

CIVIL REVISION.

Before Jack and Henderson J.J.

CHANDRA KUMAR HOME

v.

GOPI NATH KAR.*

1938

Feb. 16.

Complaint—Appeal from an order by a Munsif refusing to make a complaint, if can be heard by a Subordinate Judge—Complaint by Court, if to be forwarded to a Magistrate who has jurisdiction—Code of Criminal Procedure (Act V of 1898), s. 476 B—Bengal, Agra and Assam Civil Courts Act (XII of 1887), s. 22.

An appeal under s. 476B of the Code of Criminal Procedure, from an order of a Munsif refusing to make a complaint, may be transferred to and disposed of by a Subordinate Judge.

An order by a Munsif refusing to make a complaint is such an order as is referred to in s. 22 of the Bengal, Agra and Assam Civil Courts Act.

Lal Mahammad v. Deputy Inspector-General of Police, C. I. D., Bengal (1) followed.

Ram Charan Chanda Talukdar v. Taripulla (2) referred to.

Manphool v. Budhhu (3) and *Shiva Prasad v. Pahlad Singh* (4) dissented from.

CIVIL REVISION.

The material facts in connection with this Rule were as follows. There were two money execution cases pending against the opposite party, Gopi Nath Kar in the Court of the Fourth Munsif at Netrakona. The decree-holders in these two cases were Kashi Nath Pal in one and Kala Chand Datta in another. In both of them, the same property of the opposite party had been attached and the sales in the two cases were fixed for the 17th and 21st April, 1936.

*Civil Revision, No. 11 of 1937, against the order of Maya Taru Halder, Subordinate Judge of Mymensingh, dated June 21, 1937, reversing the order of Priya Brata Sen, Fourth Munsif of Netrakona, dated Mar. 1, 1937.

(1) (1929) I. L. R. 57 Cal. 831.

(2) (1912) I. L. R. 39 Cal. 774.

(3) (1934) I. L. R. 57 All. 785.

(4) (1935) I. L. R. 58 All. 85.

1938
Chandra Kumar
Home
 v.
Gopi Nath Kar.

Shortly before those dates it was agreed between the two decree-holders and the opposite party that on payment of certain sums the execution cases would be struck off and the opposite party would be given some time to pay the balances. The payments were made and Kala Chand Datta's execution case was struck off. The sale in Kashi Nath Pal's case, however, took place and the property was purchased by Kashi Nath. It was subsequently found that the petition in this case had been altered into one for certifying the payment made and it was alleged that this had been done after the filing of the petition at the instance of Kashi Nath. An application was made to the Munsif by the opposite party praying that a complaint be made against the decree-holder Kashi Nath Pal, his officer Surendra Nath Sarkar, his pleader in the execution case and the pleader's clerk. This application was rejected and the opposite party preferred an appeal under s. 476B of the Code of Criminal Procedure before the District Judge of Mymensingh, who, at the time of the final hearing, transferred the appeal to a Subordinate Judge for disposal. The learned Subordinate Judge allowed the appeal and made a complaint to the Subdivisional Magistrate of Mymensingh against the pleader's clerk under s. 192 of the Indian Penal Code. The pleader's clerk thereupon obtained the present Rule. When the case came up before M. C. Ghose and Khundkar JJ., their Lordships issued a Rule on the decree-holder and his *tadbeerkâr* to show cause why complaint should not also be made against them.

Birendra Kumar Dey and *Ramendra Chandra Roy* for the petitioner, the decree-holder and his *tadbeerkâr*. The order of the learned Subordinate Judge was without jurisdiction, inasmuch as he was not the Court to which the Munsif was Subordinate within the meaning of s. 195(3) of the Code of Criminal Procedure. The District Judge alone could hear the appeal and the transfer to the Subordinate Judge was illegal. In this respect there is a difference between

an Additional District Judge and a Subordinate Judge. The law is the same as it stood before the amendment of 1923. *Ram Charan Chanda Talukdar v. Taripulla* (1). This case has been followed by the Allahabad High Court in the two recent cases of *Manphool v. Budhhu* (2) and *Shiva Prasad v. Pahlad Singh* (3). Section 24 of the Code of Civil Procedure has no application, inasmuch as the Subordinate Judge could not hear the appeal. Section 22 of the Bengal, Agra and Assam Civil Courts Act has no application, as the order refusing to make a complaint is not an order contemplated by that section. The orders referred to in that section must be taken to be analogous to decrees of a civil Court. In other words, it contemplates only orders defined in s. 2(14) of the Code of Civil Procedure. The order of the learned Munsif was not such an order. The appeal should, therefore, be heard by the learned District Judge himself.

