REVISIONAL CRIMINAL.

Before Mr. Justice Iqbal Ahmad.

1927
March, 29.

NARAIN DAS *v.* EMPEROR.*

Criminal Procedure Code, sections 195 (1) (b) *and* (c) *and* 476 *—Complaint made by a court—Competence of trial court not affected by the fact of the parties concerned having compromised in appeal—Act No. XII of* 1887 *(Bengal, Agra and Assam Civil Courts Act), sections* 21 (1) *and* 8.

If it appears to a court that any of the offences enumerated in section 195 (1) (*b*) and (*c*) of the Code of Criminal Procedure have been committed "in or in relation to a proceeding in that court," it has jurisdiction to proceed under section 476 of the Code. The mere fact that in the appellate court the parties agreed to compromise the matter, or to get it decided by a reference to arbitration, or in accordance with the statement of a referee, cannot take away the jurisdiction vested in the trial court to make a complaint under section 476 of the Code of Criminal Procedure, provided that court is satisfied that "it is expedient in the interests of justice that such a complaint should be made."

The proceedings taken by a civil court under section 476 of the Code of Criminal Procedure are to be deemed as proceedings of a civil nature and are, therefore, governed by the rules relating to civil cases. By section 8 of the Civil Courts Act (XII of 1887) an Additional Judge is competent to discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions the Additional Judge is competent to exercise the same powers as the District Judge.

Mutasaddi Lal v. *Mule Mal* (1), *Ram Charan* v. *Mewa Ram* (2) and *Banwari Lal* v. *Jhunka* (3), followed. *Ram Charan Chanda Talukdar* v. *Taripulla* (4), *Hari Mandal* v. *Keshab Chandra Mana* (5) and *Rajdhari Lal* v. *Rameshar Lal* (6), referred to.

THE facts of this case are very fully stated in the judgement of the Court.

*Criminal Revision No. 34 of 1927, from an order of Raghunath Prasad, Sessions Judge of Meerut, dated the 10th of January, 1927.

(1) (1912) I.L.R., 34 All., 205.
(2) (1921) I.L.R., 43 All., 409.
(3) (1925) 24 A.L.J., 217.
(4) (1912) I. L. R., 39 Calc., 774.
(5) (1912) I.L.R., 40 Calc., 37.
(6) (1927) I.L.R., 49 All., 460.

Sir *Tej Bahadur Sapru* and Mr. *P. N. Sapru*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

IQBAL AHMAD, J. :—This criminal revision and Criminal Revisions Nos. 35 and 36 of 1927 are connected and arise out of one and the same case. The applicants in all the three cases were convicted by a Magistrate of the first class under section 193 of the Indian Penal Code, and Narain Das, applicant in Criminal Revision No. 34 of 1927, was sentenced to six months' rigorous imprisonment and to a fine of Rs. 200, and Chuttan Lal and Nand Kishore, the applicants in the other two cases, were sentenced to three months' rigorous imprisonment and to a fine of Rs. 100 each. The conviction and the sentences passed on the applicants have been upheld by the learned Sessions Judge.

Narain Das applicant is a resident of village Pilakhwa and is a substantial zamindar and moneylender. In the same village resides another zamindar named Nathu Mal. The case for the prosecution was that on the 1st of February, 1925, Nathu Mal agreed to sell to Narain Das 35 bighas 6 biswas of land in a certain village for Rs. 6,500, but for fear of preemption it was agreed between Narain Das and Nathu Mal that in the sale-deed Rs. 8,000 was to be stated as sale consideration. After the agreement for sale had been entered into, Ganpat Rai, mukhtar-i-am of Nathu Mal, went to Meerut to purchase and did purchase a stamp paper of sufficient value on which a sale-deed for a sum of Rs. 8,000 could be executed. On the 3rd of February, 1925, both Narain Das and Nathu Mal went to Ghaziabad, and, it is said, that Narain Das asked Nathu Mal to give him a pro-note

