

Before Mr. Justice Kendall

ALI NAQI (APPLICANT) v. BAQRIDI AND OTHERS (OPPOSITE PARTIES)*

1934
July, 30

Criminal Procedure Code, section 476B—Complaint by court for prosecution of a party—Appeal—Scope of appellate court—Finding by appellate court that the prosecution could not be successful—Whether sufficient to justify quashing of the complaint.

In an appeal from an order under section 476 of the Criminal Procedure Code for the prosecution of a party it is competent to the appellate court to set aside the order upon finding that there are no grounds for hoping that the prosecution will be successful and end in a conviction of the party. It is not necessary, before the appeal can be successful, that the appellate court must find that there was no good ground for even an inquiry into the matter by the lower court, or that it must find in terms that it is not expedient in the interests of justice that the trial should proceed. *Surendra Nath v. King-Emperor* (1), dissented from.

Mr. *Gopalji Mehrotra*, for the applicant.

Mr. *Mushtaq Ahmad*, for the opposite parties.

KENDALL, J.:—The facts out of which this application has arisen are briefly as follows. There was a civil suit for ejectment in the court of the Munsif, and a post-card was filed on behalf of the defendant, of which, according to the plaintiff, the date had been altered. The civil suit was settled by agreement, but on the application of the plaintiff the Munsif made an inquiry into the question of whether the defendant should be prosecuted under sections 193, 465 and 471 of the Indian Penal Code. He came to the conclusion that there ought to be a prosecution and he sent a complaint to the District Magistrate to this effect. On appeal the Additional Subordinate Judge found that the materials on the record did not justify the hope that the prosecution would end in the conviction of the defendant in the civil suit, and set aside the order of the trial court.

*Civil Revision No. 126 of 1934.

(1) [1933] A.L.J., 1623.

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I am asked to interfere with this order under section 115 of the Civil Procedure Code on the ground that the lower appellate court had no jurisdiction to set aside the order of the original court without recording a finding that it was not expedient in the interests of justice that the trial should proceed. I am not at this stage concerned with the correctness of the finding of the lower appellate court, on the evidence, that a prosecution was bound to fail. What I am asked to hold is, that assuming that finding to be sound, he had no jurisdiction to refuse to proceed with the prosecution, unless he had also found in terms that the prosecution was not expedient in the interests of justice. There is some authority for this argument in the judgment of MUKERJI, J., in the case of *Surendra Nath v. King-Emperor* (1). If the result of that judgment must be held to be that where the appellate court finds that a prosecution is bound to fail, it must nevertheless allow the prosecution to proceed merely because there was justification for an inquiry into the matter by the trial court, I must with all respect differ from the decision. There is a right of appeal against an order passed under section 476 of the Criminal Procedure Code containing a complaint, and according to the argument advanced for the applicant, that appeal could only be successful if the lower appellate court were to find that there had been no good ground for an inquiry, whatever the result of the inquiry might be. I do not wish to express an opinion as to the correctness of the finding by the Judge that there was no ground for hoping that the prosecution would succeed. But as he did come to that conclusion, he was perfectly correct in setting aside the order of the Munsif and refusing to sanction the prosecution. He did not therefore act without jurisdiction or irregularly in the exercise of his jurisdiction, and the application for revision is dismissed with costs.

(1) [1933] A.L.J. 1623.