APPELLATE CRIMINAL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Wallis, Mr. Justice Miller, Mr. Justice Sankaran-Nair and Mr. Justice Pinhey.

AIYAKANNU PILLAI

v.

EMPEROR.

1908. April 15, 23. September 4, 21.

Criminal Procedure Code—Act V of 1898, s. 476—Action under, must be taken at or immediately after conclusion of the judicial proceedings.

On the question whether a Court has jurisdiction to take action under section 476 of the Code of Criminal Procedure at any time after the conclusion of the judicial proceeding in the course of which the offence is committed.

Held, by the Full Bench (Miller, J., dissenting) that the power conferred by section 476 can be exercised by the Court only in the course of the judicial proceeding or at its conclusion or so shortly thereafter as to make it really the continuation of the same proceeding in the course of which the offence is committed.

Rahimadulla Sahib v. *Emperor*, (1908, I.L.R., 31 Mad., 140), followed.

In re Lakshmidas Lalji, (1908, I.L.R., 32 Bom., 184), not followed.

Per ARNOLD WHITE, C.J.—Section 476 is a self-contained section. Sub-section (1) gives the Court power to put the law in motion, and sub-section (2) provides procedure to be followed when the law has been put in motion.

Per MILLER, J.—There is nothing to make section 476 inapplicable to any case to which the language of the section applies. The procedure provided by the section is not incompatible with the commencement of action by the Court after the close of the proceeding in the course of which an offence is committed or disclosed.

Per SANKARAN-NAIR, J.—A Court may grant sanction at any time and to any person whom it considers fit to carry on the prosecution and who is entitled to proceed under section 190, Criminal Procedure Code.

The order under section 476 is a judicial proceeding and not a complaint under section 195.

Per PINHEY, J.—Sections 195 and 476 must be read together, and section 476 prescribes the procedure to be adopted by the Courts when making a complaint. It was however the intention of the Legislature to restrict their power in this direction and only to suffer it when promptly exercised.

The decision in the case of Rahimadulla Sahib does not decide that the final order under section 476 of the Criminal Procedure Code must issue at once. The Court must commence to take action under the section

* Crl. Misc. Petition No. 50 of 1908.

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promptly, in which case it may considered as a continuation of the proceedings; and although the final order may be delayed for sometime by necessary enquiries, the order will not be bad for want of jurisdiction.

CRIMINAL Miscellaneous Petition praying that, in the circumstances stated therein, the High Court would be pleased to issue an order directing the revocation of sanction granted by C. G. Spencer, District Judge of Tinnevelly, in Proceedings, dated 16th November 1907, in Compensation Reference No. 3 of 1907, and directing the stay of Proceedings in Calendar Case No. 1 of 1908 on the file of the Head-quarters Deputy Magistrate, Tinnevelly. The facts necessary for this report are sufficiently set out by (Benson and Miller, JJ.) in the order of Reference to the Full Bench which was as follows :—

ORDER OF REFERENCE. —"In this petition we are asked to set aside, as made without jurisdiction, the order of the District Judge of Tinnevelly directing, under section 476, Criminal Procedure Code, the prosecution of the petitioner for giving false evidence and using as genuine a forged document, offences under sections 193 and 471, Indian Penal Code.

The facts of the case are briefly as follows:—

The witness was examined in a certain case before the District Judge on the 17th September 1907, and there was reason, at once apparent, for thinking that the evidence was false. Judgment in the case was pronounced on the 8th October 1907. On the 29th October 1907 the District Judge ordered notice to issue to the petitioner to show cause why he should not be prosecuted. The petitioner's explanation was recorded on the 15th November, and his prosecution was ordered on the 16th November 1907, under section 476, Criminal Procedure Code. The District Judge appears to have acted *suo motu* in issuing notice on the 29th October, and the record before us does not give any reason for his not taking action between the 8th and the 29th October. We are asked to set aside the order of the District Judge on the ground that, as the offence, if any, came to his notice on the 17th September, and as the case in which the offence was committed came to an end on the 8th October, the District Judge had no jurisdiction to take action under section 476 after so long an interval as three weeks, that is, on the 29th October, and to make an order for prosecution on the 16th November 1907.

