

## CRIMINAL REVISION.

Before Panckridge and Patterson JJ.

1932

Nov. 25.

NAGENDRANATH ADHIKARI

v.

EMPEROR.\*

*Jurisdiction—Appeal under s. 476B of the Code of Criminal Procedure from order of Assistant Sessions Judge, if lies to the Court of Sessions—Code of Criminal Procedure (Act V of 1898), ss. 195, 476, 476B.*

An appeal under section 476B of the Code of Criminal Procedure from an order under section 476 passed by an Assistant Sessions Judge lies to the Court of Sessions.

*Superintendent and Remembrancer of Legal Affairs, Bengal v. Ijjatulla Paikar (1) and Ramjan Ali v. Moolji Sica and Co. (2) referred to.*

## CRIMINAL APPEAL.

The material facts appear from the judgment of the Court.

*Santoshkumar Basu* (with him *Debabrata Mukherji* and *Parimal Mukherji*) for the appellant.

*B. M. Sen* for the Crown.

PANCKRIDGE J. This is a Rule obtained by the petitioner, calling upon the District Magistrate of Burdwan to show cause why an order made by the Sessions Judge of Burdwan allowing an appeal against an order of the Assistant Sessions Judge of Burdwan and directing a complaint to be lodged to the effect that the petitioner had committed offences punishable under certain of those sections of the Indian Penal Code to which section 195, sub-section (1), paragraph (c) of the Criminal Procedure Code applies, should not be set aside.

\*Criminal Revision, No. 477 of 1932, against the order of J. De, Sessions Judge of Burdwan, dated April 23, 1932, reversing the order of S. N. Ray, Assistant Sessions Judge of Burdwan, dated March 3, 1932.

(1) (1930) I. L. R. 58 Calc. 1117.

(2) (1929) I. L. R. 56 Calc. 932.

It appears that an application was made to the Assistant Sessions Judge of Burdwan, who was the successor of the Assistant Sessions Judge who tried the case, in connection with which the offences are said to have been committed, to make a complaint under section 476. This the learned Assistant Sessions Judge refused to do. An appeal was made to the Sessions Judge under section 476B, with the result that the order, refusing to make a complaint, was set aside and the learned Sessions Judge expressed his intention of lodging a formal complaint before the Subdivisional Officer. We are not concerned with the merits of the Sessions Judge's decision, because the Rule has been granted on two grounds alone, which raise a question of jurisdiction.

It is said, on behalf of the petitioner, that, in the circumstances of the case, no appeal under section 476B lies to the Sessions Judge and that if the applicant before the Assistant Sessions Judge desired to question the propriety of the Assistant Sessions Judge's refusal to lodge a complaint, his remedy was by way of an appeal to the High Court. To decide this question, it is necessary to examine the relevant sections of the Code of Criminal Procedure. Section 476B provides that, in a case where the court has refused to make a complaint under section 476, the person whose application has been rejected may appeal to the court, to which such former court is subordinate within the meaning of section 195, sub-section (3). Section 195, sub-section (3) enacts that a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from the decisions of such former court. In the case of Assistant Sessions Judges, section 408 of the Code of Criminal Procedure provides that an appeal shall lie to the court of sessions, subject to the proviso that, when an Assistant Sessions Judge passes a sentence of imprisonment for a term exceeding 4 years or any sentence of transportation, an appeal shall lie to the High Court. I do not think it necessary to discuss what meaning is to be attached to the word

1932

*Nagendranath**Adhikari*

v.

