APPELLATE CIVIL.

Before Mr. Justice Madhavan Nayar and Mr. Justice Reilly.

MOIDEEN ROWTHEN (RESPONDENT), APPELLANT,

v.

MIYASSA PULAVAR (PETITIONER), RESPONDENT.*

1927, December 1.

Criminal Procedure Code (Act V of 1898), ss. 476, 476 (A), 476 (B) and 404—Appeal—Complaint made by Appellate Court on appeal from an order of a Subordinate Court refusing to make a complaint—Appeal from order of Appellate Court making a complaint, whether competent under sec. 476 (B).

A complaint made by a Court on appeal under section 476 (B) of the Criminal Procedure Code from an order of a Subordinate Court refusing to make a complaint does not fall within either section 476 or 476 (A) of the Code; consequently no appeal lies under section 476 (B) from the order of the Appellate Court making the complaint.

Muhammad Idris v. *The Crown* (1925), I.L.R., 6 Lah., 56, followed; *Ranjit Narain Singh* v. *Rambahadur Singh*, (1926) I.L.R., 5 Pat., 262, dissented from; *Somabhai Vallavbhai* v. *Aditbhai Parshottam* (1924) I.L.R., 48 Bom., 401, referred to.

Section 476 (A) applies only to cases where the Subordinate Court has neither made a complaint *suo motu* nor rejected an application by a party for making such a complaint; and a complaint made on appeal under section 476 (B) is not a complaint made under section 476, though the provisions of the latter section are made applicable to it under the former section.

APPEAL against the order of the District Court of South Malabar in C.M.P. No. 331 of 1926, presented against the order of the District Munsif of Palghat in Original Petition No. 21 of 1916.

* Appeal Against Order No. 438 of 1926.

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The material facts appear from the Judgment.

K. P. M. Menon and *P. S. Narayanaswami Ayyar* for appellant.

M. C. Sridharan for respondent, took a preliminary objection that no appeal lay. The order was passed on appeal to the District Judge under section 476 (B). No further appeal lies under section 476 (B). This is not a complaint under section 476 or 476 (A). "Such complaint" in section 476 (B) means complaint under sections 476 or 476 (A); the complaint under section 476 (B) is not one under section 476, though the provisions of section 476 may apply; nor is it under section 476 (A), because the latter section applies only to cases where neither a complaint was made by the Subordinate Court *suo motu* nor an application was made and rejected by the Subordinate Court. There is no right of appeal unless it was expressly given: See section 404, Criminal Procedure Code: See *Muhammad Idris* v. *The Crown*(1) and *Somabhai Vallavbhai* v. *Aditbhai Parshottam*(2).

K. P. M. Menon and *P. S. Narayanaswami Ayyar* for appellant.—The appeal is competent. The Appellate Court, acting under section 476 (B), if it makes a complaint, makes it under section 476, and against such order an appeal lies under section 476 (B). See *Ranjit Narain Singh* v *Rambahadur Singh*(3). If the order is made to the prejudice of the accused, whether it is made against him by the Original Court or by the Appellate Court, it is reasonable that one appeal should lie against the order making a complaint.

JUDGMENT.

MADHAVAN NAYAR, J.

MADHAVAN NAYAR, J.—This Civil Miscellaneous Appeal raises the question whether an appeal lies under section 476 (B) of the Code of Criminal Procedure to the High Court from an appellate order of the District Judge making a complaint which the District Munsif refused to make when an application was made to him under section 476.

(1) (1925) I.L.R., 6 Lah., 50. (2) (1924) I.L.R., 48 Bom., 401.
(3) (1926) I.L.R., 5 Pat., 262.

The facts are briefly these: The appellant was the first defendant in Original Suit No. 57 of 1925 in the District Munsif's Court of Palghat and the respondent was the second defendant. The suit was on a promissory note said to have been executed by both the defendants to the plaintiff. The appellant contended that the suit note was not executed by him. His contention being upheld the suit was decreed against the respondent. The respondent then moved the District Munsif under section 476 of the Code of Criminal Procedure to present a complaint to the Subdivisional First-Class Magistrate of Palghat charging the appellant with having intentionally given false evidence in a judicial proceeding before him. The District Munsif holding that there will not be a reasonable chance of conviction refused to make a complaint. On appeal by the respondent under section 476 (B) the District Judge reversed the order of the lower Court and made a complaint to the Subdivisional First-Class Magistrate holding that—

"it is expedient in the interests of justice that an enquiry should be made into the offence of intentionally giving false evidence in a judicial proceeding committed by the appellant in the course of his evidence before the District Munsif of Palghat in Original Suit No. 57 of 1925."

Against this order this appeal has been filed by the appellant under section 476 (B) of the Code of Criminal Procedure.

