

clear that the present petitioner was *prima facie* instrumental for the demand of the bribe. If Mr. Bhowmic, who took cognizance of the offence, as he did, under section 190(a), Code of Criminal Procedure, had chosen to issue process against the petitioner, no possible objection could have been taken. Mr. Dutt, to whom the case was transferred by the District Magistrate under the provisions of section 192, Code of Criminal Procedure, stood in the shoes of Mr. Bhowmic and he had full authority to deal with the case as if he himself had taken cognizance of it. The facts cited in Khudiram's case to which we have referred do not seem to us to have any bearing on the present case.

For these reasons this Rule must be discharged.

G. S.

Rule discharged.

CIVIL RULE.

Before Chótzner and Gregory JJ.

MANIR AHAMED CHOWDHURY

v.

JOGESH CHANDRA ROY*.

1928

Feb. 9.

Sanction—Complaint—Appeal Court's powers—Criminal Procedure Code (Act V of 1898), s. 476 B.

In an appeal under section 476 B., Criminal Procedure Code, the Appellate Court has no jurisdiction to remand the case directing the Court of first instance to file a complaint, but must do so itself.

Rule obtained by Manir Ahamed Chowdhury, respondent.

In a suit brought by Jogesh Chandra Roy against Manir Ahamed Chowdhury in the Court of the Subordinate Judge of Chittagong the defendant produced

*Civil Revision No. 13 of 1927, against order of R. F. Lodge, District Judge of Chittagong, dated Sep. 9, 1927 reversing the order of L. Rahaman, Subordinate Judge of Chittagong, dated May 28, 1927.

1928
 REMENDRA
 NATH SEN
v.
 EMPEROR.

1928

MANIR
AHAMED
CHOWDHURY
v.
JOGESH
CHANDRA
ROY.

in court a receipt granted by the plaintiff for a payment of Rs. 500. This receipt was dated 1330 B.S. in two places, but this figure had been changed to 1331 B.S. in different ink from the original. The plaintiff swore on oath that the receipt was granted in 1330 B.S., and that no such payment was made on that date in 1331 B.S. He produced counterfoil rent-receipts which supported his story as to the payment in 1330 B.S. The only witness examined by defendant offered no explanation as to the alteration in the receipt, which he could easily have done, if the alteration had been honestly made. The learned Subordinate Judge of Chittagong refused to file a complaint under section 471, I.P. C., and on appeal under section 476 B, Criminal Procedure Code, the learned District Judge of Chittagong directed the Subordinate Judge to file a complaint against Manir Ahamed Chowdhury, who thereupon moved the High Court and obtained a Rule.

Mr. J. Camell (with him *Labu Satindra Nath Mukherjee*) for petitioner. The District Judge's order is without jurisdiction, and must be set aside as it is contrary to the Statute.

[CHOTZNER J. But the District Judge can file the complaint. Who appears for the opposite party?]

Mr. Monnier (with *Babu Probodh Chandra Chatterjee* and *Babu Nripendra Chandra Das*), for the opposite party. But this matter must go back on remand for the District Judge to file the complaint under section 471, I. P. C. The accused can't escape altogether.

[CHOTZNER J. That is so.]

CHOTZNER AND GREGORY JJ. This Rule was granted on the first ground stated in the petition, namely, that the order of the learned Judge directing the Subordinate

Judge to file a complaint against the petitioner is illegal and without jurisdiction. The proceeding under section 476, Cr. P. C., was begun at the instance of the opposite party before the Subordinate Judge of Chittagong, and the learned Judge was invited to formulate a complaint against the petitioner under that section. This the learned Judge for reasons recorded in his judgment refused to do. An appeal was taken from that decision to the court of the District Judge of Chittagong and the learned District Judge after stating the facts said as follows: "In the circumstances, I am of opinion that there is sufficient justification for placing the opposite party (that is the present petitioner) on trial for forgery under section 471, I. P. C. The Magistrate after hearing the whole evidence will be in a position to decide whether a charge should be framed or not. Hence ordered that appeal be allowed. The record is returned to the Subordinate Judge and he is directed to file a complaint under section 471, I. P. C., or such other sections as he thinks fit". Now the appeal being under section 476B, Cr. P. C., the only person who was competent to make the complaint was the District Judge himself. The order, therefore, directing the Subordinate Judge to file the complaint was without jurisdiction and must, accordingly, be set aside.

The Rule is therefore made absolute and the case remanded to the learned District Judge to proceed according to law.

Rule absolute ; case remanded.

G. S.

1928

MANIR
AHAMED
CHOWDHURY
v.
JAGMOHAR
CHATTERJEE