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of the provision of the Code to obtain a real and effectual possession. I therefore agree with my learned brother Cammiade. The Rule stands discharged.

A. C. R. C.

Rule discharged.

APPELLATE CRIMINAL.

Before Rankin C. J. and Chotzner J.

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Nov. 24.

KANAI LAL SAHA*

v.

MAKHAN LAL SAHA.

Appeal—Appeal under s. 476B. of the Criminal Procedure Code (Act V of 1898)—Procedure.

Where an appeal is preferred under s. 476 B of the Criminal Procedure Code against an order of the Munsif under s. 476 of the Code refusing to direct a complaint to be made, on the view that he had no jurisdiction in the matter, it is the duty of the Judge to decide first of all whether the Munsif was correct in the view he took about jurisdiction.

APPEAL by Kanai Lal Saha.

The respondents, Makhan Lal Saha and Chuni Lal Saha, obtained a money decree against the appellant, Kanai Lal Saha, and put the decree in execution. The appellant, in order to avoid the liability, forged a receipt for Rs. 75, as it is alleged and filed the same in the execution case and pleaded that the decree was satisfied. The objection was disallowed. Subsequently he brought a suit in the Court of Small Causes in the 1st Munsif's Court at Goalundo for refund of Rs. 75 and Rs. 5 as interest and filed the aforesaid receipt in that suit. The suit was contested by the respondents and was dismissed, the Court holding

* Criminal Appeal No. 585 of 1927, against the order of T. H. Elles, District Judge of Faridpur, dated June 25, 1927, with an application.

the receipt to be forged. Thereupon the respondents applied to the trial Court under s 476 of the Criminal Procedure Code to prosecute the appellant for offence referred to in s. 195 (*c*) of the Code and notice was issued accordingly. The Munsif was transferred before the disposal of the case and the case was ordered by the District Judge to be placed in the file of the 1st Munsif of Goalundo. The said Court rejected the application which was preferred under s 476 of the Code on the ground of jurisdiction. The defendants, respondents in this appeal, appealed to the District Judge. The District Judge allowed the appeal, holding that a *primâ facie* case had been made out against Kanai Lal Saha on the evidence in the case and that it was expedient in the interests of justice that an enquiry should be made in the matter. He, however, held that it was not necessary for him to enter into any discussion as to the propriety or not of the finding of the Munsif on the question of jurisdiction.

Kanai Lal Saha thereupon preferred this appeal in the High Court.

Babu Suresh Chandra Talukdar, for the appellant. I concede that no appeal lies from an order made by a superior Court in its appellate power under s. 476 B, Cr. P. C. See *Ahamadar Rahman* v. *Dwip Chand Chowdhury* (1).

The present order is, however, entirely without jurisdiction.

The District Judge ought to have decided first whether the 1st Munsif of Goalundo had jurisdiction or not, If he had jurisdiction and had rightly exercised it, the District Judge should have dismissed the appeal. He could only have made a complaint

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under s. 476 B, if he was of opinion that the Munsif had wrongly held to have no jurisdiction.

The order is also invalid for grave error in procedure, inasmuch as the procedure followed deprived the petitioner of a right of appeal.

The Deputy Legal Remembrancer (Mr. Khundkar), in reply.

RANKIN C. J. In this case the learned District Judge of Faridpur has made an order directing that a complaint should be made against the appellant for an offence under section 195 (*i*) (*c*) of the Criminal Procedure Code in respe ct that he forged a receipt and used that document in evidence in a certain suit before the Court of the second Munsif of Goalundo knowing it to be forged.

The Munsif in the suit found that the receipt was a forgery and the two defendants applied to the Munsif for an order directing that a complaint should be made to a Magistrate against the present appellant. Before that application was disposed of, the judicial officer in question was transferred and the case was, by the order of the District Judge, transferred to the Court of the First Munsif of Goalundo. That learned Munsif of Goalundo, when the matter came before him under section 476 Cr. P. C., refused to direct a complaint to be made, on the view that he had no jurisdiction in the matter, he not being the Court referred to in section 476 in respect that the alleged offence had not been committed in or in relation to a proceeding in his own Court, but had been committed, if at all, in relation to a proceeding in the Court of the Second Munsif of Goalundo, who had tried the case. That being his view, the learned First Munsif thought that he had no jurisdiction.

An appeal was taken to the District Judge under section 476 B, and the first thing that the learned Judge had to decide was whether the view as to jurisdiction taken by the Court from whose order an appeal was being brought to him was right or wrong. If the learned First Munsif of Goalundo had no jurisdiction to make a complaint and had rightly refused to make a complaint, the appeal should have been dismissed upon that ground. On the other hand, if the learned District Judge took the view that the learned First Munsif of Goalundo had jurisdiction but had wrongly held that he had no jurisdiction, then he would be entitled to make a complaint under section 476 B. Upon the former view that there was no jurisdiction in the First Munsif of Goalundo, it might or might not have been proper for the learned District Judge to entertain an application, if made under section 476 A, and in that event whether he granted the application or refused the application, an appeal would lie to this Court. This Court has already held that no appeal lies from an order made by a superior Court in its appellate powers under section 476 B. It is entirely wrong, however, for the learned District Judge to think that whether or not the First Munsif of Goalundo had jurisdiction under section 476, he, the learned District Judge, on an appeal therefrom, could make a complaint which the learned First Munsif could not have made. It seems to us, therefore, that the order before us is wrong in the sense that the learned District Judge has proceeded irregularly without enquiring properly into the correctness of the view taken by the First Munsif of Goalundo to the effect that there was no jurisdiction in his Court to entertain this particular application for complaint.

We cannot interfere with the order, however, as a matter of appeal, but it does seem to us that the error

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committed by the learned District Judge falls within section 115 of the Civil Procedure Code. It was an error with respect to jurisdiction. It is also an error with respect to procedure. It is a material irregularity and the view taken by the learned District Judge may operate to deprive the present appellant of a right of appeal. If the true view be that the learned District Judge's only power to make a complaint was in the circumstances under section 476 A, it is quite clear that the erroneous procedure adopted in this case has deprived the appellant of a right of appeal. In these circumstances, we must make an order sending this matter back to the learned District Judge, in order that he may decide whether or not the Court from which the appeal was brought rightly or wrongly held that it had no jurisdiction. If it rightly so held, then the appeal should be dismissed. It may or may not then happen that an application will be made to the learned District Judge under section 476 A. We say nothing to limit the discretion of the learned District Judge in that event. On the other hand, if the learned District Judge takes the view that the First Munsif of Goalundo had jurisdiction to order a complaint and had wrongly refused to do so, then it would be possible for him to make a proper order under section 476 B, directing that a complaint should be lodged.

The appeal is dismissed, but an order is made as stated under section 115 of the Civil Procedure Code.

CHOTZNER J. I agree.

S. M.