

costs of launching the application or of the hearing of the same.

MUKERJI J. I agree.

Attorneys for the appellant : *Fox and Mandal.*

Attorneys for the respondent : *Khaitan & Co.*

N. G.

1926
 JAPAN
 COTTON
 TRADING
 CO., LTD.
 v.
 JAJONIA
 COTTON
 MILLS,
 LTD.

CIVIL RULE.

Before Chotzner and Duval JJ.

HAMID ALI

v.

MADHU SUDAN DAS SARKAR*

1926
 Sep. 23.

Judgment—Judgment of the Appellate Court not in accordance with law—Appeal under s. 476B of the Criminal Procedure Code—Applicability of the provisions of the Criminal Procedure Code to such appeals—Criminal Procedure Code (Act V of 1898), s. 424.

Where the District Judge, on an appeal under s. 476B of the Criminal Procedure Code, recorded a judgment merely stating that he had heard arguments for the appellants, read the reply of the Subordinate Judge (who had made the complaint under section 476), to the points on which a report was called for, and was not prepared to interfere and order withdrawal of the complaint :—

Held, that the judgment of the District Judge was defective, and that the appeal must be re-heard, and a judgment passed in accordance with law.

Per CHOTZNER J. Where a complaint has been made under section 476, the person affected by it may appeal to the Court to which the Court making the complaint is subordinate ; such appeal must be dealt with as

* Civil Revision No. 6 of 1926, against the order of J. M. Pringle, District Judge of Tippera, dated May 22, 1926.

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an ordinary appeal under the Criminal Procedure Code, and the appellate judgment must conform to the provisions of section 424 of the latter.

Per DUVAL J. The appeal is triable as a miscellaneous civil appeal, and is regulated by Order XLI of the Civil Procedure Code, and not by sections 422—424 of the Criminal Procedure Code.

The facts of the case were as follows. One Madhu Sudan Das instituted a suit for damages against the petitioners in the Court of the Second Sub-Judge of Comilla, and obtained a decree against the petitioners 1—3. An application was made, on the 14th February 1925, for execution, and the petitioners thereupon filed a petition alleging settlement out of Court and payment by them of part of the decretal sum, and they produced a receipt for the sum paid. On the 24th April Madhu Sudan put in an objection denying the settlement, and alleging that the receipt was a forgery. *Miscellaneous case No. 64 of 1925* was started, evidence taken, and the case dismissed by the Sub-Judge on the 12th December 1925. He then issued a notice, under section 476 of the Criminal Procedure Code, against the petitioners, on the application of Madhu Sudan, and ultimately, on 1st February 1926, directed a complaint to be made to the District Magistrate under sections 471, 467/109 of the Penal Code against all the petitioners, and in addition under section 193 against the 4th petitioner. The petitioners appealed, under section 476B of the Criminal Procedure Code, to the District Judge who passed an order as set out in the judgment of the High Court. The Sub-Judge sent the report called for, and made a fresh complaint, and the appeal was thereupon dismissed by the District Judge in the following terms :—

“ Heard the arguments for the appellants, and read the Sub-Judge’s reply to the points referred to in my order. I am not prepared to interfere or order a withdrawal.”

The petitioners then moved the High Court and obtained the present Civil Rule.

Mr. Narendra Kumar Bose and Babu Debendra Narain Bhattacharjee, for the petitioners.

Babu Birendra Kumar Dey, for the opposite party.

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CHOTZNER J. We are of opinion that this Rule must be made absolute on the first ground upon which it was issued, namely, that the judgment of the learned District Judge is not in accordance with law. It seems that the Subordinate Judge drew up an order directing the prosecution of the present petitioners on certain grounds. An appeal was taken from that order, under section 476B of the Criminal Procedure Code, to the District Judge. The learned Judge, however, seems to have regarded the complaint drawn up by the Subordinate Judge as defective, and he, therefore, sent instructions to the Subordinate Judge "to frame a proper complaint more or less in the form of a charge, giving the date of the alleged offence or offences, the way in which they were committed (*i.e.*, in the case of the charge under section 471, the "mode of user)", and then he goes on to say "let him send me the complaint in this form," and he then proceeded to state what apparently was one of the grounds of appeal which was "that judgment-debtors Nos. 2 and 3 took no active part in the prosecution of the case, and cannot be bound with anything which judgment-debtor No. 1 may have done. The Subordinate Judge should meet that objection." This order was made on the 1st May 1926. On the 22nd May the learned Judge notes—"Heard arguments for the appellants, and read the Subordinate Judge's reply to the points referred to in my order. I am not prepared to interfere or order withdrawal." Now it is plain from the wording of section 476B that where a complaint has been made under section 476, the person affected by the complaint may take an

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appeal to the Court to which the Court making the complaint is subordinate, and that appeal must be dealt with as an ordinary appeal under the Criminal Procedure Code, as is provided for in section 424 of the Code. The procedure, however, adopted by the learned District Judge was not in accordance with that section. We doubt whether he had jurisdiction, when an appeal had been preferred against an order of the Subordinate Judge, to require the Subordinate Judge to answer arguments which he was required to answer himself. We are also of opinion that the summary method he had followed in disposing of the appeal, without giving any reason, cannot be supported. We consider, therefore, that the Rule must be made absolute, and the case remitted to the Court of the District Judge so that he may re-hear the appeal and write a judgment in accordance with law.

DUVAL J. I agree with my learned brother that the appeal must be heard according to law. In my opinion, however, the appeal must be triable as a Miscellaneous Civil Appeal, and regulated by Order XLI of the Code of Civil Procedure, and not by sections 422—424 of the Criminal Procedure Code, it being an appeal against an order of a Civil Court to a Superior Civil Court, and the procedure in Civil Courts being provided for in the Civil and not the Criminal Procedure Code.

E. H. M.

Rule absolute.