A preliminary objection is taken that section 476 (B) of the Code gives a right of appeal only when a Court has made or refused to make a complaint under section 476 or section 476 (A) and that, as neither of these sections relates to a complaint made by a Court on appeal from an order of the Subordinate Court refusing to make a complaint, no appeal will lie to this Court under section 476 (B) of the Code against the order making such a complaint.

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The question has to be decided by examining the provisions of sections 476, 476 (A) and 476 (B) of the Code of Criminal Procedure. Shortly stated, section 476 authorises any Civil, Revenue or Criminal Court, where it is of opinion that it is expedient in the interests of justice that an enquiry should be made into certain offences, to make a complaint thereof in writing and it lays down the procedure to be followed in making such a complaint. In any case in which such Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint, section 476 (A) authorizes a complaint to be made by the Court to which such Court is subordinate within the meaning of section 195 (3) and provides that where the Superior Court makes such complaint the provisions of section 476 shall apply. Section 476 (B) provides for appeals. It runs as follows :—

"Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476 (A) 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), and the Superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the Subordinate Court might have made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly."

The appellant in order to succeed will have to show that he has a right of appeal to this Court under the provisions of this section. The section first provides in what cases appeals would lie, and then it points out what orders the Appellate Court may pass in dealing with the appeals. Under this section a person may appeal when a Court has refused to make a complaint under section 476 or section 476-A or when it has

made against him such a complaint, i.e., a complaint under section 476 or section 476-A. In other words, it gives the right of appeal only when a Court has made or refused to make a complaint under section 476 or section 476-A. A complaint made by a Court on appeal from an order of a Subordinate Court refusing to make a complaint does not fall within either of these sections and, therefore, in the present case, which is one of this description, there can be no right of appeal according to the wording of the section. This view has found favour with the judges of the Lahore High Court [See *Muhammad Idris* v. *The Crown*(1)]; but it is argued that on a proper interpretation of the section this view is untenable, and reliance is placed on the decision in *Ranjit Narain Singh* v. *Rambahadur Singh*(2), which dissents from the decision in *Muhammad Idris* v. *The Crown*(1). Both the decisions are directly in point.

It is conceded that when an Appellate Court dismisses an appeal against the order of its Subordinate Court refusing to make a complaint or making a complaint under section 476 or when it sets aside in appeal an order making a complaint under section 476, there is no further appeal to a Superior Court under section 476-B against any of those orders; but when the Appellate Court sets aside an order of its Subordinate Court refusing to make a complaint and makes a complaint, it is contended that an appeal would lie, because the Appellate Court makes a complaint under section 476 and against such an order making a complaint an appeal would lie to that Court to which the Appellate Court is subordinate. This contention is accepted by the learned Judges of the Patna High Court in *Ranjit Narain Singh* v.

(1) (1925) I.L.R., 6 Lah., 56. (2) (1926) I.L.R., 5 Pat., 262.

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Rambahadur Singh(1). At page 274 the learned Judges observe thus:

"... The District Judge may disagree with the Munsif and himself make a complaint and the complaint then is amenable to the provisions of section 476; that is to say, it is under section 476-B, subject to appeal to the High Court, for section 476-B reads

'Any person against whom a complaint under section 476 has been made by any Court.'

"In the case mentioned the District Judge is making the complaint under section 476. The District Judge's Court is subordinate to the High Court within the meaning of section 195 (3) and, therefore, the appeal lies to the High Court."

The wording of the section does not warrant this interpretation. The complaint which the Appellate Court makes is one under section 476-B: because the provisions of section 476 apply to it, it does not become a complaint under that section attaching to itself the incident of appealability existing in the case of such complaints under the first part of section 476-B. To include by this process of interpretation, within the expression "such a complaint" a complaint made by an Appellate Court under section 476-B is to read into the section words which are not in it. I am not prepared to adopt such a construction. I may observe with great respect, that the words "any person against whom a complaint under section 476 of the Code of Criminal Procedure has been made by any Court" quoted in *Ranjit Narain Singh* v. *Rambahadur Singh*(1) do not find a place in section 476-B. When the meaning of the section is clear, I do not think it is permissible to construe it in the way suggested by the appellant on the ground that the legislature intended that the person to

(1) (1926) I.L.R., 5 Pat., 262.

whose prejudice an order has been made should always have a right of appeal. Section 404 of the Code of Criminal Procedure says that no appeal shall lie from a judgment or order of the Court except as provided for by this Code or by any other law for the time in force. If it was intended that appeals should be allowed against such orders, the legislature would clearly have said so. The policy of the legislature seems to be to allow only one appeal against orders that may be passed under section 476 and not to allow an appeal and a second appeal against such orders. If we accept the construction now suggested it will lead to the anomaly of having two appeals in this class of cases while in the other cases admittedly only one appeal will lie under the section.

