

## CRIMINAL DIVISION.

Before C. C. Ghose and Duval JJ.

TARAKESWAR MUKHOPADHYA

1925

Dec. 18.

v.

EMPEROR.\*

*Complaint—Proper Court to make a complaint—“Offence committed in or in relation to, a proceeding in that Court”—Criminal Procedure Code (Act V of 1898) s. 476.*

The proper authority to make a complaint under s. 476 of the Criminal Procedure Code, is not the Court which took cognizance and issued process, but the Court which tried and disposed of the original case.

*Jeebun Krista Shaw v. Benoy Krista Shaw* (1), and *Putiram Ruidis v. Mahomed Kasem* (2) applied.

On the 14th June 1924 the petitioner filed a complaint against one Jonabali Tassimuddy and others in the Court of Mr. Suresh Chandra Sen, Deputy Magistrate of the first class in the district of Backergunge, under sections 395, 380 and 147 of the Penal Code. The Magistrate examined the petitioner, and the case was then withdrawn by the Additional District Magistrate and transferred to Mr. Lolit Chander Guha, a first class Deputy Magistrate. The latter held a local inquiry and dismissed the complaint under section 203 of the Code, with the observation that there was no reason for proceeding against the petitioner under section 211 of the Penal Code. Thereupon Mr. S. C.

\* Criminal Revision No. 852 of 1925 against the order of W. H. Carter, Sessions Judge of Backergunge, dated Aug. 3, 1925.

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Sen made a complaint against the petitioner of the offence under section 211 of the Penal Code, and sent it to Mr. Madhusudan Das, a Deputy Magistrate, for necessary action. The accused was ultimately committed to the Court of Session, and he was convicted by the Assistant Sessions Judge of Backergunge, sitting with a jury, under section 211 of the Penal Code, and sentenced to rigorous imprisonment for a year and-a-half. An appeal against the conviction and sentence was dismissed by the Sessions Judge on the 3rd August 1925.

The petitioner then moved the High Court and obtained the present Rule on the ground that no legally valid complaint had been made in the case.

*Babu Suresh Chandra Taluqdar* (with him *Babu Ramendra Chandra Roy*), for the petitioner. The complaint should have been made by Mr. Guha who held the local inquiry and disposed of the case, and not by the Magistrate who took cognizance: See *Jeebun Krista Shaw v. Benoy Krista Shaw* (1), and *Putiram Ruidas v. Mahomed Kasem* (2).

*The Deputy Legal Remembrancer* (Mr. Ashraf Ali) for the Crown. The offence under section 211 of the Penal Code was committed in, or in relation to, a proceeding in the Court of Mr. Sen, as the complaint found false was filed before him, and he recorded the examination of the complainant. He had jurisdiction to make the complaint.

C. C. GHOSE AND DUVAL JJ. In this case the petitioner filed a petition of complaint on the 14th June, 1924, in the Court of Mr. Suresh Chandra Sen, Deputy Magistrate, first class, under sections 395, 380 and 147 of

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the Indian Penal Code. Mr. Sen examined the petitioner on oath, and thereafter the case was transferred to the file of Mr. L. C. Guha, Deputy Magistrate, first class, for disposal. Mr. L. C. Guha held a local inquiry and then dismissed the petitioner's complaint under section 203 of the Criminal Procedure Code. He observed, however, that there was no occasion for proceedings against the petitioner under section 211 of the Indian Penal Code. Mr. Sen, before whom the petition of complaint had been filed, thereafter made a complaint under section 476 of the Criminal Procedure Code, against the petitioner and sent the complaint to Mr. Das, Deputy Magistrate, for necessary action. After a preliminary inquiry the petitioner was committed to the Court of Session to take his trial under section 211 of the Indian Penal Code. He was convicted by the Assistant Sessions Judge and sentenced to undergo rigorous imprisonment for a period of one year and a half. An appeal against the said conviction and sentence was summarily dismissed by Mr. Carter, Sessions Judge, on the 3rd August 1925.

It is now contended before us that the petitioner's case having been transferred from the file of Mr. Sen to that of Mr. Guha, Deputy Magistrate, who tried the case on the merits, the former had no jurisdiction to make the complaint under section 476 of the Criminal Procedure Code. The matter really depends upon the meaning of the words "which appears to have been committed in, or in relation to, a proceeding in that Court" occurring in section 476 of the Criminal Procedure Code. It will be noticed that the same words occurred in clause (b) of sub-section (1) of section 195 of the Criminal Procedure Code. Now it has been held in cases under the old section 195 of the Criminal Procedure Code that it is the Court trying the case which is the proper authority to grant sanction, and

not the Court before which proceedings are instituted and by which process is issued (see the cases of *Jeebun Krista Shaw v. Benoy Krista Shaw* (1), and *Putiram Euidas v. Mahomed Kasem* (2). No doubt, under the present Code, sanction to prosecute under section 195 has been done away with, and in its place a complaint <sup>de</sup> to be made in writing under section 476 of the Criminal Procedure Code. We think, however, that the *ratio* of the decisions referred to above applies, and that if a complaint had to be made in this case it should have been made by Mr. Guha and not by Mr. Sen. In this view of the matter the contention urged before us succeeds, and we make the Rule absolute. The result is that the conviction and sentence are set aside and the petitioner will be discharged from his bail bonds.

E. H. M.

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