

APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

IN RE D. S. RAJU GUPTA (ACCUSED), APPELLANT.*

1939,
January 25.

Code of Criminal Procedure (Act V of 1898), sec. 476-B—Complaint by a civil Court under sec. 476—Appeal to the High Court against—If to be filed on the civil or criminal side—Criminal Rules of Practice and Orders (Madras), 1931—Rule 37 of—Validity of.

The jurisdiction that is exercised by a civil Court in filing a complaint under section 476, Criminal Procedure Code, is a jurisdiction exercised under that Code and is therefore of a criminal nature. An appeal preferred to the High Court under section 476-B, Criminal Procedure Code, against the order of a civil Court directing a complaint to be lodged by the person against whom the complaint has been ordered to be lodged, should therefore be filed on the criminal side of the High Court and not on its civil side.

Janardana Rao v. Lakshmi Narasamma(1), *Dhanpat Rai v. Balak Ram*(2) and *Emperor v. Bhatu Sadu*(3) relied upon.

Rule 37 of the Criminal Rules of Practice and Orders, 1931, is not in consonance with law and cannot affect a right given by a statute.

APPEAL against the order of the Court of Session of the Vizagapatam division, dated 10th November 1938 and made in Original Petition No. 99 of 1938.

Kasturi Seshagiri Rao for appellant.

ORDER.

PANDRANG ROW J.—The District Judge of Vizagapatam made an order under sections 476 and 195 of the Criminal Procedure Code directing that a complaint

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* Criminal Appeal No. 80 of 1939.

(1) (1933) I.L.R. 57 Mad. 177 (F.B.). (2) (1931) I.L.R. 13 Lah. 342 (F.B.).
(3) I.L.R. [1938] Bom. 331 (F.B.).

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should be preferred charging one D. S. Rajugupta, Managing Director, Bharathamatha Commonwealth Insurance Bank, Ltd., Vizagapatam, with offences punishable under sections 465 and 467 read with sections 109 and 471, Indian Penal Code. The person against whom the complaint has been ordered to be lodged presents an appeal from the order. A right of appeal is given by section 476-B, Criminal Procedure Code, from the order in question, but it has been objected to by the office that the appeal should be filed on the civil side of this Court and not on the criminal side, in view of rule 37 of the Criminal Rules of Practice and Orders, 1931. The Advocate for the appellant insists that he is entitled to file an appeal on the criminal side. The question is whether his contention is right. The learned Advocate has referred me to several important decisions which bear on the point, namely, *Janardana Rao v. Lakshmi Narasamma*(1), *Dhanpat Rai v. Balak Ram*(2) and *Emperor v. Bhatu Sadu*(3). These Full Bench decisions (and it is unnecessary for me to go beyond them in dealing with a matter of this kind) make it clear that the jurisdiction that is exercised by a Court in filing a complaint under section 476 is a jurisdiction exercised under the Criminal Procedure Code and is therefore of a criminal nature. There is no rule that everything done by a civil Court should be regarded as being of a civil nature. The Civil Procedure Code does not empower a civil Court to file a complaint and the present complaint is directed to be made ostensibly under a provision of the Criminal Procedure Code. It appears to me that the order of the Court which is now sought to be challenged in a superior Court is an order passed in the exercise of criminal jurisdiction ;

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the right of appeal is also provided by another provision in the Criminal Procedure Code. The appeal therefore has to be presented under the Criminal Procedure Code and there is no reason why the appeal which is presented under the Criminal Procedure Code from an order passed in the exercise of a jurisdiction conferred by the Criminal Procedure Code should not be treated as an appeal on the criminal side of this Court. It may be that the rule quoted by the office prescribes a different procedure, but I am not satisfied that that rule is in consonance with law or can affect a right given by a statute, namely, the right of appeal from an order made under section 476, Criminal Procedure Code, to the Court to which that Court is subordinate. The powers of a Court of appeal in criminal matters are governed by different provisions than in the case of civil appeals, and it is desirable in my opinion that any doubt which remains on the subject should be removed. I am satisfied that cases of this kind including revisions preferred from appellate orders made under section 476-B of the Criminal Procedure Code are proceedings of a criminal nature and should be therefore filed on the criminal side of this Court and not on the civil side. It is obvious that in the case of revision petitions the powers of the Revisional Court would be materially different in criminal cases than in civil cases. What should really count in matters of this kind is not the designation of the Court which makes the order but the character of the jurisdiction exercised in making the order that is sought to be taken to a higher Court in appeal or revision—whether it is of a criminal nature or of a civil nature. It cannot for a moment be maintained that an order directing a criminal complaint to be made is one made in the exercise of civil

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jurisdiction. It is not part of the jurisdiction of civil Courts as such to prefer criminal complaints. The power to make a complaint is given by the provisions of the Criminal Procedure Code and that shows to my mind that when this power is actually exercised by civil Courts under section 476, Criminal Procedure Code, they are really acting in the exercise of criminal jurisdiction. The appeal should therefore be entertained on the criminal side of this Court.

V.V.C.