*Emperor.**Panckridge J.*

1932

*Nagendranath  
Adhikari  
v.  
Emperor.  
Panckridge J.*

“ordinarily” in section 195, or to come to any decision whether appeals from Assistant Sessions Judges ordinarily lie to the court of sessions rather than to the High Court, or to the High Court rather than to the court of session. It is clear that appeals do lie from convictions by Assistant Sessions Judges, some of which are to be dealt with by courts of session and some by the High Court. When we turn to the proviso of section 195, sub-section (3), we find that, when appeals lie to more than one court, the appellate court of inferior jurisdiction shall be the court to which the trial court shall be deemed to be subordinate. It is clear that these words cover the case, to which the learned advocate for the petitioner has referred, of the court of a Subordinate Judge from whom an appeal lies either to the court of the District Judge or to the High Court, according to the value of the subject matter of the suit. The question is whether the proviso gives us any indication to what court an appeal lies from an order made by an Assistant Sessions Judge under section 476. Mr. Basu contends that sub-section (3) cannot apply to Assistant Sessions Judges and courts of sessions for he says the subordinate court must be a different court from the one to which it is subordinate, and the proviso contemplates a court which is subordinate to two different courts in the sense that appeals lie from it to both those courts and lays down that in such a case the court of inferior jurisdiction shall be the court to which the original court shall be held to be subordinate for the purpose of the section. He also points out that Assistant Sessions Judges, Additional Sessions Judges and Sessions Judges are all Judges of the same court, namely, the court of sessions. That would appear to be the case, both from the language of section 6 of the Code of Criminal Procedure, which only contemplates, besides High Courts, courts of session and various magistrates’ courts, and also from the language of section 9, which contemplates the establishment by the Local

Government of a court of session for every sessions division, and the appointment of a judge of such court, and also of Additional Sessions Judges and Assistant Sessions Judges, all of whom are members of the same court. In addition to the Code, there is also the case of *Superintendent and Remembrancer of Legal Affairs, Bengal, v. Ijijatulla Paikar* (1). In that case it was held that, when an offence under section 193 of the Indian Penal Code had been committed in a proceeding before an Additional Sessions Judge and the Additional Sessions Judge had been transferred, the Sessions Judge had jurisdiction to make a complaint under section 476, because he was a judge of the same court, namely, the court of session, as the Additional Sessions Judge. I think that there is considerable force in Mr. Basu's argument, but if it is sound it must follow that no appeal can lie under section 476B of the Code of Criminal Procedure against an order of a Judge of the High Court sitting singly on the Original Side to a Division Bench of the Court, because, if it is necessary for the court from which an appeal is to lie under section 476B to be a court different from the court making the order under section 476, that condition will not be satisfied, because the High Court exercising its ordinary original civil jurisdiction is the same Court as the High Court exercising its appellate jurisdiction. This very point has been considered and decided in the case of *Ramjan Ali v. Moolji Sicca and Co.* (2), where Rankin C. J. and Buckland J. held that not only did an appeal lie from a single Judge of the High Court exercising original civil jurisdiction to a Division Bench where a single Judge has made a complaint under section 476, but also that such appeal lay by virtue of the provisions of section 476B. In taking this view, the learned Judges relied upon two decisions—one a Full Bench decision of the Madras High Court and the other a decision of the Bombay High Court. It appears to me that the same

1932

*Nagendranath  
Adhikari  
v.  
Emperor.  
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1932

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Adhikari  
v.  
Emperor.  
Panchridge J.*

considerations apply in the present case. Although, as I have said, Mr. Basu's argument is attractive and the language of the Code is not altogether happily chosen, I am of opinion that an appeal from the sentence of an Assistant Sessions Judge does ordinarily lie to the court of session, even though an Assistant Sessions Judge is a member of that court. If it cannot be said also ordinarily to lie to the High Court no question arises. But if it can be said ordinarily to lie to the High Court, proviso (a), sub-section (3) of section 195 applies, and the appeal under section 476B must be held to lie to the court of inferior jurisdiction, namely, the court of session. These considerations dispose of the matter, and since we are of opinion that the grounds on which the Rule was granted have not been shown to be sustainable, the Rule must be discharged.

PATTERSON J. I agree.

*Rule discharged.*

A. C. R. C.