

CRIMINAL RIVISION.

Before Suhrawardy and Jack JJ.

LAL MAHAMMAD

v.

THE DEPUTY INSPECTOR-GENERAL OF
POLICE, C.I.D., BENGAL.*

1929

July 29

Appeal—Additional Sessions Judge, if can hear appeals under section 476B, Cr. P. C.—Code of Criminal Procedure (Act V of 1898), s. 476B.

The District Judge, after receiving an appeal under section 476B of the Code of Criminal Procedure from the order of a Munsif, has jurisdiction to transfer the same to the Additional District Judge, who can, thereupon, hear the appeal and make a complaint under section 476B of the Criminal Procedure Code.

RULE obtained by Lal Mahammad and two others against a complaint made on appeal under section 476B of the Criminal Procedure Code.

The accused Lal Mahammad brought a suit for recovery of money on a handnote against one Dhora Mea and his father, Ramjan Mea, in the Munsif's Court at Raiganj. The latter had lodged an information at the *thânâ* of their native village in the district of Balia, alleging that they had been threatened by Lal Mahammad and, on receiving summons in the suit, approached the District Magistrate, who wrote to the Criminal Investigation Department of Bengal for defending the suit. After the suit had proceeded to some extent, it was dismissed for default on the 5th May, 1925. On the 10th July, 1925, an application was made by the Deputy Inspector-General of the Criminal Investigation Department, Bengal, for the prosecution of Lal Mahammad and others. The application was dismissed by the learned Munsif, but, on appeal to the District Judge, the latter set aside the order of dismissal and made a complaint, which in turn was set aside by the High Court, which

*Criminal Revision, No. 5 of 1929, against the order of H. C. Mitter, Additional District Judge of Dinajpur, dated Jan. 17, 1929.

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remanded the case to another Munsif, with certain directions. After the remand, the Sadar 1st Munsif of Dinajpur, held the enquiry and dismissed the application. An appeal was preferred to the District Judge, who after receiving it, transferred it to the Additional District Judge, who was also an Additional Sessions Judge. The latter allowed the appeal, set aside the order of dismissal and made a complaint under section 476B of the Criminal Procedure Code.

Mr. Sureshchandra Talukdar (with him *Mr. Surajitchandra Lahiri*), for the petitioners. The order of complaint is *ultra vires*, inasmuch as the Additional Sessions Judge had no authority to hear appeals under section 476B of the Code of Criminal Procedure. That court is not one to which appeals ordinarily lie from the decrees of the Munsif. It is the District Judge, who alone can hear such appeals and who alone can make a complaint. *Mahim Chandra Nath Bhoumick v. Emperor* (1) referred to. The question of a complaint is of serious nature and section 195, clause (3), should be strictly construed. The complaint, therefore, should be quashed.

Mr. Satindranath Mukerji, for the opposite party. The Additional District Judge has ample authority to hear such appeals. Section 24 (a) of the Civil Procedure Code and section 8 of the Civil Courts Act (XII of 1887) give power to the District Judge to transfer such proceedings to the Additional District Judge. In this case, the appeal was filed before the District Judge. Hence the case of *Mahim Chandra Nath Bhoumick v. Emperor* (1) is distinguishable. Even if it be considered to be a criminal appeal, section 409 of the Criminal Procedure Code covers it. The Additional District Judge was also an Additional Sessions Judge.

Mr. Talukdar, in reply. Since the amendment, an appeal under section 476B is a Criminal appeal and is governed by the Criminal Procedure Code.

Rajani Kanta Kayal v. Bistoo Moni Dassi (1),
Chunder Kumar Sen v. Mathuriya Debya (2) and
Hamid Ali v. Madhusudan Das Sarkar (3).

SUHWARDY J. This Rule was issued on ground No. 9, which is to this effect: "For that the learned "Additional Sessions Judge had no jurisdiction "to hear the appeal or to lodge the complaint." The facts are that the petitioner sued the defendants upon a *hâtchitâ* in the Court of the Munsif at Raiganj in the district of Dinajpur, and, on behalf of the defendants, the suit was contested by the opposite party Deputy Inspector-General of Criminal Investigation Department, Bengal. The suit was transferred by the order of the District Judge from Raiganj to the Munsif at Dinajpur. The petitioner applied to the Munsif for leave to withdraw from the suit, with liberty to bring a fresh suit on the same cause of action. It was refused and the suit was dismissed for non-prosecution. Thereafter, the opposite party applied to the Munsif to prosecute the petitioner under section 476 of the Criminal Procedure Code on charges under sections 120B, 109, 209, 471 of the Indian Penal Code. The application was refused by the Munsif and the opposite party preferred an appeal from the order of the Munsif to the District Judge of Dinajpur under section 476B of the Criminal Procedure Code. The District Judge allowed the appeal and made a complaint under section 476B. Against that order there was an application for revision in this Court. This Court set aside the order of the District Judge and sent the matter back to the Munsif with certain directions. The Munsif again rejected the petition of the opposite party for sanction. The opposite party preferred an appeal to the District Judge against the order of the Munsif, who transferred the case to the Additional District Judge to deal with it. The latter officer allowed the appeal by his judgment, dated the 17th January, 1929. The

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(1) (1927) 46 C. L. J. 40.

