

1927

BALNATH
PANDE
v.
BABBAN
PANDE.

exercised a judicial discretion in giving the permission. Ordinarily permission should not be given by an appellate court except on cogent grounds.

Accordingly I allow this application and direct that the order of the lower court granting the permission to withdraw from the suit with liberty to institute a fresh suit be set aside and the case will go back to it with directions to place the appeal upon the file of pending appeals and to dispose of it according to law. If the application for permission for liberty to withdraw from the suit with liberty to bring a fresh suit is granted by the court, the court must state its reasons. The costs of this application will abide the result.

Application allowed.

Before Mr. Justice Ashworth.

RAJDHARI LAL (OPPOSITE PARTY) v. RAMESHAR
LAL (APPLICANT).*

1927
January,
11.

Civil Procedure Code, section 24—Transfer—Criminal Procedure Code, section 476—"Proceeding."

Section 24 of the Code of Civil Procedure cannot be invoked to allow a court other than the court, in the course of proceedings in which a perjury or forgery was committed, or a court to which appeals ordinarily lie from that court, to entertain the question of preferring a criminal complaint. The word "proceeding" as used in section 24 of the Code of Civil Procedure can be construed to cover all proceedings contemplated at the date when the Code of Civil Procedure was passed but not a special proceeding not then in contemplation but established by a subsequent Act, namely, the Criminal Procedure Amendment Act, 1923. *Banwari Lal v. Thunka* (1), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

* Civil Revision No. 161 of 1926.
(1) (1925) 24 A.L.J., 217.

Munshi Kumuda Prasad, for the applicant.

Mr. Nihal Chand, Mr. G. W. Dillon and Babu
Indu Bhushan Banerji, for the opposite party.

ASHWORTH, J. :—This is an application in revision under section 115 of the Code of Civil Procedure impugning an order, dated the 30th of October, 1926, passed by the District Judge of Ghazipur. The order in question is one purporting to be passed under section 24 of the Code of Civil Procedure, transferring a pending proceeding on an application to the Munsif of Saidpur, made under section 476 of the Code of Criminal Procedure, that the Munsif should make a complaint against a party to a suit on a charge of forgery. The order directs that the proceeding should be transferred to the Subordinate Judge of Ghazipur.

The applicant contends that section 476 of the Code of Criminal Procedure only contemplates a proceeding under section 476 being conducted by the court wherein the forgery was committed or a court to which appeals from that court ordinarily lie. It is admitted by the counsel for the opposite party that appeals do not ordinarily lie to the Subordinate Judge from the Munsif, but he urges that under section 24 of the Code of Civil Procedure the District Judge, independently of section 476 of the Code of Criminal Procedure, had power to transfer the proceeding from the court of the Munsif.

It cannot be denied that, according to the decision of this Court in *Banwari Lal v. Jhunka* (1), the proceeding under section 476 is to be regarded as a proceeding by a civil court. Nor is there any restriction placed on the power of transfer conferred by section 24 of the Code of Civil Procedure in respect of proceedings. The only question is whether section 24 of

1927

 RAJDHARI
LAL
P.
KAMESHAR
LAL.

1927

RAJENDRAJI
LAL,
P.
RAMESHWAR
LAL.

the Code of Civil Procedure can apply to a proceeding of a civil court arising out of the power conferred on a civil court by section 476 of the Code of Criminal Procedure. In my opinion section 476 of the Code of Criminal Procedure must be construed as self-contained and exhaustive, in respect of the matter of a court making complaint against litigants on the ground of perjury or forgery. I construe the word "proceeding" in section 24 of the Code of Civil Procedure to cover all proceedings contemplated at the date when the Code of Civil Procedure was passed and not to cover a special proceeding not then in contemplation but established by a subsequent Act, namely, the Criminal Procedure Amendment Act (XVIII of 1923). It is perfectly clear from the terms of section 476 of the Code of Criminal Procedure that the legislature did not intend the power of making a complaint conferred by this section to be exercised by anyone but the court before whom the offence has been committed or a court to which appeals from that court ordinarily lie. It must be deemed to exclude such a court as that of the Subordinate Judge, on the principle that general provisions cannot override special provisions. I hold that section 24 of the Code of Civil Procedure cannot be invoked to allow a court other than the court, in the course of proceedings in which a perjury or forgery was committed, or a court to which appeals ordinarily lie from that court, to entertain the question of preferring a criminal complaint.

In any case it appears to me very undesirable to pass such an order of transfer. Section 476 appears to me to contemplate that ordinarily the court to prefer the complaint shall be the original court which heard the case and that an appellate court should only

make a complaint when the suit has been up before it on appeal or when the original court has granted or refused a complaint and its order is appealed from to the appellate court. It was not intended by the legislature that while proceedings were going on before the original court the appellate court should step in and deal with the matter. The district court, apart from its powers as an appellate court under section 476B, can only consider the desirability of itself preferring a complaint, if there is some *primá facie* ground for its so doing. Such *primá facie* ground will not exist if the original court is considering the matter, and certainly will not exist if, as in the present case, the appellate court has no reason to believe that sanction should be granted.

In the present case it would appear sufficient for the District Judge to direct the Munsif to conclude his proceeding without delay. Then if the Munsif decides to make a complaint, the present applicant can appeal to the District Judge.

For the above reasons I allow this application, but, in the circumstances, I make no order as to costs.

Application allowed.

1927

RAMDHARI
LAL.
v.
RAMESHAR
LAL.