

APPELLATE CRIMINAL.

Before Mr. Justice Mockett and Mr. Justice Lakshmana Rao.

1936,
December 15.

IN RE T. VARADARAJULU NAIDU, ACCUSED.*

Code of Criminal Procedure (Act V of 1898), sec. 476—Suit on the original side, High Court—Offences under secs. 471 and 466, Indian Penal Code, found committed during trial of—Complaint under sec. 476, Criminal Procedure Code, in respect of—Judge of High Court, other than trial Judge, if competent to file a complaint as required by sec. 195, Criminal Procedure Code.

In a suit on the original side of the High Court, the trial Judge found that two documents were fabricated by one of the defendants and used by him knowing them to be such. In the absence of the trial Judge, the Officiating Chief Justice in the exercise of the ordinary original jurisdiction passed an order under section 476, Criminal Procedure Code, directing the Registrar to make a complaint under section 471 read with section 466, Indian Penal Code, which was accordingly done. On an objection taken to the validity of the complaint,

held, that the Officiating Chief Justice had jurisdiction to pass the order under section 476, Criminal Procedure Code.

The complaint required by section 195, Criminal Procedure Code, is the complaint of the Court in which the documents were given in evidence and not of the trial Judge only, and there is nothing to prevent any Judge of the High Court from dealing with the matter.

Bai Kasturbai v. Vanmalidas, (1925) I.L.R. 49 Bom. 710, approved.

CASE REFERRED for the opinion of the High Court, under section 432 of the Criminal Procedure Code, by the Chief Presidency Magistrate, Egmore, Madras, in his Letter R.O.C.C. No. 1405/36, dated 9th October 1936.

* Criminal Revision Case No. 777 of 1936 (Case Referred No. 50 of 1936).

K. V. Ramaseshan for Crown Prosecutor (*T. S. Anantaraman*) for the Crown.

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A. S. Sivakaminathan for accused.

The JUDGMENT of the Court was delivered by LAKSHMANA RAO J.—This is a reference by the Chief Presidency Magistrate, Madras, and the questions referred are :

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(i) Whether the complaint preferred in pursuance of an order passed by the Officiating Chief Justice on an office note is an order passed by the Court within the meaning of section 476, Criminal Procedure Code.

(ii) Whether the Officiating Chief Justice could pass an order under section 476, Criminal Procedure Code, in a case where no orders were passed under section 476, Criminal Procedure Code, either by the trial Judge or his successor or the appellate Bench that decided the Original Side Appeal against the judgment and decree in Civil Suit No. 542 of 1931.

(iii) Whether the Officiating Chief Justice could be deemed to be the successor to the trial Judge who decided Civil Suit No. 542 of 1931 in the exercise of original civil jurisdiction.

The facts are set out in the order of reference and briefly stated they are that during the trial of Civil Suit No. 542 of 1931 on the file of the High Court, two documents, dated 10th March 1928 and 10th May 1928, purporting to be certified copies of orders, dated 2nd March 1928 and 26th April 1928, alleged to have been passed in Original Petition No. 38 of 1928, were filed on behalf of one of the defendants. The trial Judge, the present Chief Justice, found that the documents were fabricated and used by Varadarajulu Naidu, one of the defendants in the suit, knowing them to be such, and the matter was under the directions of the trial Judge reported to the police for necessary action. The police filed a charge sheet against

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Varadarajulu Naidu under section 471 read with section 466, Indian Penal Code, and he was committed to the High Court Sessions for trial. There was however no complaint in writing by the High Court as required by section 195 of the Code of Criminal Procedure, and the order of committal was quashed by CORNISH J. on the ground that the offence under section 471, Indian Penal Code, cannot be taken cognizance of except on the complaint of the Court in which the documents were given in evidence. The original side office then put up a note to the Officiating Chief Justice setting out the entire facts, and the Officiating Chief Justice passed an order under section 476 of the Code of Criminal Procedure directing the Registrar to make a complaint under section 471 read with section 466, Indian Penal Code. The complaint was filed accordingly and process was issued to the accused. Objection was taken by him to the validity of the complaint and hence this reference.

The order was in terms passed under section 476 of the Code of Criminal Procedure and the real question is whether the Officiating Chief Justice had no jurisdiction to pass the order. The complaint required by section 195 of the Code of Criminal Procedure is the complaint of the Court in which the documents were given in evidence and not of the trial Judge, and, as pointed out in *Bai Kasturbai v. Vanmalidas*(1), when a suit is tried by a Judge of the High Court, the term "Court" occurring in the section must be taken to mean "the High Court". There is nothing to prevent any Judge of the High Court from dealing with the

(1) (1925) I.L.R. 49 Bom. 710.

matter though as a matter of convenience this would seldom be done, and the matter was in this case placed before the Officiating Chief Justice, as the trial Judge was absent at the time. The Court may, under section 476 of the Code of Criminal Procedure, make the complaint on application made to it or otherwise, and it need not hold a preliminary enquiry. Notice to the person proceeded against is not essential, and it is apparent from the order itself that it was passed by the Officiating Chief Justice in the exercise of ordinary original jurisdiction. There is therefore no substance in the contention that the Officiating Chief Justice had no jurisdiction to pass the order under section 476 of the Code of Criminal Procedure, and Questions 1 and 3 do not arise. The proper course for the accused was to appeal against the order under section 476 of the Code of Criminal Procedure, and it is strange that objection should have been raised and permitted before the Magistrate. The reference is answered accordingly, and the records will be retransmitted to the Chief Presidency Magistrate for proceeding with the case according to law.

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V.V.C.