The petitioner relies on the decision of the Full Bench in the recent case of *Rahimadulla Sahib* v. *Emperor*(1).

In that case the majority of the Full Bench held that "an order under the section should be made either at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is part of the proceedings." It would, we think, be difficult on the facts to distinguish the present case from that before the Full Bench, and we should ordinarily feel bound to follow the decision of the Full Bench. But in the recent case of *Ramiah Naik*(2), a Bench of this Court (Benson and Munro, JJ.) expressed a desire to have the question decided by the Full Bench further considered, and they would have asked for it in that case but that they were able to dispose of the case on other grounds. Referring to the decision of the majority, as quoted above, the Division Bench said: "Miller, J., however, dissented from that view and adduced what appear to us to be cogent reasons for his conclusion. The view taken by the majority was largely based on certain *obiter dicta* of a Full Bench of the Calcutta High Court in *Begu Singh* v. *Emperor*(3). These *dicta* have been recently examined by a Bench of the Bombay High Court *In re Lakshmidas*(4) and have been dissented from for reasons based *inter alia* upon a consideration of section 195 of the Criminal Procedure Code, which must be read with section 476 in order to determine the procedure intended by the Legislature to be followed in cases where perjury is committed before a Court. The bearing of this section on the question before them, though touched on by Miller, J., was not referred to by the other Judges. The inference to be drawn from it is, however, in our opinion, almost conclusive against the view of the majority. Having regard to these considerations and also to the evident hesitation with which Wallis, J., arrived at his conclusion, we would propose that the question should be further considered by the Full Bench if it were necessary for us to do so on the facts of the case."

In view of this expression of opinion by the Division Bench and of the reasons on which it is based (with which we concur),

(1) (1908) I.L.R., 31 Mad., 140.

(2) Crl. Misc. Petition No. 227 of 1907 (unreported).

(3) (1907) I.L.R., 34 Calc., 551. (4) 10 Bom., L.R., 28.

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we resolve to refer for the decision of the Full Bench the question whether, on the facts stated by us, the order of the District Judge in the present case was made without jurisdiction.

The case came on for hearing in due course before the Full Bench constituted as above.

C. Madhavan Nair for petitioner.

J. L. Resario for the Acting Public Prosecutor *contra*.

The Court expressed the following

OPINIONS (WHITE, C.J.).—The question raised in this Order of Reference was considered by a Bench of three Judges in *Rahimadulla Sahib* v. *Emperor*(1). The learned Judges by whom the present Order of Reference was made were desirous, for the reasons stated in the Order of Reference, that the question should be further considered.

I have carefully considered the points taken in the Order of Reference and the judgments of the Bombay High Court in the case *In re Lakshmidas Lalji*(2), and I am of the same opinion as I was when the case was first argued before a Full Bench.

Sub-section (2) of section 476, Criminal Procedure Code, indicates the procedure which is to be followed when an order under sub-section (1) has been made. The sub-section says "such Magistrate shall thereupon, etc.," that is after the making of an order under sub-section (1). With all respect to the learned Judges who take a different view I cannot see how sub-section (2) throws light on the question of the time when the order under sub-section (1) must be made. The express reference to section 476 in section 200 would seem to show that the object of section 476 (2) was to relieve the Magistrate who makes the order under section 476 (1) from the obligation of making a complaint on oath before the Magistrate to whom the case is sent for inquiry or trial. I do not think it follows that because a complaint can be presented at any time subject to the law of limitation, an order under section 476 (1) can be made at any time.