The question whether an appeal would lie to the High Court in a case like the present has not been specifically decided by any other High Court, but there is an observation in *Somabhai Vallavbhai* v. *Aditbhai Parshottam*(1) which supports the interpretation of the section laid down in *Muhammad Idris* v. *The Crown*(2). In that case, the Subordinate Judge directed under section 476 of the Code of Criminal Procedure that the counter-petitioners before the Court should take their trial before a First-class Magistrate for offences under sections 193, 465, 471 and 209 of the Indian Penal Code. Against the order of the Subordinate Judge an appeal was filed to the Sessions Judge under section 476-B of the Code of Criminal Procedure. The Sessions Judge allowed the appeal and directed that the sanction against the appellants should be withdrawn. From that order directing withdrawal the petitioner filed an appeal to the High Court.

(1) (1924) I.L.R., 48 Bom., 401. (2) (1925) I.L.R., 6 Lah., 56.

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In holding that no appeal will lie against such an order, the learned Judges (Sir NORMAN MACLEOD, C.J., and SHAH, J.) said that they were clearly of opinion that no appeal lay under the provisions of the Code against an order made by the Court to which the Court making a complaint is subordinate. This dictum would cover the present case also though it was made with reference to an appeal against the order directing the withdrawal of a complaint under section 476-B.

For the above reasons, we must allow the preliminary objection and hold that no appeal lies to the High Court. The appeal is therefore dismissed with costs. There are no circumstances in the case calling for our interference in revision.

REILLY, J.

REILLY, J.—I agree that the preliminary objection raised by Mr. Sridharan must be upheld and that no appeal lies in this case. Mr. K. P. M. Menon has urged that, if an order is made to the prejudice of any person that a complaint should be made against him, whether the order is made against him originally or on appeal, it is reasonable that one appeal at least should be allowed against that order and that we may assume that that was the intention of the legislature in section 476-B, Code of Criminal Procedure. But, even if the wording of that section were so obscure that it were necessary for us instead of trying to apply its literal meaning to speculate as to what would be a reasonable course for the legislature to adopt, it might be urged with at least equal force that, when it has appeared proper to a Court, original or appellate, that such a complaint should be made, it is reasonable that the person accused should face an inquiry or trial on the complaint without more ado as he would have to do if a complaint of an offence were made against him by a private person, unless the complaint was

dismissed under section 203, Code of Criminal Procedure. There is certainly no reason why an accused person should require more protection against the complaint of a Court, which it may be assumed will act after judicial consideration, than against the complaint of a private person. But in this matter I do not think that we are justified in entering upon any such speculation. The wording of section 476-B appears to me to be clear. It gives an appeal to any person on whose application any Court has refused to make a complaint under section 476 or section 476-A and to any person against whom such a complaint has been made. The words "such a complaint" appear to me to mean clearly a complaint made under section 476 or section 476-A. That is their clear grammatical meaning, and we cannot suppose that they mean anything else, unless we assume that the legislature has done its work in this matter in a very slipshod way, an assumption which we are least of all justified in making when we are interpreting a provision which has been deliberately introduced into the Code by an amending Act. A different view was taken in *Ranjit Narain Singh* v. *Rambahadur Singh*(1). But, though the judgment in that case is long and elaborate, the reasoning in it is, if I may say so with great respect, very scanty and appears to have been affected by what is a serious misquotation from section 476-B. The section does not contain, as the report of this case says that it contains, the words "any person against whom a complaint under section 476 has been made by any Court". To my mind the correct interpretation of section 476-B in this matter is that adopted in *Muhammad Idris* v. *The Crown*(2). There is one other consideration which I may perhaps mention. The first

(1) (1926) I.L.R., 5 Pat., 262. (2) (1925) I.L.R., 6 Lah., 56.

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principle of the Code of Criminal Procedure in regard to appeals is that expressed in section 404, viz. that no appeal shall lie unless provided for by the Code or some other law. Bearing that principle in mind we must recognize that none but a most careless legislature could have intended to provide a right of appeal in the Code but have failed to give it in clear, precise and explicit language. The last resort of interpretation is to assume that the legislature has done its work in a careless way, has failed to say what it means or has said what it does not mean. There is nothing whatever in the present instance to justify us in making such an extreme and exceptional assumption or in supposing that when framing section 476-B the legislature had forgotten a cardinal principle of the Code which it was amending. In my opinion there is no ambiguity about the section in this respect and nothing to justify us in interpreting it otherwise than in its plain, grammatical meaning. I agree therefore that this appeal must be dismissed as incompetent.

I agree that this is not a case in which we should interfere in revision, as Mr. Menon requests us to do, now that his appeal has been held to be inadmissible.

K.R.