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for Rs. 1,500, viz., the difference between the real and the bogus price before the execution of the sale-deed, and accordingly Nathu Mal passed a pro-note duly signed by him for the said amount in favour of Narain Das, but ante-dated the same to the 25th of January, 1925. A draft of the sale-deed was also prepared. It is alleged that Narain Das then went to consult his local lawyer, Babu Duli Chand, and took with him the pro-note, the stamp paper and the draft of the sale-deed. When Narain Das did not return, Nathu Mal went in search of him and was informed that Narain Das had left for his village. Nathu Mal followed Narain Das and found him in the village and asked him either to have the sale-deed executed or to return the pro-note. It is said that Narain Das put off the matter and did not get the sale-deed executed nor returned the pro-note. Then Nathu Mal reported the matter to the District Magistrate, but the District Magistrate took no action and directed Nathu Mal either to file a civil suit or to make a formal complaint in a criminal court. Nathu Mal then went to Ghaziabad and filed a civil suit in the court of the Munsif on the 5th or 6th of February, 1925, for a declaration that the pro-note, dated the 25th of January, 1925, was without consideration.

Narain Das contested the suit on the ground that he had money dealings with Nathu Mal for a long time and that the pro-note was for consideration, and that there was no contract for sale as alleged by Nathu Mal, and that he being a co-sharer in the village could not be afraid of pre-emption, and, therefore, there was no occasion to get an inflated price entered in the sale-deed. He stated that about one and a half years prior to the institution of the civil suit one of his servants had filed a complaint against one Dwarka Das, son-in-law of Nathu

Mal, and Dwarka Das was convicted in that case by the trial court, but the case was compromised in the appellate court, and Narain Das's case was that Dwarka Das thought that Narain Das was really at the bottom of that case, and it was he (Dwarka Das) who persuaded Nathu Mal to concoct the story that the pro-note was without consideration. The civil suit was tried by Mr. Kedar Nath, Munsif. He disbelieved the statements of Narain Das and of Chuttan Lal and of Nand Kishore who stated that the pro-note was for consideration, and overruled the pleas urged in defence, and passed a decree in favour of Nathu Mal in terms of the reliefs prayed for in the plaint, on the 2nd of June, 1925. Narain Das filed an appeal against the decree in the court of the District Judge. During the pendency of the appeal the parties agreed to refer the dispute between them to the arbitration of one Bakhtawar Singh. The arbitrator gave an award in favour of Nathu Mal on the 26th of February, 1926. Narain Das filed objections to the award on the 9th of March, 1926, but those objections were dismissed for default on the 27th of March, 1926. On the 22nd of April, 1926, Narain Das applied for setting aside of the order of dismissal for default, and during the pendency of this application the parties agreed to abide by the oath of one Umrao Singh. On the 7th of June, 1926, Umrao Singh made a statement on oath to the effect that the pro-note was not for consideration. Because of the statement of Umrao Singh the application for restoration was dismissed on the 7th of June, 1926.

On the 17th of June, 1926, Nathu Mal filed applications in the court of the Munsif of Ghaziabad under section 476 of the Code of Criminal Procedure, praying that the Munsif should make complaints against Narain Das, Chuttan Lal and Nand Kishore

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applicants under section 193 of the Indian Penal Code. These applications were heard by Mr. Daya Nand Joshi who had succeeded Mr. Kedar Nath, Munsif. He granted the application against Narain Das but rejected the applications against the other two applicants noted above. Both Nathu Mal and Narain Das filed appeals in the court of the District Judge. Narain Das's appeal was heard by the District Judge and was dismissed. Nathu Mal's appeal was transferred to the court of the Additional Judge which was presided over by Mr. Shambhu Nath Dube. Mr. Shambhu Nath Dube allowed the appeal of Nathu Mal and directed the institution of complaints against Chuttan Lal and Nand Kishore for an offence punishable under section 193 of the Indian Penal Code.

All the three applicants, as already stated, have been found guilty and have been convicted.

In revision before me certain facts were relied upon by the learned counsel for the applicants with a view to show that the story of Nathu Mal was improbable and should not have been believed. As there was ample material upon the record to justify the findings of fact arrived at by the learned Sessions Judge, I cannot go into the evidence and interfere with those findings, and I must accept the same as binding on me.

