election of the respondent as a properly appointed member of the Union Board, direct that the nomination of the petitioner be accepted as right and that an election be held on that basis.

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The respondent will pay the petitioner his costs both in this Court and the lower Court.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

1924, November 6.

KALYANJI (NOW DEAD) AND ANOTHER (RESPONDENTS 2 AND 3 AND PLAINTIFFS 2 AND 3), APPELLANTS,

v.

RAM DEEN LALA (PETITIONER AND SECOND DEFENDANT), RESPONDENT.*

Criminal Procedure Code (V of 1898 and XVIII of 1923), ss. 476 and 195—Order under sec. 476, Criminal Procedure Code, by a Judge of the Presidency Small Cause Court, Madras, to prosecute for offences under sections 193 and 196, Indian Penal Code—Appeal against order to the appellate side of the High Court, maintainability of.

An appeal against an order of a Judge of the Presidency Small Cause Court, Madras, directing under section 476, Criminal Procedure Codes, the prosecution of a person for offences under sections 193 and 196, Indian Penal Code, lies only to the appellate side of the High Court and not to the Full Bench of the Small Cause Court under section 38 of the Presidency Small Cause Courts Act (XV of 1882) or to the original side of the High Court. *In re Shivlal Padma*, (1910) I.L.R., 34 Bom., 316, followed. *Munisamy Mudaliar* v. *Rajaratnam Pillai*, (1922) I.L.R., 45 Mad., 928 (F.B.), explained.

As an order under section 476, Criminal Procedure Code, directing a prosecution for offences under sections 193 and

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* Civil Miscellaneous Appeal No. 412 of 1923.

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196, Indian Penal Code, amounts to a complaint under section 200, Criminal Procedure Code, the Court before making the order must hold an inquiry and must itself specify by its order (1) the witnesses to prove the complaint, (2) the false evidence complained against and (3) whether the person complained against knew that the evidence which he was using as genuine was false.

An order which does not itself specify these matters but leaves them to be fished out by the trying Magistrate is liable to be set aside as illegal.

APPEAL against the order of C. R. TIRUVENKATA ACHARIYAR, Chief Judge of the Court of the Small Causes, Madras, in M.P. No. 358 of 1923 in Suit No. 4774 of 1922, dated 19th October 1923.

The facts and arguments are given in the judgment.

S. T. Srinivasagopala Achariyar for appellants.

Govinda Menon for *Crown Prosecutor*.

S. Rangaswami Ayyar and *M. Krishna Bharathi* for respondent.

JUDGMENT.

WALLACE, J.

WALLACE, J.—This is an appeal against an order of the Chief Judge of the Court of Small Causes, Madras, under section 476 of the Criminal Procedure Code, directing that a complaint under sections 193 and 196 of the Indian Penal Code be filed against the appellants. Mr. Menon for the Crown Prosecutor raised two preliminary objections, first, that the appellate tribunal in a case like the present is not the High Court but a Bench of the Court of Small Causes, and secondly, that, if the appellate tribunal is the High Court, the appeal must be put in on the original side of the High Court.

As to the first objection, an appellate tribunal is, by force of sections 476 (*b*) and 195 (3) of the Criminal Procedure Code, the Court, if there is such a Court, to which appeals from the appealable decrees of the Court of Small Causes ordinarily lie. Mr. Menon relies on

section 38 of the Presidency Small Cause Courts Act, which states that, in the case of a contested suit, either party has the right to apply for an order for a new trial or for altering, setting aside, or reversing the decree. Section 38 does not talk of an appeal, but the heading of the chapter is "New trials and appeals.' The rules of procedure governing an application under section 38 are contained in Order XLI of the Presidency Small Cause Court Rules, headed "Application for a new trial," and it is to be in form No. 15 described as an "application for a new trial." Order XLI throughout speaks of an application, not of an appeal. We also understand that no stamp is levied on such applications. No doubt rules of procedure could not take away a right of appeal given by a Statute: but the rules are an indication that the High Court which framed them did not consider that the right conferred by section 38 was a right of appeal. There is no direct authority of the Madras High Court on this point, unless the case in *Srinivasa Charlu* v. *Balaji Rau*(1) be taken as such: but, with due respect to the learned Judges who decided that case, I do not think that section 37 settles the question whether there is or is not an appeal, since section 37 itself on its own wording is subject to the other provisions of that chapter. It is not necessary, however, in the view I take, to press this point further. I agree with the judgment in *In re Shivlal Padma*(2), a case directly in point, that section 37 implies that decrees of the Presidency Small Cause Court are not ordinarily appealable. The Bench in that case held that that was a sufficient ground for holding that there was no Court to which, in the language of section 195 of the Code of Criminal Procedure as it then was, "appeals ordinarily lie." The amended section 195 now uses the phrase "the Court

(1) (1898) I.L.R., 21 Mad., 232. (2) (1910) I.L.R., 34 Bom., 316.