(2) (1925) 42 C. L. J. 120.

(3) (1926) I. L. R. 54 Calc. 355.

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petitioner objects to this order on the ground that the Additional District Judge had no authority to make the complaint under section 476B of the Criminal Procedure Code. The matter is not free from doubt and I have given my best consideration to it. Under section 476B, any person whose application under section 476 has been refused or against whom such a complaint has been made may appeal to the court to which such former court is subordinate within the meaning of section 195, sub-section (3). Under section 195, sub-section (3), the court to which the primary court is subordinate shall be deemed to be the court to which appeal ordinarily lies from the appealable decree or sentence from the former court. Section 476B then lays down that, on such appeal being made, the superior court may thereupon pass necessary order.

Now, there can be no doubt that an appeal under section 476B lies to the court to which the trial court is subordinate and in this instance the District Judge's Court is the court to which appeal lies. So that, so far as the filing of the appeal is concerned, there is no irregularity. The next question is whether the District Judge, having received the appeal, has authority to transfer it to the Additional District Judge. This question does not seem to have been finally settled under the Code as amended in 1923. But we may refer to a case under the old Code, namely, the case of *Ramcharan Chanda Talukdar v. Taripulla* (1). There the learned Judges in interpreting the relevant clauses of the old section 195 held that no one except the District Judge had power to hear an appeal under sections 195 (6) and 195 (7) of the old Code. The ratio of that decision, as given by N. R. Chatterjea J., is that a District Judge is competent to dispose of any appeal or any proceeding himself or to transfer it to a Subordinate Judge. But under section 195 (6) of the Criminal Procedure Code, 1898, the power of revoking or granting any sanction

(1) (1912) I. L. R. 39 Calc. 774.

given or refused is given to the authority to which the authority giving or refusing it is subordinate. The judgment of D. Chatterjee J. also deals with the powers of a District Judge to transfer appeals pending in his file to an Additional District Judge. Now, these clauses of section 195 have been repealed and the new sections 476A and 476B have been substituted. 476B lays down that an appeal must be preferred to the court to which the primary court is subordinate, in the sense that appeals ordinarily lie to the former court from the decisions of the latter court, but the final orders may be passed by the superior court. The Court of the Additional Judge may be said to be a superior court in relation to a Munsif's court. Reference may also be made to section 8 of the Civil Courts Act (XII of 1887) which empowers an Additional District Judge to discharge all the functions of a District Judge which may have been assigned to him. Section 24 (a) of the Code of Civil Procedure gives unfettered jurisdiction to the District Judge to transfer an appeal or any proceeding pending before him to any competent court subordinate to him. Now, it has been held that an appeal under section 476B is an appeal under the Criminal Procedure Code and has to be governed by the provisions of that Act: *Rajani Kanta Kayal v. Bistoo Moni Dassi* (1), *Chunder Kumar Sen v. Mathuriya Debya* (2) and *Hamid Ali v. Madhu Sudan Das Sarkar* (3). If it is an appeal under the Criminal Procedure Code, it is governed by section 409, Criminal Procedure Code, which says that an appeal to the Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge. But an appeal under 476 in a civil matter is not preferred to the Sessions Judge, but to the District Judge, the same officer who combines in him both the functions, and power is given to District Judge under the Civil Procedure Code and the Civil Courts Act to regulate the procedure of an appeal.

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I have been pressed for the view I have taken in this matter by considerations of reasonableness in the procedure laid down by the Code. Under section 476A, the power under section 476 may be exercised by a court to which the trial court is subordinate within the meaning of section 195 (3). To give a strict interpretation that only the court to which the primary court is subordinate can make a complaint under section 476A is to deprive Subordinate Judges and Judges other than District Judges, who ordinarily hear most of the appeals from the Munsifs of the power of making any complaint under that section. It often happens and such cases frequently come before us, that when an appellate court forms an opinion in connection with any proceeding in a civil court, it does act under section 476A and make a complaint before the proper court. It is never intended to deprive Judges other than the District Judges, who hear ninety per cent. of the appeals, of the power of making a complaint where they find that an offence has been committed.

Reference in this connection has also been made on behalf of the petitioner to the decision in the case of *Mahim Chandra Nath Bhoumick v. Emperor* (1). That case does not discuss the question raised before us. There the appeal was not preferred to the District Magistrate to whom the trial court was subordinate but to an officer specially empowered to hear appeals from second class magistrates. In the view I have taken of this matter this Rule should be discharged.

JACK J. I agree; but I would simply base my decision on the fact that the District Judge is empowered under section 24 (a), Civil Procedure Code, to transfer any proceeding to the Additional District Judge.

Rule discharged.

A. C. R. C.

(1) (1928) I. L. R. 56 Calc. 824.