

rule 4, the time for payment being extended to six months from this date. The parties will bear their own costs in this appeal.

Appeal allowed.

1926

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PRASAD
v.
GANESH
PRASAD.

REVISIONAL CRIMINAL.

Before Mr. Justice Wazir Hasan.

KING-EMPEROR (APPELLANT) v. RAM NATH BUX
SINGH (COMPLAINANT-RESPONDENT).*

1926
September,
9.

Criminal Procedure Code, section 476, sub-section (1) and section 195, sub-section (1), clauses (a), (b) and (c)—Complaint—Section 476, sub-section (1) of the Criminal Procedure Code authorizes complaints of offences under section 195, sub-section (1), clauses (b) and (c) only.

Held, that section 476, sub-section (1) of the Code of Criminal Procedure, does not authorize a complaint with reference to offences described in section 195, sub-section (1), clause (a), committed in or in relation to a proceeding in a court. The jurisdiction to make a complaint under that sub-section is limited to such cases as are provided for in sub-section (1), clause (b) or clause (c) of section 195 only.

Mr. *Ali Zaheer*, for the applicant.

Government Advocate (Mr. *G. H. Thomas*), for the Crown.

HASAN, J.:—This is a reference under section 438 of the Code of Criminal Procedure 1898, by the Sessions Judge of Sitapur. The circumstances in which the reference has arisen are as follows:—

In execution of a simple money decree passed by the court of the Munsif of Sitapur in favour of Dilaram Sah against one Thakur Ramnath Bakhsh Singh a village belonging to the judgment-debtor was

* Criminal Reference No. 42 of 1926.

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attached by the Munsif and placed in possession of a receiver for making collections for the purpose of satisfying the decree. The appointment of the receiver was followed by an injunction prohibiting the judgment-debtor from making collections in the village and the tenants from paying rent to him. On a report made by the receiver the Munsif somewhat hurriedly came to the conclusion that the judgment-debtor and his agent, Bharat Singh, had disobeyed the injunction. Having formed that opinion the Munsif purporting to act under section 476, sub-section (1) of the Code of Criminal Procedure, made a complaint to a first class Magistrate in Sitapur having jurisdiction in the matter that an offence under sections 183 and 185 of the Indian Penal Code had been committed by the judgment-debtor and his agent, Bharat Singh. The complaint was made on the 17th of April, 1926. Thereafter the judgment-debtor appeared before the Munsif and produced evidence for the purpose of showing that the injunction was not disobeyed. The decree money was also in the meantime fully paid up by the judgment-debtor. The Munsif was satisfied that the answer given by the judgment-debtor to the question as to whether he had or had not disobeyed the court's injunction was true. He thereupon by his order dated the 31st of May, 1926 requested the Sub-divisional Magistrate to allow the withdrawal of the complaint.

It appears to me that there was no justification whatsoever for the Magistrate in not accepting the Munsif's prayer as to the withdrawal of the complaint under section 248 of the Code of Criminal Procedure. Instead of acting under the provisions of that section, the Magistrate forwarded the papers to the District Magistrate for obtaining, apparently, directions from him as to the course of conduct he

should adopt in that behalf. The learned District Magistrate returned the papers to the Magistrate seized of the case with an endorsement that an offence seems to have been committed if not by the accused, then by his brother. When the file returned to the Magistrate he refused to take any further notice of the Munsif's prayer for withdrawal and proceeded to try the case. Thereupon the accused moved the court of the Sessions Judge of Sitapur for an order setting aside the entire proceedings as illegal.

It appears to me that the learned Sessions Judge instead of forwarding this reference to this Court for final orders in the case, could have acted himself under the provisions of section 476B of the Code of Criminal Procedure as a court superior to the court of the Munsif and directed the withdrawal of the complaint. If he had done this the matter would have ended then and there and the Magistrate would have had no option left but to acquit the accused. The case having now been reported to this Court for orders, it will serve no useful purpose to throw it back to the court below for disposal. I therefore proceed to decide the case myself under section 439, sub-section (1) of the Code of Criminal Procedure.

I am of opinion that the action of the Munsif in making the complaint and purporting to have done so under section 476, sub-section (1) of the Code was *ultra vires* and wholly without jurisdiction. Section 476, sub-section (1), does not authorize a complaint with reference to offences described in section 195, sub-section (1), clause (a), committed in or in relation to a proceeding in a court. The jurisdiction to make a complaint under that sub-section is limited to such cases as are provided for in sub-section (1), clause (b) or clause (c) of section 195 only.

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The result is that I quash and set aside the complaint made by the Munsif and the proceedings taken in relation thereto by the Sub-divisional Magistrate.

Complaint set aside.

APPELLATE CIVIL.

Before Sir Louis Stuart, Kt., Chief Judge, and Mr. Justice Wazir Hasan.

1926
September,
24.

DEPUTY COMMISSIONER OF HARDOI (DEFENDANT-APPELLANT) v. SYED MAIRAJ RASUL (PLAINTIFF-RESPONDENT).*

Maintenance grants, rule of construction of—Grants for maintenance are ordinarily intended to be for life.

Stuart, C. J.,
and Hasan,
J.

The rule of construction applicable to maintenance grants is that where the purpose of a grant is the maintenance to the grantee it is a *prima facie* intention that the grant was intended to be for life.

It is the purpose of the grant and not the form of the document by which the grant is made upon which the rule of interpretation is founded. *Rameshar Bakhs Singh v. Arjun Singh*, (1901) I. T. R., 23 All., 194 (P. C.), followed.

Mr. *Niamat Ullah* and Government Advocate (Mr. *G. H. Thomas*), for the appellant.

Mr. *M. Wasim*, for the respondent.

STUART, C. J., and HASAN, J.:—This is the defendant's appeal from the decree of the 4th Additional District Judge of Lucknow, dated the 28th of April, 1925, reversing the decree of the First Additional Subordinate Judge of Lucknow, dated the 31st of January, 1925.

* Second Civil Appeal No. 322 of 1925, against the decree of Mahmud Hasan, 4th Additional District Judge of Lucknow, dated the 28th of April, 1925, reversing the decree of Jitendra Nath Roy, 1st Additional Subordinate Judge of Lucknow, dated the 31st of January, 1925.