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to which appeals ordinarily lie from the appealable decrees . . . of such former Court," which would imply that, although ordinarily there is no appeal, yet, if there are decrees of the Court which are appealable, then an appeal against an order under section 476 (*b*) will lie to the Court to which appeals from such appealable decrees ordinarily lie. So that the real question now is not whether there is any ordinary right of appeal from the decrees of the Presidency Small Cause Court, but whether any of the decrees passed by that Court are appealable decrees. This question has to be decided not under section 37 of the Act but under section 38, and I am constrained to hold that section 38 does not give what is usually known as a right of appeal. Had this been meant, it would have been laid down in unambiguous language such as section 96 of the Civil Procedure Code employs, "an appeal shall lie." Section 38 also makes no provision for a higher Court, for example, a Bench of the Small Cause Court, to hear an appeal; and does not talk, for example, as section 96 of the Civil Procedure Code does, of the "Court authorized to hear appeals." An application under section 38 is to the same Court which passed the decree and, in so far as appears from the section, it may be even to the same Judge who passed the decree, and there is no statutory provision elsewhere constituting a Court of Appeal to hear such applications. I therefore hold that section 38 does not imply that any decree of the Presidency Small Cause Court is an appealable decree. It follows that there is no Court to which appeals ordinarily lie from the appealable decrees of that Court.

The second preliminary objection then has to be met. Since there is no Court to which appeals ordinarily lie from appealable decrees of the Presidency Small Cause Court, an appeal has to be put in to the principal Court

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having ordinary original civil jurisdiction within the local limits of whose jurisdiction the Presidency Small Cause Court is situated. Mr. Menon contends that this phrase can apply only to the original side of the High Court. Under the unamended Code, there was a clear authority, *Jamna Doss* v. *Sabapathy Chetty*(1) that the Original Side of the High Court was not a different Court for purposes of this section from the rest of the High Court, and that the High Court generally was the principal Court of original jurisdiction. I cannot see that the alteration of language in the section displaces this ruling. The High Court generally is still the principal Court having ordinary original civil jurisdiction. Mr. Menon, however, calls our attention to a ruling in *Munisamy Mudaliar* v. *Rajaratnam Pillai*(2), in which it was held that an appeal from an order under section 195 by a Judge sitting on the original side of the High Court lies to a Bench of the High Court, and argues from that and from the language of section 195 (3) that, therefore, these two tribunals must be different Courts. I do not think that that follows. *Munisamy Mudaliar* v. *Rajaratnam Pillai*(2) may be pressed so far as to say that under the first portion of section 195 (3), when an order by the original side of the High Court is in question, the term "Court" may be taken to mean "side of the High Court"; but *Munisamy Mudaliar* v. *Rajaratnam Pillai*(2) has not reversed *Jamna Doss* v. *Sabapathy Chetty*(1), nor under the second part of section 195 (3) can the wor d" Court" be made to mean "Side of the High Court." The difficulties that would follow in holding that the High Court is not one Court but is as many Courts as there are varieties of Original and Appellate jurisdictions

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(1) (1913) I.L.R., 36 Mad., 138. (2) (1922) I.L.R., 45 Mad., 928 (F.B.).

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comprised in it are much greater than the difficulty of reconciling the language of section 195 (3) with *Munisamy Mudaliar* v. *Rajaratnam Pillai*(1). I am not prepared to sustain either of these preliminary objections and they both fail.