With great respect I am unable to agree with the observation of Chandavarkar, J., in *In re Lakshmidas Lalji*(1) "section 476, clauses(1) and (2), therefore, define the form, scope and nature of *the complaint* mentioned in clauses (*b*) and (*c*) of section 195. And the two clauses of the former section must be read with the two clauses

(1) (1908) I.L.R., 31 Mad., 140 (2) (1908) I.L.R., 32 Bom., 184 at p. 189.

of the latter, when any question about a prosecution started *upon the complaint* of a Court arises." I think section 476 is a self-contained section: sub-section (1) gives the Court power to put the law in motion and sub-section (2) provides for the procedure to be followed when the law has been put in motion. For the purposes of the question which has been referred to us it seems to me immaterial whether the section is to be construed as empowering the Court to make an order when the judicial proceeding in the course of which the alleged offence is brought to the notice of the Court is subsequent to and independent of judicial proceeding in connection with which the offence is alleged to have been committed, or whether the judicial proceeding must be the same. In either case I think the order under section 476 must be part of the judicial proceeding in which the alleged offence is committed or brought to the notice of the Court.

I am of opinion that the order of the District Judge was made without jurisdiction.

WALLIS, J.—I adhere to my previous judgment in the case of *Rahimadulla Sahib* v. *Emperor*(1), and am of opinion that the question should be answered in the negative assuming that proceedings under section 476 were first taken on the 29th October.

MILLER, J.—I remain of the opinion which I have already expressed in my judgment in *Rahimadulla Sahib* v. *Emperor*(1) and I am fortified by the decision in *In re Lakshmidas Laljî*(2). At page 190 of the report Chandavarkar, J., says "we fail to find anything in the language of section 476 which makes it incumbent upon a Court acting under it to exercise the power within any period or at any particular time. Such a construction necessitates the importing into the section of words which are not there; and for which there is no necessary implication from the language used by the Legislature." Knight, J., entirely concurred in the reasoning of Chandavarkar, J., and my view of the section is by these opinions strongly confirmed.

Mr. Madhavan Nair in the course of his argument cited certain decisions (which I think it unnecessary to quote) to show that the powers which the Bombay High Court and I consider are conferred on Courts by section 476 are not necessary to ensure the due punishment of offenders against public justice. The Court,

(1) (1908) I.L.R., 31 Mad., 140. (2) (1908) I.L.R., 32 Bom., 184.

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according to his contention, can direct some officer to apply for sanction to prosecute, or can of its own motion issue a sanction and direct some one to act on it, or may so to speak shoot a sanction into the air in the hope that it may fall to earth some where within the ken of a Magistrate empowered to take cognizance of the offence. These powers, he says, can be exercised whether the offence comes to light in the course of the proceeding or after its close, and hence there is no necessity for action under section 476.

Assuming that these powers or some of them are conferred by the law, though other authorities including the learned Judges in *In re Lakshmidas Lalji*(1) take a different view of the meaning of a sanction "given" under section 195, Criminal Procedure Code, it may be that the ground is out away beneath the argument from necessity, but with it falls also the counter-argument from policy.

It can hardly be seriously contended that the Legislature has felt itself bound to withhold from the Court the power of taking the convenient course of taking action itself in a case in which it empowers it to compel some one else to take action.

Granting then that section 476 is self-contained and has nothing to do with section 195, I am still unable to see why the former section should be held inapplicable to any case to which its language is applicable.

It was contended by Mr. Rosario for the Public Prosecutor that section 476 would empower, let us say, District Judge A to prosecute an offender for an offence disclosed in a judicial proceeding before himself but committed in relation to a proceeding before District Judge B. I do not desire to express any opinion as to the soundness or otherwise of this contention, and only refer to it because if it is sound, the illustration which I utilized in my judgment in *Rahimadulla Sahib* v. *Emperor*(2) and which resembles that used by Chandavarkar, J., in the Bombay case, might not be quite opposite. It would be necessary then for my purpose to put a case in which the second proceeding, that in which the offence is disclosed, is not a judicial proceeding; it might be put that sometime after the close of the suit in which a forged document was used as genuine, the offence is disclosed during an examination of the document by an officer of the Court with a view to grant a copy or in connection with an application for the return of

(1) (1908) I.L.R., 32 Bom., 184. (2) (1908) I.L.R., 31 Mad., 140.

documents. The officer brings the offence to the notice of the Judge and the Judge decides to prosecute. It my view section 476 enables him to do so.