But it is argued that inasmuch as the appellate court had decided the case in accordance with the statement of a referee, the learned Munsif had no jurisdiction to proceed under section 476 of the Code of Criminal Procedure. It is pointed out that the fact of the parties agreeing to abide by the oath of a referee precluded a judicial consideration by the appellate court of the evidence in the civil suit, and

the statement of the referee was in view of the provisions of section 11 of the Oaths Act (Act X of 1873) to be treated as conclusive. In short, it is argued that the judgement of the learned Munsif should be deemed to have been discharged, and the suit having terminated by the statement of a referee, the courts below had no jurisdiction to make a complaint for an offence punishable under section 193 of the Indian Penal Code. I am unable to agree with this contention. The offence of perjury was committed in a proceeding in the court of the Munsif of Ghaziabad and as such that court was fully competent to proceed under section 476 of the Code of Criminal Procedure. If it appears to a court that any of the offences enumerated in section 195 (1) (*b*) and (*c*) have been committed " in or in relation to a proceeding in that court, " it has jurisdiction to proceed under section 476 of the Code of Criminal Procedure. The mere fact that in the appellate court the parties agreed to compromise the matter, or to get it decided by a reference to arbitration, or in accordance with the statement of a referee, cannot take away the jurisdiction vested in the trial court to make a complaint under section 476 of the Code of Criminal Procedure, provided that court is satisfied that " it is expedient in the interests of justice that such a complaint should be made." At the same time there is much to be said in favour of the contention advanced on behalf of the applicants that in the circumstances of this case either a complaint should not have been made against the applicants or, if made, Nathu Mal should also have been prosecuted. Nathu Mal, on his own showing, was, by ante-dating a fictitious pro-note with the intention of causing loss to a possible pre-emptor, guilty of having committed forgery. In short, both Nathu Mal and Narain Das

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had conspired to bring into existence a false document for the purpose of defeating the just rights of any co-sharer who was inclined to assert his right of pre-emption, and if the sale-deed had been executed and a pre-emption suit had been filed, one would not have been surprised to find Nathu Mal testifying to the fact that the pro-note was supported by consideration. Moreover, the dispute between the parties having terminated by the statement of a referee appointed by them, I cannot hold that Nathu Mal could have asked for the prosecution of the applicants in the interests of purity of administration of justice. Further, in this connexion I cannot overlook the fact that the learned Munsif who tried the suit did not initiate proceedings under section 476 of the Code of Criminal Procedure. However, the applicants have been prosecuted and convicted and it is sufficient to say that the question of propriety of the prosecution of the applicants has been urged at a very late stage of the case. It ought to have been taken up at the time when the order for the prosecution of the applicants was passed. Once that order was passed the Magistrate had jurisdiction to try the case. But I will take the matters referred to above into consideration in awarding the sentences passed on the applicants.

As already stated above, the learned Munsif rejected the application of Nathu Mal and declined to make a complaint against Chuttan Lal and Nand Kishore, but on appeal the learned Additional Judge made complaints against them under section 193 of the Indian Penal Code. It is argued on behalf of Chuttan Lal and Nand Kishore that the learned Additional Judge had no jurisdiction to make a complaint and in this connexion my attention has been drawn to sub-clause (*b*) of clause (1) of section 195