1938
Chandra Kumar
Home
v.
Gopi Nath Kar.

The complaint made to the Subdivisional Officer of Mymensingh was illegal under the amended section, because it must be made to the Magistrate having jurisdiction over the offence which was the Subdivisional Officer of Netrakona.

Anil Chandra Ray Chaudhuri for the Crown. The learned Subordinate Judge had ample jurisdiction to deal with the appeal. It was properly filed before the District Judge and the subsequent transfer was legal both under s. 24 of the Code of Civil Procedure and s. 22 of the Bengal, Agra and Assam Civil Courts Act. The cases before the amendment of 1923 are no longer applicable. Formerly, there was no appeal against such an order, but a special proceeding under cl. (6) of s. 195 of the Code of Criminal Procedure. It was, therefore, held that s. 22 of the Civil Courts Act had no application. It was also held on account of the use of the word "authority" in cl. (6) that the District Judge only

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

(2) (1934) I. L. R. 57 All. 785.

(3) (1935) I. L. R. 58 All. 85.

1938
Chandra Kumar
Home
v.
Gopi Nath Kar.

could either revoke or grant sanction. *Ram Charan Chanda Talukdar v. Taripulla* (1) and *Hari Mandal v. Keshab Chandra Mana* (2). These decisions are no longer applicable because cl. (6) has been repealed and a regular appeal has been provided for, the power being given not to a particular authority alone but to a superior Court as such. Moreover, the use of similar expressions in s. 476A and s. 476B shows that Subordinate Judges are competent to deal with such matters while exercising appellate powers. Under s. 476A, a Subordinate Judge hearing a Civil appeal from the decision of a Munsif can make a complaint. It would be anomalous to hold that he could not do so under s. 476B although the language used is the same. *Lal Mahammad v. Deputy Inspector-General of Police, C.I.D., Bengal* (3). The case of *Manphool v. Budhhu* (4) merely follows the case of *Ram Charan Chanda Talukdar v. Taripulla* (*supra*). The opposite view has been held by the same High Court in *Karimullah v. Rameshwar Prasad* (5). With great respect to the learned Judges, the case of *Shiva Prasad v. Pahlad Singh* (6) was wrongly decided. The refusal to make a complaint is an order even within the limited meaning of s. 2(14) of the Code of Civil Procedure inasmuch as it finally decides whether a person should be criminally proceeded against. It removes a very important bar, namely, that to the taking of cognizance by a Magistrate. In the case of *Chandra Kumar Sen v. Mathuria Debya* (7), this was held to be an order within the meaning of Art. 154 of the Limitation Act.

Dinesh Chandra Roy, Jatindra Nath Sanyal and Pramatha Krishna Chakrabarti for the complainant.

Birendra Kumar Dey, in reply.

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

(2) (1912) I. L. R. 40 Cal. 37.

(3) (1929) I. L. R. 57 Cal. 831.

(4) (1934) I. L. R. 57 All. 785.

(5) (1928) I. L. R. 51 All. 344.

(6) (1935) I. L. R. 58 All. 85.

(7) (1925) I. L. R. 52 Cal. 1009.

JACK J. This Rule was issued calling upon the District Magistrate of Mymensingh and also upon the opposite party to show cause why an order of the Subordinate Judge under s. 476B of the Code of Criminal Procedure making a complaint against the petitioner to the Subdivisional Magistrate under s. 192 of the Indian Penal Code and reversing the order of the Munsif should not be set aside on the grounds that the order of the learned Subordinate Judge was illegal and could not be sustained in that the learned Subordinate Judge had no jurisdiction to hear the appeal from the order of the Munsif and make the complaint.

1938
Chandra Kumar
Home
v.
Gopi Nath Kar.

The alleged offence arose in connection with an application in a Money Execution case in the Court of the Fourth Munsif, Netrokona. There was an alteration made in this application filed before the Munsif and subsequently the opposite party suspected that the decree-holder and the clerk of the pleader, who is the present petitioner, and others had tampered with the application after it was filed. They prayed that the Munsif should make a complaint against these persons. The Munsif held a preliminary enquiry and rejected this application under s. 476 holding that there was no case for prosecution. Thereupon an appeal was made to the District Judge of Mymensingh and it was transferred by him for hearing to the Subordinate Judge, Babu Maya Taru Haldar. The Subordinate Judge reversed the order of the Munsif and made a complaint to the Subdivisional Magistrate, Mymensingh, against the petitioner under s. 192 of the Indian Penal Code.