In my judgment in *Rahimadulla Sahib* v. *Emperor*(1), at page 150, I endeavoured to show that there is nothing in the procedure provided by section 476 incompatible with the commencement of action by the Court after the close of the proceeding in the course of which an offence is committed or disclosed. As a further support to the remarks I then made, I may refer to section 53 (2) of the Provincial Insolvency Act where the same procedure is provided for cases where the Court sees reason to belive that an undischarged insolvent has committed the offence of obtaining credit without disclosing his position, an offence which is unlikely to be committed in the presence of the Insolvency Court, and which may not infrequently be brought to notice in a proceeding to which the offender is not a party. The legislature evidently does not contemplate any difficulty in the way of holding a preliminary enquiry in such cases and sending the offender to the Magistrate.

I am of opinion that the order in the present case was made with jurisdiction and would answer the question accordingly.

SANKARAN-NAIR, J.—I agree generally with the learned Judges of the Calcutta High Court and with the Chief Justice and Wallis, J., in their decision in *Rahimadulla Sahib* v. *Emperor*(1), that the power conferred by section 476, Criminal Procedure Code, can be exercised by the Court only in the course of the judicial proceeding or at its conclusion, or so shortly after as to make it really the continuation of the same proceeding in the course of which the offence was committed or brought to its notice.

I propose to deal first with the opinion of the Bombay High Court that such a conclusion would be disastrous to the administration of justice, and that section 476, Criminal Procedure Code, if read with section 195, must lead to the opposite conclusion.

Under section 190, Criminal Procedure Code, any Magistrate therein referred to may take cognizance of an offence upon (1) complaint, (2) police report, (3) information otherwise derived or his own knowledge or suspicion. But with respect to certain offences referred to in section 195 the Magistrate shall not

(1) (1908) I.L.R., 31 Mad., 104 at p. 150.

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take cognizance "except with the previous sanction, or on the complaint" of the public servant or the Court, as the case may be, therein referred to. A private prosecutor therefore must obtain the sanction before filing his complaint. But I see nothing to prevent a police officer from obtaining sanction under this section, and then filing a complaint or submitting a report to the Magistrate for him to take cognizance of the offence under section 190. Similarly if a Magistrate wishes to act in a fit case upon any other information or upon his own knowledge or suspicion he has only to apply for sanction under section 195. Nor is there anything to preclude a Public Prosecutor from obtaining the necessary sanction for any person to file a complaint. The Madras High Court has gone further and held that the sanction may be granted to any person, and when granted others may act under it and the Magistrate may take cognizance. (*In re Chinna Meeran*(1), *In re Thathayya*(2) and *Queen-Empress* v *Subbaraya Pillai*(3)). But however that may be, I have no doubt that any person competent to act under section 190 may apply for sanction. I can imagine no case therefore where, when the Court is willing to complain or give sanction under section 195, any legal impediment exists to prosecution for offences referred to in section 195 which does not equally exist in respect of the far graver offences like murder or dacoity, not included in section 195. The learned Judges of the Bombay High Court, it appears to me, labour under the misconception that the sanction under section 195 can be granted only to a private prosecutor by which, I presume, is intended the person injured. I see no reason for that assumption. In my opinion a Court may grant sanction at any time, and to any person it considers fit to carry on the prosecution and entitled to proceed under section 190, Criminal Procedure Code.

Another ground of decision in *In re Lakshmidas Laljî*(4) is that section 476, clauses (1) and (2), Criminal Procedure Code, only prescribe a special procedure for the Court to follow when it exercises the power to make a complaint under section 195 and as the former section only defines the form, scope and nature of the complaint under section 195 there is no reason why the power

(1) 2 Weir, 596. (2) (1889) I.L.R., 12 Mad., 47.
(3) (1895) I.L.R., 18 Mad., 489. (4) (1908) I.L.R., 32 Bom., 184 at 189.

under section 476 may not be exercised any time after the close of the proceedings as a complaint under section 195 may be filed at any time.