and to sub-clause (3) of section 195 and to section 476B of the Code of Criminal Procedure. It is pointed out that a complaint for an offence punishable under any of the sections of the Indian Penal Code enumerated in section 195 (1) (*b*) of the Code of Criminal Procedure, could be made either by the Munsif of Ghaziabad or by the court to which that court was subordinate within the meaning of clause (3) of section 195 of the Code of Criminal Procedure, viz., the court " to which appeals ordinarily lie from the appealable decrees or sentences of " the court of the Munsif. It is urged that in view of the provisions of section 21 (1) of the Bengal, Agra and Assam Civil Courts Act (Act XII of 1887) appeals against the decrees of Munsifs ordinarily lie to the court of the District Judge, and as such no other court except the court of the District Judge had jurisdiction to make a complaint against Chuttan Lal and Nand Kishore. In support of this argument reliance has been placed on the cases of *Ram Charan Chanda Talukdar* v. *Taripulla* (1), *Hari Mandal* v. *Keshab Chandra Mana* (2) and *Rajdhari Lal* v. *Rameshar Lal* (3). I am unable to agree with the contention of the learned counsel for the applicants. It is true that under section 476 of the Code of Criminal Procedure, the order of the learned Munsif refusing to make a complaint could be challenged only in the court to which an appeal ordinarily lies from the appealable decrees of the Munsif, i.e., in the court of the District Judge. But it is to be remembered that, in view of the decision in *Banwari Lal* v. *Jhunka* (4), the proceedings taken by a civil court under section 476 of the Code of Criminal Procedure are to be deemed as proceedings of a civil nature and are,

(1) (1912) I.L.R., 39 Calc., 774.
(2) (1912) I.L.R., 40 Calc., 37.
(3) (1927) I.L.R., 49 All., 460.
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therefore, governed by the rules relating to civil cases. By section 8 of the Civil Courts Act (Act XII of 1887) an Additional Judge is competent to discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions the Additional Judge is competent to exercise the same powers as the District Judge.

If the District Judge was competent to make a complaint against Chuttan Lal and Nand Kishore, the Additional Judge, to whom the District Judge transferred the appeals filed by Nathu Mal, was equally competent to make a complaint. For these reasons I am unable, with all respect, to agree with the view taken in the cases relied on by the learned counsel for the appellant. The view I take is in consonance with the view taken in the cases of *Mutasaddi Lal* v. *Mule Mal* (1) and *Ram Charan* v. *Mewa Ram* (2). I hold that the learned Additional Judge had jurisdiction to make complaints against Chuttan Lal and Nand Kishore.

In considering the question of sentences passed on the applicants I cannot overlook the fact that, for the reasons already assigned, I would have been reluctant to lend the weight of judicial authority to complaints against the applicants on the application of Nathu Mal, and as such I have come to the conclusion that I must not send the applicants back to jail. At the same time, taking into consideration the nature of the offence committed by the applicants and particularly by Narain Das, I must enhance the amount of fines imposed on them.

Accordingly I reduce the sentence of imprisonment passed on all the applicants to the term already

(1) (1912) I.L.R., 34 All., 205. (2) (1921) I.L.R., 43 All., 409.

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undergone by them but enhance the fines imposed on Narain Das from Rs. 200 to Rs. 500 and on Chuttan Lal and Nand Kishore from Rs. 100 to Rs. 125. In default of payment of fine Narain Das will undergo rigorous imprisonment for a period of six months and Chuttan Lal and Nand Kishore will undergo rigorous imprisonment for three months. If the applicants pay the fines imposed on them they need not surrender to their bail which will stand cancelled the moment the fines are paid. With this modification in the sentences passed on the three applicants I reject the three applications.

Applications rejected.

APPELLATE CIVIL.

Before Mr. Justice Boys and Mr. Justice Kendall.

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PHUL SINGH (DEFENDANT) *v.* BHOJRAJ AND OTHERS (PLAINTIFFS) AND JANG BAHADUR SINGH (DEFENDANT).*

Act No. IX of 1908 (*Indian Limitation Act*), *section* 19—*Acknowledgement—Suit on a mortgage of joint family property—Acknowledgement of liability contained in a reference to arbitration and an award.*

The managing member of a joint Hindu family executed in 1902 a simple mortgage of some of the joint family property. Thereafter, the members of the family being in doubt as to how the liability under this mortgage should be distributed amongst them agreed to refer the question to arbitration and an award was made setting forth the proportions in which each member of the family was liable. This was in 1910. In 1922 the representatives of the original mortgagee instituted a suit for sale on the mortgage of 1902,

*Second Appeal No. 1913 of 1924, from a decree of Lakshmi Narain Tandon, Subordinate Judge of Farrukhabad, dated the 20th of October, 1924, confirming a decree of M. O. Kerney, Munsif of Farrukhabad, dated the 30th of August, 1923.