

shown against the 15th of December 1926, it is described as a hand-loan paid to Mr. Venkata Rao who purported to receive it as the Chairman of the Board of Directors. Whether the liquidator is bound to pay this sum or not, I do not wish to decide at present. Granting that the liquidator is not bound to pay this sum from the assets of the Company, it may be open to the creditor to ask that it should be paid over to him from any amount to be found payable by the Company to Mr. Venkata Rao. This point I must reserve for future consideration. The applicant's costs, which I fix at Rs. 150, shall come from the assets. The liquidator may pay himself Rs. 50 for his costs. I also direct that Mr. Gopalaswami Mudaliar be paid from the assets the costs of his application, which I fix at Rs. 50.

SABAPATHY
RAO
v.
SABAPATHY
PRESS
COMPANY,
LTD.

B.C.S.

APPELLATE CIVIL.

*Before Mr. Justice Curgenvin and Mr. Justice
Bhashyam Ayyangar.*

M. NAMBERUMAL CHETTI (DEFENDANT), APPELLANT,

1930,
July 31.

v.

M. NAINIAPPA MUDALI (PLAINTIFF), RESPONDENT.*

*Code of Criminal Procedure, 1898, sec. 476B—Court suo motu
making complaint—Appeal against.*

An appeal under section 476B of the Code of Criminal Procedure (as amended by Act XVIII of 1923) lies where the Court *suo motu* makes the complaint, as under section 476 of the amended Act it is for the Court itself in all cases, whether of its own accord or on application made to it, to make a complaint.

* Original Side Appeal No. 39 of 1929.

NUMBERAMAL
CHETTI
v.
NAINIAPPA
MUDALI.

APPEAL from the order of BEASLEY J. (now Chief Justice), dated 25th January 1929 filing a complaint under section 476 of the Code of Criminal Procedure charging the appellant under section 193 of the Indian Penal Code in respect of the evidence given by him in the trial of Civil Suit No. 250 of 1926 in the exercise of the Ordinary Original Civil Jurisdiction.

No one appeared for appellant.

M. Subrahmanya Mudaliyar for respondent.

The JUDGMENT of the Court was delivered by

CURGENVEN
J.

CURGENVEN J.—This is an appeal against an order of BEASLEY J., as he then was, under section 476 of the Code of Criminal Procedure, making a complaint under section 195 (1) (b) of the same Code against one M. Numberamal Chetti in respect of an offence punishable under section 193 of the Indian Penal Code. The appellant is not represented before us. We have perused his memorandum of appeal and the order of the learned Judge, and we have heard the learned Advocate for the respondent, who has raised the preliminary point that no appeal will lie in the circumstances of this case.

The complaint was filed not at the instance of any applicant but *suo motu* by the learned Judge, and the learned Advocate's argument is that in such circumstances the terms of section 476B do not provide for an appeal. As an authority for this position he refers us to *Mt. Satto v. Emperor*(1), which is a decision by a single Judge of the Lahore High Court, based upon what he terms the genesis of the present section. He appears to read the words in that section "Such a complaint" as meaning not merely a complaint under section 476 or 476A, but, further, a

(1) (1929) 30 Cr. L.J. 163.

complaint on an application by some person ; but we are of opinion that any analogy which is to be drawn between the terms of the present sections and those of the corresponding sections of the old Code is likely to be misleading, inasmuch as the procedure has been radically altered, and whereas, under the old Code, a Court could give sanction to prosecute and that sanction to prosecute on application could be made the subject of an appeal, all that has now been swept away, and it is for the Court itself in all cases, whether of its own accord or on application, to make a complaint. We cannot see accordingly why the appealability of an order should depend upon the special circumstance of an application having been made ; nor do we think that the terms of the section itself support that view.

NAMBERUMAL
CHETTI
v
NAINIA-PA
MUDALI.
CUGGENVEN
J.

Coming to the merits, the learned Judge has delivered a very detailed and comprehensive order containing all the materials from which the offence in his view, may be established ; and the only criticism that we can discover in the grounds of appeal is that under the terms of section 476 there should be not only a finding to the effect that it is expedient in the interests of justice that an inquiry should be made but also a complaint. In the present case it appears that the proceedings are embodied in a single document. But we think that that document itself serves the dual purpose of a finding and also of a complaint, because a mere perusal of it will show that the learned Judge has set forth the particulars in respect of which he considers that false evidence was given and the nature of the proofs that that evidence is in fact false, and, since these particulars serve the double purpose of a finding and a complaint, we see no reason why they should not be held sufficiently to comply with the requirements of the section, although in that form.

NAMBURUMAL
CHETTI
v.
NAINIAPPA
MUDALI,
CARGENVEN
J.

We have been referred to one case, *Bhuban Chandra Pradhan v. Emperor*(1), where the objection was raised that the learned Judge who made the complaint had not recorded a finding that it was expedient in the interests of justice to complain, and this was disposed of with the observation that

“the learned Judge’s order shows that in his opinion the appellant had given false evidence before him. That order by itself and in view of the proceedings started under section 476 carries the implication that the learned Judge must have felt that the ends of justice required that an inquiry before a Magistrate should take place.”

We think that the same implication is clearly to be gathered from the order which the learned Judge has passed in this case; and we can find no grounds for interfering with it in appeal. The appeal is accordingly dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan Pandalai.

1930,
July 1928.

IN RE APPASAWMY MUDALI (FIRST ACCUSED), PETITIONER.*

Code of Criminal Procedure, 1898, Ss. 110 (f) and 117—Proceedings against several persons under sec. 110 (f)—Joint enquiry under sec. 117—Legality of.

Where proceedings are taken against several persons under section 110 (f) of the Code of Criminal Procedure, a joint enquiry under section 117 of the Code is legal, provided the evidence of reputation admitted is not against each accused separately but against them all together.

In re Kutti Goundan (1924) 47 M.L.J. 689, *Hari Telang v. Queen-Empress* (1900) I.L.R. 27 Calc. 781 and *Emperor v. Angnu Singh* (1922) I.L.R. 45 All. 109, referred to.

(1) (1927) I.L.R. 55 Calc. 279.

* Criminal Revision Case No. 472 of 1930.