The principal point urged in connection with this Rule is that the Subordinate Judge had no jurisdiction to hear the appeal under s. 476B of the Code of Criminal Procedure, inasmuch as, under the provisions of that section, an appeal is to be made to the Court to which the Court which refused to make the complaint is subordinate within the meaning of s. 195(3). In this case there can be no doubt that

1938
Chandra Kumar
Home
v.
Gopi Nath Kar.
Jack J.

the Court of the District Judge is the Court to which the Munsif's Court is subordinate and, therefore, the appeal was quite rightly made to the District Judge. But it is asserted that the District Judge had no jurisdiction to transfer the appeal for hearing to the Subordinate Judge. The transfer was made under the provisions of s. 22 of the Bengal, Agra and Assam Civil Courts Act which lays down that a District Judge may transfer to any Subordinate Judge under his administrative control any appeal from the decrees or orders of Munsifs pending before him. It is contended that the order of the Munsif refusing to file a complaint is not such an order as is referred to in s. 22 of the Bengal, Agra and Assam Civil Courts Act. In support of this we have been referred to some decisions of the Allahabad High Court in which it was held that s. 24(1) (a) of the Code of Civil Procedure or s. 22 of the Bengal, Agra and Assam Civil Courts Act does not authorise the transfer to a Subordinate Judge of an appeal from an order of a Munsif under s. 476 of the Code of Criminal Procedure. This was held in the case of *Manphool v. Budhhu* (1) and also in the case of *Shiva Prasad v. Pahlad Singh* (2). It was held in the latter case that an indication as to what an order connotes could to some extent be gathered from the definition of "order" in s. 2, sub-s. (14) of the Code of Civil Procedure by way of analogy and the learned Judges held that it was not an order because it did not decide any matter finally against the person against whom the complaint was made nor was there any adjudication of any right of the parties. With all due respect to the learned Judges who decided this case, it appears to me that the Court in passing this order did decide as to rights of the parties, for the Munsif decided that they were not entitled to the complaint. There seems to be no reason to limit the meaning of the word "orders" in s. 22 of the Bengal, Agra and Assam Civil Courts Act so as to exclude

(1) (1934) I. L. R. 57 All. 785.

(2) (1935) I. L. R. 58 All. 85.

an order of this kind. In another decision of the Allahabad High Court *Karimullah v. Rameshwar Prasad* (1) it was held that a complaint by the Munsif did amount to an order within the meaning of s. 22 of the Bengal, Agra and Assam Civil Courts Act and the same view was held in this Court in the case of *Ram Charan Chanda Talukdar v. Taripulla* (2), although as the law then stood, according to the provisions of s. 195(6) a Subordinate Judge could not hear an appeal under s. 476. The same view was also held in the case of *Lal Mahammad v. Deputy Inspector-General of Police, C.I.D., Bengal* (3).

1938
Chandra Kumar
Home
v.
Gopi Nath Kar.
Jack J.

Accordingly, there appears to be no substance in the objection that the order of the Subordinate Judge was without jurisdiction on this ground.

The only other point raised was that the Subordinate Judge had no jurisdiction to forward the complaint as he did to a Magistrate who had no jurisdiction to try the case. Under the law a Subordinate Judge is only entitled to forward a complaint to a Magistrate who has jurisdiction. In the present case, the Subordinate Judge has forwarded the complaint to the Subdivisional Officer, Mymensingh. This part of the order must be set aside and the complaint should be forwarded to the Subdivisional Officer, Netrakona. Apart from this modification in the order this Rule is discharged.

Another Rule was issued by this Court upon *Kashi Nath Pal* and his officer *Surendra Chandra Sarkar* to show cause why an order for prosecution against them should not be made. *Kashi Nath Pal* was the decree-holder in the execution proceedings out of which this case arose and the Rule was issued as it appeared to the Court that they were implicated in the tampering with an application out of which the complaint arose. We think that there is no need to make this Rule absolute inasmuch as it is

(1) (1928) I. L. R. 51 All. 344.

(2) (1912) I. L. R. 39 Cal. 774.

(3) (1929) I. L. R. 57 Cal. 831.

1938
Chandra Kumar
Home
 v.
Gopi Nath Kar.
 Jack J.

open to the Magistrate who hears the complaint to proceed against these persons if there is evidence that they have been guilty of any offence under s. 192 of the Indian Penal Code or any other section in connection with the same transaction. This Rule is, accordingly, discharged. We make no order as to costs.

HENDERSON J. I agree. If the rejection of the application filed by the opposite party or the refusal of the Munsif to make a complaint is not an order, I do not know what it is. Indeed, in the course of the judgment just delivered, my learned brother referred not only to the order of the Munsif but also to the order of the Subordinate Judge and I very much doubt whether it would be possible to find a more suitable expression. The Munsif actually reached a decision. He did not merely make a pious expression of his opinion. The result of his decision was that apart from any interference by the lower appellate Court the prosecution of the petitioner was stifled. Nor would I be prepared to say that the matter is not within the terms of the definition of "order" in the Code of Civil Procedure.

Rule discharged.

A. C. R. C.