On the merits we are concerned only with the third plaintiff, Vadivelu Mudaliar, since the second plaintiff is now dead. In the first place, the lower Court has misconceived the scope of section 476. It was for the lower Court to hold such inquiry that its order, when sent to the Magistrate, will amount to a complaint under section 200 of the Criminal Procedure Code. For that purpose, the complaining Court must decide upon and name the witnesses to be examined by the Magistrate, or the complaint is liable to be dismissed on the ground that there are no witnesses. The lower Court, however, has apparently left it to the Magistrate to inquire for himself and find out who the witnesses may be. Again, so far as the complaint filed by the lower Court goes, the offences alleged to have been committed by the third plaintiff are offences under sections 193 and 196 of the Indian Penal Code. Section 193 is "giving false evidence," but the complaint, which we have gone through, does not state what was the false evidence given by the third plaintiff. It is not for the Magistrate to fish about in order to find out what statements the lower Court may have considered to be false. The complaint itself must make that clear. The complaint under section 193 cannot therefore stand.

Section 196 is "using as genuine evidence known to be false." This is with reference to certain entries of a symbol for "and Company" found interpolated in the account books of the firm of which the third plaintiff is

(1) (1922) I.L.R., 45 Mad., 928 (F.B.).

a partner, the book having been filed in the case, S.C. Suit No. 4774 of 1922, by the third plaintiff who was conducting it. The complaint or order of the lower Court does not indicate why the lower Court thought that the third plaintiff knew the addition of this symbol to amount to a false entry. The third plaintiff had merely put into Court his own firm's accounts, which contained, let us suppose, interpolations for the purpose of showing that the transactions were with Chandu Lala & Co. instead of with Chandu Lala only. Even so, I find it difficult to bring the case within section 196. The third plaintiff put forward the accounts of the firm as they were at the time he produced them. He did not write these accounts nor is it suggested that he wrote the interpolations. The office manager was second plaintiff, and the accounts are in Guzerati, which is not third plaintiff's language. The lower Court does not indicate that there was any evidence that the third plaintiff knew that the interpolation was a false statement and relies merely on the fact that it was the third plaintiff who produced the accounts into Court. I am clear that no conviction could stand under section 196 on such meagre evidence.

I am therefore of opinion that the order of the lower Court should be reversed *in toto* and would direct accordingly.

MADHAVAN NAYAR, J.

MADHAVAN NAYAR, J.—I have had the advantage of reading the judgment of my learned brother with which I agree.

This is an appeal against an order passed by the Chief Judge of the Court of Small Causes, Madras, under section 476 of the Code of Criminal Procedure, by which he forwarded a complaint to the Chief Presidency Magistrate for holding an inquiry as to whether the two appellants are guilty of offences under sections

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193 and 196 of the Indian Penal Code. The sanction was applied for under section 195 of the Criminal Procedure Code, but the matter was dealt with by the Chief Judge under section 476 of the new Code.

The two appellants along with another as partners of firm instituted S.C. No. 4774 of 1922 before the Court of Small Causes against the respondent as second defendant and another as first defendant for the recovery of the balance of money due for principal and interest for the price of goods sold by them to the defendants. The sanction applied for related to certain entries in the account books of the plaintiffs' firm which were adduced in evidence on plaintiffs' behalf in the said suit and marked as Exhibits B-3 to B-5 and C to C-8. Those entries were relied upon by the plaintiffs in support of their case that they dealt with a firm styled T. Chandu Lala & Co. of which both the defendants were partners. The first defendant remained *ex parte*. The respondent pleaded that he was not a partner and that there was no firm with the name T. Chandu Lala & Co., and that the first defendant carried on business as T. Chandu Lala only without the addition of the words "& Co." The learned Judge held that the second defendant was not a partner, that the plaintiffs' accounts were suspicious and that the word "Ku" in Guzerati was probably interpolated subsequently in the plaintiffs' accounts for the purpose of supporting the plaintiffs' case. On these facts, the learned Judge came to the conclusion that a *prima facie* case under sections 193 and 196, Indian Penal Code, was made out against the appellants and therefore forwarded a complaint to the Chief Presidency Magistrate under section 476, Criminal Procedure Code.