I am unable to agree with the learned Judges. Is it not open to a Court instead of following the procedure prescribed by section 476 to present a complaint like any other ordinary person before a Magistrate? If so how can the 'form' be the same? A complaint may be made under section 195 when the matter requires investigation. An order is to be passed under section 476 when a *primâ facie* case is made out. This will explain many of the differences which will now be referred to. There are many cases falling within section 195 which do not fall within section 476 as the latter section is confined to judicial proceedings, while the former is not. Conversely there are cases falling within section 476 but not within the operation of section 195, as the offences in clause (*c*) of the section must be committed by a party to the proceeding while the scope of section 476 is not so restricted and applies for instance to witnesses of parties (*In re Devji Valad Bhavani*(1)). The limitation of section 476 to judicial proceedings is explicable if it is a judicial order. Its reason is not clear if it is a complaint under section 195. The complaint under section 195 must be made before a Magistrate having jurisdiction under the ordinary provisions of the Code; while section 476 confers an exclusive jurisdiction on the 'nearest' First-class Magistrate (see *Queen-Empress* v. *Nagappa*(2)), who may not have any power to enquire and try, if a complaint were laid before him under section 195; for instance a Court in Madras has to send the case to a First-class Magistrate out of Madras to the exclusion of the Presidency Magistrates. The Magistrate to whom a case is sent under section 476 has to dispose of the case after 'inquiry' or 'trial' as the case may be, but not upon the result of any 'investigation' by a police officer or any other person than a Magistrate or police officer as a Magistrate taking cognizance of a complaint under section 195 is entitled to do under section 203. Further, an investigation under section 202 can only be ordered after the *examination* of the complainant and cannot therefore be directed by a First-class Magistrate acting under section 476. When an order under that section may make it possible for the Magistrate

(1) (1894) I.L.R., 18 Bom., 581. (2) (1893) I.L.R., 16 Mad., 461.

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to begin the 'trial' without any preliminary inquiry, it appears difficult to treat that order as a complaint or anything in the form of a complaint. It has now been decided by all the High Courts, including the Chief Courts of the Punjab and Burma, that an order passed, at least by Civil or Criminal Court, under section 476 may be set aside by the High Court, *In the matter of the Petition of Bhup Kunwar*(1), *Emperor Gopal Barik* (2), *In re Bal Gangadhar Tilak*(3), *Suryanarayana Row and Bala Ramayya* v. *Emperor*(4); the Madras High Court (see *Suryanarayana Row and Bala Ramayya* v. *Emperor*(4), and *Eranholi Athan* v. *King-Emperor*(5)), differing from the rest only as to the grounds on which it may be set aside, while it seems clear that a High Court has no power to reject or direct the Magistrate to reject a complaint preferred under section 195. There is thus all the difference between a complaint under section 195 and an order under section 476 that exists between the act of a party and an order by a Court. I am unable therefore to hold that an order under section 476 is the complaint under section 195, and I therefore decline to accept the reasoning based on that assumption.

In construing section 476 it must be remembered that the power to send for enquiry and arrest is conferred also on Revenue Courts, that is, on Tahsildars (*Queen-Empress* v. *Munna Shetti*(6)), and, if the Punjab Chief Court is right, on Income-tax Officers whose proper function is not the administration of justice but the collection of revenue and who are not subject to any control by the High Court.

