentions two unreported cases in which it was held that the Criminal Bench have no jurisdiction.

13. There only remains to consider whether my jurisdiction to interfere is excluded by reason of there being an appeal. In Hardeo Singh v. Hanuman Dat Narain 26 A. 244 . Sir John Stanley says "Sub-section 6 of Section 195 gives a right of appeal in very clear terms. Whether it is called an appeal or a right to make a substantive application to have an order refusing or giving sanction set aside, appears to us to be immaterial"

14. It was immaterial for the purpose Sir John Stanley was then considering, viz., the powers, of the District Magistrate but for this purpose it is material and, in my opinion, the application under Sub-section 6 of Section 195 is not an appeal properly so called and, therefore, the power of revision is not excluded. It may be that eventually when the application has been heard and decided, it will be open to the parties to make an application, u/s 195 subjection 6, to the High Court but the matter has not advanced to the stage when any question whether such an application should be made has arisen. With regard to the point that the Small Cause Court is not bound to go beyond its records, I would only observe that the records have nothing to do with the application. The plaint is before the Court and the Court will have to ascertain whether the case made on the plaint was a true or false case and if a false case whether sanction should be granted or not. It may be that to decide whether the case is a false case will involve an enquiry equivalent to trying the case de novo if the Judge finds that necessary, he must discharge the duty the law imposes on him.

15. I do not wish in any way to interfere with the discretion of the learned Judge, when he hears the application, when lie will apply the principles which are well known and appear in the reported cases but I only observe if the number of false cases brought in his Court is, as he seems to consider, excessive, which view is confirmed by the fact that the public authorities have thought fit to take steps in reference to it, this is a reason for granting: not for refusing the application: for how is his Court to be purged of such cases if the Judge himself is an obstructionist to any efforts in that direction.

16. I, therefore, direct that the record be returned to the Small Cause Court with a direction to the 5th, now officiating 4th, Judge to hear and determine the application.