

## APPELLATE CIVIL.

*Before Mr. Justice Devadoss.*

SAMI VANNIA NAINAR AND ANOTHER (PETITIONERS),

1927,  
November 21.

PETITIONERS,

v.

PENASAMI NAIDU AND ANOTHER (RESPONDENTS),

RESPONDENTS.\*

*Criminal Procedure Code (Act V of 1898), sec. 476 (b)—Appeal from an order refusing to make a complaint under sec. 476—Affidavit filed in the appellate Court—Additional evidence in the appeal under sec. 476 (b) whether admissible—Jurisdiction of appellate Court to admit additional evidence—No objection by party, effect of.*

In an appeal under section 476 (b), Criminal Procedure Code, the appellate Court has no jurisdiction to take additional evidence for the disposal of the matter coming up before it under the section, whether the party objected to the reception of such evidence or not.

Section 428 of the Code, which empowers the appellate Court to take evidence, has no application to proceedings under section 476 (b) of the Code: the decision in *Krishna Reddi v. Emperor*, (1910) I.L.R., 33 Mad., 90, applies to case under section 476 (b).

PETITION under section 115, Civil Procedure Code, to revise the order of R. NARASIMHA AYYANGAR, District Judge of South Arcot, in Original Petition No. 167 of 1925.

The defendants in a suit, which was decreed in favour of the plaintiffs, applied to the District Munsif to make a complaint under section 476 of the Criminal Procedure Code against the plaintiff. The District Munsif refused<sup>a</sup> to do so. The petitioners filed an appeal to the District Court under section 476 (b) of the Code. The appellate Court admitted an affidavit for

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\* Civil Revision Petition No. 363 of 1927.

SAMI VANNIA  
NAINAR  
v.  
PENASAMI  
NAIDU.

the disposal of the matter. No objection was made by the respondent for the reception of the affidavit as additional evidence in the appellate Court. Relying on the affidavit, the appellate Court dismissed the matter before it. The petitioners filed this revision petition.

*K. S. Jayarama Ayyar* for petitioners.

*M. Patanjali Sastri* for respondent.

### JUDGMENT.

This is an application to revise the order of the District Judge of South Arcot, declining to interfere with an order under section 476 of the Criminal Procedure Code, passed by the District Munsif of Vriddbachalam. Mr. Jayaram Ayyar's contention is that the learned District Judge had no jurisdiction to take additional evidence in a matter coming up under section 476 (b). The District Judge allowed an affidavit of the respondent's vakil to be filed before him and has relied mainly upon the affidavit in his judgment. It was held by a Bench of this Court in *Krishna Reddi v. Emperor*(1), that a superior Criminal Court acting under section 195 of the Criminal Procedure Code against the order by an inferior Criminal Court granting sanction had no power to take or call for further evidence. Section 195 has been amended and section 476 empowers a Court, Civil, Revenue or Criminal, to forward a complaint to a magistrate of the first class for inquiry into an offence which, it has reason to hold, has been committed before it. Under section 476 (b) an appellate Court has power to withdraw the complaint or to direct a complaint to be filed when the lower Court declines to prefer a complaint. The decision in *Krishna Reddi v. Emperor*(1) applies to a case coming under section 476 (b), for the section of the Criminal Procedure Code,

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(1) (1910) I.L.R., 33 Mad., 90.

which empowers the appellate Court to take evidence, that is, section 428, has no application to proceedings under section 476 (b).

SAMI VANNIA  
NAINAR  
v.  
PENASAMI  
NAIDU.

The learned District Judge says that the affidavit was not objected to as if that was a ground for his relying upon it. Whether the petitioner's vakil objected to the reception of the affidavit or not, it is immaterial if the Court had no jurisdiction to receive the affidavit as evidence in an appeal against an order of the District Munsif under section 476.

It is strongly urged by Mr. Patanjali Sastri for the respondent that this is a matter more than three years old and that I should not interfere in revision with the order of the District Judge, even though he acted without jurisdiction. The fact that the offence was committed more than three years ago is a matter for consideration by the District Judge. It is sufficient to remark here that the order of the District Munsif is very unsatisfactory. He says in paragraph 6

"I think that the production of this document is due only to carelessness and not to any deliberate fraudulent intention".

It is difficult to see how it could be said when a party to a suit presented a document and relied upon it that he did so owing to gross carelessness. It was open to the District Munsif to have refused to take action under section 476 for other reasons than the reasons he has given. Seeing that the District Judge has acted without jurisdiction in receiving an affidavit in evidence and relying upon it, I set aside his order and direct him to restore the petition to file and dispose of it according to law. Petitioner is entitled to costs in this Court.

K.R.