The words of the section contemplate immediate action, and the scheme of the Code requires it. When a Court in the course of any proceeding sees reason to suspect the commission of any offence referred to in section 195, then the Court may set the criminal law in motion for the detection of the offence or the conviction of the supposed offender by filing a complaint. It would then be open to the Magistrate to direct an investigation and reject it or proceed with the enquiry. When the Court in the course of the judicial proceeding after the examination of the

(1) (1904) I.L.R., 26 All., 249; (1908) All. W.N., 27.
(2) (1907) I.L.R., 34 Calc., 42. (3) (1902) I.L.R., 26 Bom., 785.
(4) (1906) I.L.R., 29 Mad., 100; 1 Crim. L.J., 25; 3 L. Burma, 234; (1902), 3 Punjab W.R. Crim., 13 or 7 Crim., L.J., 281.
(5) 1903) I.L.R., 26 Mad., 98. (6) (1901) I.L.R., 24 Mad., 121.

witnesses and any further enquiry that may be necessary finds that a *primâ facie* case has been made out and there is a reasonable probability of conviction, it may send the case at once for "inquiry or trial"—the words are mutually exclusive—under section 476. The case then has passed beyond the stage of investigation, the opinion formed by the Court after hearing the witnesses in a judicial proceeding dispensing with its necessity. Or the Court may commit the accused under section 478, if the case should be tried by the Sessions Court. This section seems to require that action should be taken in the course of the judicial proceeding in which the offence was committed. It suggests then that the same view should be taken of section 476. If it is open to the Court at any time to proceed under section 476 it could only be for the reason that when a Court is satisfied of the probable commission of an offence, the suspected person should not be allowed to escape an enquiry or trial if no private prosecutor appears. If this is the true reason why should the operation of section 476 be confined to the offences referred to in section 195 and not extended to the cases of graver offences that may be brought to the notice of the Court?

Once the case is over in which this offence is committed or brought to its notice, that Court, except with references to complaint or sanction, is on the same footing as any other Court. With reference to complaint it is only necessary to see whether there ought to be any investigation. With reference to sanction, there would be an applicant to put forward his case which may be met by the suspected person and the Court will be enabled to come to a conclusion whose soundness may be tested by appeal.

But when a Court takes up the case sometime after, it acts really as a prosecutor placing the person proceeded against in a disadvantageous position without the safeguard of an appeal, while there is no guarantee of an opinion formed after consideration of all the facts, which exists in the case of action taken at the time. I can see therefore no reason why a Court in those circumstances should be called upon to undertake any investigation or inquiry instead of leaving it to the properly constituted authorities.

Further I agree with the learned Chief Justice of Calcutta that it is difficult to see any necessity for section 195 if the

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suggested interpretation of section 476 is right. If the magistracy, the police, the private prosecutor are all of them unwilling to apply for sanction, it is futile for any Court to send a case under section 476 for inquiry or trial to a First-class Magistrate

For these reasons I am of opinion that the order of the District Judge was made without jurisdiction.

PINHEY, J.—The question is whether the case of *Rahimadulla Sahib* v. *Emperor*(1) was rightly decided.

The decision in question is that of a Full Bench and followed the *dicta* of the Full Bench in *Begu Singh* v. *Emperor*(2), but we have been asked to reconsider it in the light of the recent Bombay decision, *In re Lakshmidas Lalji*(3), which dissents from the Calcutta decision.

The principle of the Madras decision was that an order under section 476 Criminal Procedure Code, should be made either at the close of the trial or proceedings to which it relates or so shortly thereafter that it may reasonably be said to form a part of those proceedings.

It may be admitted that the language of section 476, Criminal Procedure Code, contains no express limitation in these terms, and that the view now taken of the scope of that section is somewhat novel, but I am none the less of opinion that it is correct.

The chief argument urged by those who take a contrary view is that serious failures of justice may ensure if this interpretation is affirmed. It is a singular fact that both Miller, J., of this Court—the dissenting Judge in *Rahimadulla's* case(1) and Chandavarkar, J., of Bombay, failed in their attempt to illustrate the sort of failures of justice that might occur. If the illustrations given by the two Judges I have named are scrutinized it will appear that in each case the fact has been overlooked that action under section 476, Criminal Procedure Code, could be taken by the Court in which the offence was subsequently brought to light.

