

## REVISIONAL CIVIL

*Before Mr. Justice Bajpai*

MEHDI HASAN *v.* EMPEROR\*

1934

November, 1

*Criminal Procedure Code, section 476B—Appeal to District Judge against complaint by Munsif—Transfer of appeal to Subordinate Judge—Subordinate Judge not competent to deal with such appeal—Transfer, powers of—Civil Procedure Code, section 24—Bengal, Agra and Assam Civil Courts Act (XII of 1887), section 22.*

An appeal under section 476B of the Criminal Procedure Code, filed in the court of a District Judge against a complaint made by a Munsif under section 476, was transferred by the District Judge to a Subordinate Judge, who heard and disposed of the appeal: *Held*, that the Subordinate Judge was not competent to hear and decide the appeal, as the only court competent to deal with the appeal was that of the District Judge, it being the court to which the court of the Munsif was subordinate, within the meaning of section 195(3) of the Criminal Procedure Code.

Nor was the Subordinate Judge empowered to deal with the appeal by reason of the transfer of the appeal to him by the District Judge. The Criminal Procedure Code, to which one should look for the power of transfer in such cases, does not provide for any transfer in matters like this. So far as civil enactments go, section 24 of the Civil Procedure Code lays down that the transfer can be made only to a court which is itself competent to dispose of the matter; and section 22 of the Bengal, Agra and Assam Civil Courts Act, which deals with appeals from decrees or orders of Munsifs, does not apply inasmuch as the direction of the Munsif, under section 476 of the Criminal Procedure Code, for the filing of a complaint is not a decree, nor even an order in the sense in which that word is used in section 22.

Mr. *Shiva Prasad Sinha* and Miss *L. W. Clarke*, for the applicant.

The Government Advocate (Mr. *Muhammad Ismail*), for the opposite party.

BAJPAI, J.:—The learned Munsif of Deoband after holding a preliminary inquiry under section 476 of the

1934

MEHDI  
HASAN  
v.  
EMPEROR

Criminal Procedure Code directed that "A complaint shall be lodged before the District Magistrate of Saharanpur under section 195(1) (b) and (c) read with section 476 of the Criminal Procedure Code against Mehdi Hasan to stand his trial under section 193 read with section 198 and section 471 of the Indian Penal Code." An appeal against this was filed by Mehdi Hasan under section 476B in the court of the District Judge, Saharanpur. The court of the Munsif is subordinate to the court of the District Judge because appeals ordinarily lie from the appealable decrees of the Munsif to the court of a District Judge; and so far everything was regular. The learned District Judge transferred the appeal to the court of the Subordinate Judge, who with some modifications has confirmed the direction of the learned Munsif.

Mehdi Hasan has applied in revision to this Court under section 115 of the Civil Procedure Code. His first contention is that the learned Subordinate Judge was not competent to dispose of the appeal. It is said that under section 476B the withdrawal of the complaint made by the learned Munsif could be directed only by a court to whom the learned Munsif was subordinate. Within the meaning of section 195, sub-section (3), the court of the Munsif is subordinate only to that court to which appeals from the Munsif's decisions ordinarily lie, and such a court is the court of the District Judge, as provided by section 21, sub-section (2), of the Bengal, Agra and Assam Civil Courts Act. It is, however, contended by the learned Government Advocate that the appeal was filed in the court of the District Judge of Saharanpur, and the said officer had jurisdiction under section 24 of the Civil Procedure Code to transfer the appeal to a court subordinate to itself. Section 24 of the Civil Procedure Code says that a district court may, at any stage, transfer an appeal pending before it for disposal to any court subordinate to it and *competent*

to try or dispose of the same. The words "competent to try or dispose of the same" are important; and the question is whether the Subordinate Judge was competent to try or dispose of the appeal; and it must be conceded that if the provisions of the Criminal Procedure Code alone are looked at, the learned Subordinate Judge was not competent to try or dispose of the appeal. Reliance was then placed upon section 22 of the Bengal, Agra and Assam Civil Courts Act which says that a District Judge may transfer to any Subordinate Judge under his administrative control any appeals, pending before him, from the decrees or orders of Munsifs. It is clear that the direction of the Munsif for the filing of the complaint was not a decree; and it is open to some doubt whether it could be called even an order of the Munsif in the sense in which that word is used in section 22 of the aforesaid Act. In a case like this we should look, for the power of transfer, not in any civil enactment but in the Criminal Procedure Code itself, and that Code does not provide for any transfer in a matter like this. I am supported in this view by the cases of *Ram Charan Chanda Talukdar v. Taripulla* (1) and *Emperor v. Jagrup Shukul* (2).

Several other points were discussed before me, and it was especially argued that Mehdi Hasan was not a party to a proceeding pending in the court of the learned Munsif, and therefore a complaint under section 471 could not be filed against him. It was also said that he could not be said to be guilty of an offence under section 193 of the Indian Penal Code. Section 198 of the Indian Penal Code was not discussed before me because the learned Subordinate Judge who heard the appeal of Mehdi Hasan revoked the complaint so far as section 198 was concerned; but in view of the action which I propose to take in this revision it would be necessary for the learned District Judge of Saharanpur to consider the

1934

---

 MEHDI  
 HASAN  
 v.  
 EMPEROR

(1) (1912) I.L.R., 39 Cal., 774.

(2) (1917) I.L.R., 40 All., 21.

1934

MEHDI  
HASAN  
v.  
EMPEROR

propriety of the direction made by the learned Munsif of Deoband which was to the effect that a complaint shall be lodged against Mehdi Hasan under section 193 read with section 198 and section 471 of the Indian Penal Code. In connection with the last offence I may invite the attention of the learned District Judge to the Full Bench decision of this Court in *Emperor v. Kushal Pal Singh* (1).

For the reason that the learned Subordinate Judge was not empowered to hear the appeal I allow the application, set aside the order of the learned Subordinate Judge and send back the case to the District Judge of Saharanpur with directions that he would re-admit the appeal of Mehdi Hasan on his own file and dispose of it himself. Parties to bear their own costs.

### APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Ganga Nath*

1934  
November, 5

MANGAL SEN AND ANOTHER (PLAINTIFFS) v. MATHURA PRASAD AND OTHERS (DEFENDANTS)\*

*Civil Procedure Code, order XXI, rules 91, 92—Sale in execution of decree—Sale during pendency of a third party claimant's suit—Auction purchaser aware of and becoming party to such suit—Claimant's title proved—Auction purchaser deprived of property purchased—Remedy of auction purchaser—Suit for refund against decree-holders who had attached and taken away surplus of purchase money lying to the credit of the judgment-debtor—Suit not maintainable—Court sale—Warranty of title.*

Certain property was attached and sold in execution of a decree. At that time a suit was pending, which had been brought by a third party, who claimed to be the owner of the property, against the decree-holder and the judgment-debtor.

\*Second Appeal No. 1198 of 1933, from a decree of B. D. Kankan, Additional Subordinate Judge of Moradabad, dated the 4th of March, 1933, confirming a decree of Ghulam Sabir, Munsif of Moradabad, dated the 15th of February, 1932.