

1915

THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL
v.
JAWAHIR
LAL.

come to a settlement with the Government. We do not feel called upon to decide the question, but at the same time we do not express any disagreement with the finding of the court below. In our opinion we are precluded from making any declaration that would in any way directly or indirectly affect the liability of Government to pay this revenue to the plaintiff. We, therefore, think upon all these grounds that the plaintiff's suit was misconceived and ought to have been dismissed.

We accordingly allow the appeal, set aside the decree of the court below and dismiss the plaintiff's claim with costs in all courts.

Appeal allowed.

REVISIONAL CIVIL.

1915
March, 22.

Before Mr. Justice Channier and Mr. Justice Piggott.

EMPEROR v. TILAK PANDEY AND OTHERS.*

Criminal Procedure Code, section 476—Jurisdiction—Limitation.

There is nothing in section 476 of the Code of Criminal Procedure which requires a court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time thereafter. *In the matter of the petition of Nawal Singh* (1) *Girwar Prasad v. King-Emperor* (2) followed; *Aiya Kannu v. Emperor* (3) *Rahimadulla v. Emperor* (4) not followed. *In re Lakshmi Das* (5) *Emperor v. Rustomji Harmusji Tarwalla* (6), referred to.

THE facts of this case were as follows :—

One Musammat Mohra brought a suit to establish her right to certain property as the daughter of Sheo Narain. The applicants and others brought another suit against Musammat Mohra for possession of property on the ground that she was not the daughter of Sheo Narain. The two cases were tried together, and the Subordinate Judge found that Musammat Mohra was the daughter of Sheo Narain. He waited for a month probably to see whether appeals would be filed against his decision, and as soon as the month had expired he took proceedings against the applicants under section 476 of the Code of Criminal Procedure.

The applicants thereupon applied in revision to the High Court to have the Subordinate Judge's order set aside upon

* Civil Revision No. 175 of 1914.

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| (1) (1912) I. L. R., 34 All., 393. | (4) (1907) I. L. R., 31 Mad., 140. |
| (2) (1906) 6 A. L. J., 392. | (5) (1907) I. L. R., 32 Bom., 184. |
| (3) (1908) I. L. R., 32 Mad., 49. | (6) (1902) 4 Bom., L. R., 778. |

the main ground that he had no jurisdiction to take action against them a month or more after he had disposed of the cases in which the offences were alleged to have been committed.

Munshi *Lakshmi Narain* and Munshi *Harnandan Prasad*, for the applicants.

The Government Advocate (Mr. *A. E. Ryves*.) for the Crown.

CHAMIER, and PIGGOTT, JJ. -- This is an application for revision of an order of the Subordinate Judge of Gorakhpur under section 476 of the Code of Criminal Procedure directing the prosecution of the applicants on various charges in connection with pleadings verified, and evidence given, by them in two cases tried by the Subordinate Judge. It appears that one Musammat Mohra brought a suit to establish her right to certain property as the daughter of Sheo Narain. The applicants and others brought another suit against Musammat Mohra for possession of property on the ground that she was not the daughter of Sheo Narain. The two cases were tried together, and the Subordinate Judge found that Musammat Mohra was the daughter of Sheo Narain. He waited for a month, probably to see whether appeals would be filed against his decision, and as soon as the month had expired he took proceedings against the applicants under section 476 of the Code of Criminal Procedure. On the part of the applicants it is contended that the Subordinate Judge had no jurisdiction to take action against them a month or more after he had disposed of the cases in which the offences are alleged to have been committed. We have been referred to several decisions on the subject. A full Bench of the Madras High Court (MILLER, J. dissenting) has held that the power conferred by section 476 of the Code of Criminal Procedure can be exercised by the court only in the course of the judicial proceedings or at its conclusion, or so shortly thereafter as to make it really the continuation of the proceeding in the course of which the offence was committed, or brought to notice, see, *Aiya Kannu Pillai v. Emperor* (1), which followed a previous decision of the same court in *Rahimadulla Sahib v. Emperor* (2). The Madras High Court declined to follow the decision of the Bombay High Court,

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(1) (1908) I. L. R., 32 Mad., 49.

(2) (1907) I. L. R., 31, Mad., 140.

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In re Lakshmidas Lalji, (1), in which the learned Judges said that they were unable to find anything in the language of section 476 making it incumbent upon a court acting under it, to take action if at all, within any particular period or at any particular time. There is also a reported decision to the effect that action should not be taken by a court under section 476 before the close of the case in which the offence is brought to the notice of the court, see *Emperor v. Rustomji Harmasji Tarwalla* (2). This Court in *Girwar Prasad v. King-Emperor* (3) declined to follow the decision of the Madras High Court referred to above, and held that a munsif had jurisdiction to take action under section 476, eighteen months or more after the conclusion of the case in which the offences were said to have been committed and in *In the matter of the petition of Nawal Singh*, (4) Mr. Justice BANERJI upheld the order of a Subordinate Judge passed under section 476, several years after the conclusion of the case in which the offences were said to have been committed. We agree with the view which has hitherto been taken by this Court that there is nothing in section 476 which requires a court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time thereafter. Cases can easily be imagined where it would be impossible or inadvisable to take action immediately on the conclusion of the case. In the present case the Subordinate Judge appears to us to have exercised a wise discretion in abstaining from taking action against the applicants until he knew that no appeal had been filed against his decision. It would have been useless to prosecute the applicants for the offences which they are supposed to have committed, if there had been an appeal in the case and the District Judge had held that Musammatt Mohra was not the daughter of Sheo Narain. We express no opinion on the merits of the case or on the advisability of the prosecution which has been ordered. In our opinion the Subordinate Judge had jurisdiction to direct the prosecution of the applicants, and we have, therefore, no power to interfere with his order. The application is dismissed with costs.

Application dismissed.

(1) (1907) I. L. R., 32 Bom., 184.

(3) (1909) 6 A. L. J., 392.

(2) (1902) 4 Bom. L. R., 778.

(4) (1902) I. L. R., 34 All., 390.