It is however an error to suppose that there is no remedy open to a Court if section 476, Criminal Procedure Code, cannot be made use of. Section 195, Criminal Procedure Code, affords a remedy without the necessity of granting sanction to a *private party*. Under section 195, Criminal Procedure Code, a sanction can be

(1) (1908) I.L.R., 31 Mad., 140. (2) (1907) I.L.R., 34 Calc., 551.
(3) (1908) I.L.R., 32 Bom., 184.

granted as easily to the Public Prosecutor or any other official deputed by the District Magistrate to obtain it; and the District Magistrate can be moved to take action in the matter in a variety of ways if the case is one deserving *his* attention

I have no doubt that the decision of the Full Bench in *Ishri Prasad* v. *Sham Lal*(1) was perfectly correct, that section 195, Criminal Procedure Code, and section 476, Criminal Procedure Code, must be read together, and that section 476, Criminal Procedure Code, prescribes the procedure to be adopted by a Court when making a complaint: but this does not appear to effect the question before us which is what latitude the Legislature intended to afford to Courts *as complainants*. I am of opinion that it was the intention of the Legislature to restrict their power in the direction and only to suffer it when promptly exercised.

The Judges who have made this reference are of opinion that on the facts the present case cannot be distinguished from the case of *Rahimadulla Sahib*(2) In my opinion that is by no means clear. The District Judge of Tinnevelly concluded the proceedings under the Land Acquisition Act on the 8th October and sent notice "*suo motu*" to the accused (to show cause why he should not be prosecuted) on the 29th October.

From the observation that the record does not disclose any reason for the delay of three weeks in issuing the notice I conclude that no explanation was called for from the District Judge. Seeing that the view now taken of a Court's power under section 476, Criminal Procedure Code, is somewhat novel, and that the report of the decision in *Rahimadulla Sahib's* case(2) was not before the District Judge at the time that he passed his order, it is possible that the District Judge was not aware that any explanation of the delay was necessary on his part. It is not impossible that the District Judge did express his intention of taking action as early as 8th October or earlier, and that he devoted the three weeks that elapsed before sending notice to the accused in making enquiries. Section 476, Criminal Procedure Code, contemplates the possibility of enquiry being necessary and does not require that notice should be given to the accused to attend during such enquiry. If such be the explanation of the delay it might reasonably be held that the proceedings taken by the Judge under section 476,

(1) (1885) I.L.R., 7 All., 871. (2) (1908) I.L.R., 31 Mad., 140.

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Criminal Procedure Code, were in fact a continuation of the former proceedings under the Land Acquisition Act.

I do not interpret the decision in the case of *Rahimadulla Sahib*(1) to mean that the final order under section 476, Criminal Procedure Code, must issue at once. What I understand by that decision is that the Court must commence to take action under section 476, Criminal Procedure Code, promptly. The final order may possibly be delayed by necessary enquiries for some time.

My reply therefore to the reference must be that the principle of the decision in *Rahimadulla Sahib* was correct, and that I am unable on the facts set forth to state whether the District Judge acted without jurisdiction in the present instance.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Sankaran-Nair.

1908. August 25, 26, 27. September 2, 9, 22.

VENKATACHELLA CHETTIAR AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

SAMPATHU CHETTIAR AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Evidence Act, Act I of 1872, ss. 123, 124, 162—Income-tax Act, II of 1886, s. 38 and rule 15—Statements made before income-tax officer not privileged under s. 123 or 124 of the Evidence Act—And not exempt from disclosure by s. 38 of the Income-tax Act and rule 15 of the rules.

Statements made and documents produced by assessees before income-tax officers for the purpose of showing the income of such assessees do not refer to matters of State, and are not privileged under section 123 of the Indian Evidence Act. The Collector, when summoned to produce such documents by the Court, is bound to produce them, and the Court is empowered under section 162 of the Evidence Act to inspect them to decide on the validity of any objection to their admissibility in evidence.

Section 38 of the Income-tax Act and rule 15 of the rules framed thereunder only forbid public servants to make public or disclose any information

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(1) (1908) I L.R., 31 Mad., 140.

* Original Side Appeal No. 25 of 1907.