

APPELLATE CRIMINAL.

Before Mr. Justice Sankaran-Nair and Mr. Justice Abdur Rahim.

1908
August 3, 11.

JOGIAH AND ANOTHER, PETITIONERS,

v.

EMPEROR, RESPONDENT.*

Charter Act, s. 15 and Letters Patent els 28, 29 - Power of High Court to order stay of proceedings initiated under s 476 of the Code of Criminal Procedure.

THE High Court has power, under section 15 of the High Courts Act, and under clauses 28, 29 of the Letters Patent, to stay proceedings, when action, under section 476 of the Code of Criminal Procedure, is taken by a Court subject to its powers of superintendence.

Where a Court, in a Civil suit, finds a document to be a forgery and, while an appeal against its decision is pending, takes proceedings in the Criminal Courts under section 476 of the Code of Criminal Procedure, the High Court will direct further proceedings in the Criminal Court to be stayed, if, on a consideration of the circumstances, it is satisfied that such proceedings are oppressive and will prevent the party from conducting his appeal.

In the matter of the Petition of Ram Prasad Hawra, (B. L. R., F. B., 426), distinguished.

THE facts of this case are sufficiently stated in the judgment.

T. R. Venkatarama Sastriar for petitioners.

The Ag. Public Prosecutor, *contra*.

ORDER.—In a Civil suit, a document, filed by the petitioners, was found a forgery, and proceedings have been taken against them under section 476 of the Criminal Procedure Code. The petitioners have filed an appeal against the decree passed against them in the Civil suit in which the main question for determination is whether the document is genuine, and they apply to this Court under section 15 of the Charter Act to stay further proceedings in the Criminal Courts against them pending the disposal of the appeal.

On a consideration of the circumstances of the case, it appears to us that it would be oppressive to the petitioners to allow the criminal proceedings to be prosecuted, as they must thereby be prevented from carrying on the appeal; and, as the prosecution

* Criminal Revision Case No. 190 of 1908, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of M. R. Ry. S. Krishnamoorthy Iyer, Sub-Magistrate of Ooty, dated 2nd April 1908, in P. E. No. 1 of 1908.

was one instituted by a Court, it is probable in the event of the document being found genuine by the Appellate Court, the proceedings against the petitioners might be dropped. There was no suggestion that the petitioners will abscond or not be forthcoming, if the finding of the Court as to the genuineness is confirmed. We are therefore of opinion that further proceedings should be stayed.

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It was then argued by the Public Prosecutor that this Court has no power to stay proceedings, and reliance was placed on the case of *In the matter of the Petition of Ram Prasad Hazra* (1).

It is pointed out in *Jadu Lal Sahu v. Louis* (2), that the Full Bench only decided that, under the Code of Procedure then in force, the High Court sitting as a Court of Civil Appeal had no power to direct that Criminal proceedings ordered by a Civil Court should be stayed. The High Court did not consider the effect of section 15 of the Charter Act and sections 28 and 29 of the Letters Patent.

The power of general superintendence given by section 15 is not limited by any other provisions of law, and it appears to us to include the power to point out to the subordinate Courts the inexpediency of trying a case when it is likely to interfere with the due course of justice. The power of superintendence (section 15), and transfer (section 29) implies the power to send for the records in any case in the lower Courts, which must necessarily stay further proceedings in that case.

It appears to us therefore that this Court has the power to stay proceedings. The fact that we may not have the power to set aside the order under section 476, Criminal Procedure Code, is in itself no reason for holding the other way.

The proceedings are stayed, not on the ground that the High Court may ultimately quash the proceedings, but on account of the injustice that may be done to the petitioners in preventing them from prosecuting the appeal.

We therefore order the stay of proceedings as prayed for.

(1) B. L. R., F. B., 426. (2) I. L. R., 34 Calc., 348 at p. 351.