As the first appellant is dead, we have to deal with the appeal only so far as it concerns the second

appellant Vadivelu Mudaliar who was the third plaintiff in S.C. No. 4774 of 1922. On the merits I have no doubt that the order of the lower Court should be set aside. Proceedings are directed against this appellant as already mentioned under sections 193 and 196, Indian Penal Code. The complaint which we have perused does not state what the false evidence given by the plaintiff was and the Magistrate is left to find this out for himself. Nor does the complaint give any list of witnesses in support of the prosecution case. As the complaint does not disclose the nature of the false evidence given by the appellant, I do not think it can be said that a *prima facie* case under section 193, Indian Penal Code, has been made out against him. As regards the complaint under section 196, the evidence is not sufficient to convict the appellant for that offence. It is not proved that the appellant wrote the accounts or that he made the interpolation. This interpolation is in the Guzerati language and the appellant does not know that language. The learned Judge does not refer to any evidence to show that the appellant knew that this interpolation amounted to a false entry in the account books. He is said to have produced the account books in Court. Under these circumstances, it cannot be said that a *prima facie* case under section 196, Indian Penal Code, has been made out against the appellant.

The main argument of Mr. Govinda Menon who appeared for the Crown Prosecutor on behalf of the respondent is that reading sections 476 (*b*) and 195 (3) of the Criminal Procedure Code together, the appellant should have preferred his appeal (1) not to this Court but to the Full Bench of the Court of Small Causes under section 38 of the Presidency Small Cause Courts Act and (2) even if an appeal lay to this Court, he should have preferred it to the original side of the High Court and

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not to the Appellate Side. Section 38 of the Small Cause Courts Act runs as follows :—

"Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings."

In my opinion, this section does not confer a right of appeal on a defeated litigant; it also does not imply that a decree of the Court of Small Causes is an appealable decree. It is true that the section appears in the chapter headed "New trials and appeals"; but it is a rule of construction that headings are not to be taken into consideration if the language of the section is clear. The section itself does not speak of appeals. If it was intended to confer a right of appeal, I have no doubt that we should have found in the section itself appropriate language such as "an appeal shall lie," as we find in the Civil Procedure Code, for instance, in section 96. The right of appeal is given to a party to carry the case from a lower Court to a higher tribunal for testing the correctness of the lower Court's judgment. It cannot be said that the jurisdiction conferred by section 38 is necessarily upon a Bench consisting of more than one Judge, for, according to the language of the section, the application under it is to be made to the same Court that passed the decree and it is not stated that the Court is to consist of more than one Judge. In this connexion, the rules of the Small Cause Court governing the procedure under section 38 may be usefully referred to. A proceeding under section 38 of the Small Cause Courts Act is called an "application for new trial" (see Order XLI of the Rules) and is to be in form No. 15 which is termed an "application for new trial." The

Rules show that what is contemplated under section 38 is not an appeal but only an application. We have been informed that no stamp fee is levied on such applications. I may also refer to section 37 of the Small Cause Courts Act which shows that ordinarily a decree of a Presidency Small Causes Court is not appealable.

The question discussed in the above paragraph has not been considered in any decision of this Court, but most of the considerations pointed out are referred to in *In re Shivlal Padma*(1), with which I agree. In that case it was held that where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay, a Full Court of that Court has no power to revoke the sanction. Though it is a decision under section 195 of the old Code, the reasoning of the learned Judges in that case may be relied upon for holding that a Full Bench of the Small Causes Court is not the Court to which an appeal will lie in this case under section 476 (*b*) read with section 195 (3) of the Criminal Procedure Code.

The next point argued on behalf of the respondent is that if the High Court is the appellate Court contemplated under section 195 (3) in this case, then the appeal should have been preferred to the original side of the High Court and not to the appellate side. The decision in *Jamna Doss* v. *Sabapathy Chetty*(2) is an authority against this argument. When a similar contention was put forward in connexion with section 195 (7-*c*) of the old Code, it was pointed out by the learned Judges in that case that

"The original side of the High Court is not a different Court from the appellate side and that the High Court is the principal Court of original jurisdiction though it exercises both original and appellate jurisdiction."

(1) (1910) I.L.R., 34 Bom., 316. (2) (1913) I.L.R., 36 Mad., 138.

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This decision has not been overruled by the decision in *Munisamy Mudaliar* v. *Rajaratnam Pillai*(1) which held that an appeal from an order under section 195 passed by a Judge sitting on the original side lies to a Bench of the High Court. I do not think it follows from this decision that the High Court is not one Court but is composed of as many Courts as there are original and appellate jurisdictions in it.

I, therefore, overrule the contentions put forward on behalf of the respondent; and, as I have already decided that the order of the lower Court cannot be supported on the merits, I allow this appeal and set aside the order passed by the Chief Judge.

N.R.

(1) (1922) I.L.R., 45 Mad., 928 (F.B.).