

## APPELLATE CRIMINAL.

Before Mr. Justice A. G. P. Pullan.

1930  
April, 29.

SHANKAR SAHAI, BABU (APPELLANT) v. KING-  
EMPEROR, THROUGH L. SHAMBHU NATH (COMPLAINANT-  
RESPONDENT).\*

*Criminal Procedure Code (Act V of 1898), section 476—  
Proceedings should not ordinarily be taken on applications  
of private persons—Proceedings under section 476 cannot  
be taken against a person not a party to the proceedings  
in court—Complaint under section 476 must state the  
evidence relied upon.*

Proceedings under section 476, Criminal Procedure Code, should not be undertaken on the application of private persons unless the prosecution is clearly in the interest of the State and is reasonably certain to result in a conviction and a court has no jurisdiction to take action under section 476 against a person who was not a party to the proceedings in the court.

When complaints are made under section 476 the officer making them must state the evidence on which he relies, otherwise the Magistrate to whom the case is referred for decision has no means of ascertaining what the evidence is on which the prosecution case is based.

Messrs. *R. F. Bahadurji* and *Moti Lal Saxena*, for the appellant.

The Assistant Government Advocate (Mr. *H. K. Ghose*), for the Crown, and Mr. *B. K. Dhaon*, for the opposite party.

PULLAN, J. :—This is an appeal under section 476B of the Code of Criminal Procedure against an order of the Sessions Judge of Hardoi in which he makes a complaint to the District Magistrate under section 476 of the Code of Criminal Procedure requiring one Babu Shankar Sahai, who is a practising lawyer in the Hardoi district, to be prosecuted under sections 193 and 465 of the Indian Penal Code. The case which gave rise to the proceedings was a criminal case brought by one

\*Criminal Appeal No. 191 of 1930, against the order of S. Asghar Hasan, Sessions Judge of Hardoi, dated the 6th of March, 1930.

Shambhu Nath against Tula and others which resulted in the conviction of the accused for offences under sections 147, 323 and 324 of the Indian Penal Code, and the conviction and sentences were upheld on appeal by the learned Sessions Judge. Neither he nor the Magistrate elected to prosecute Babu Shankar Sahai at that time and the present order has been passed on the application of Shambhu Nath. It cannot be too strongly impressed upon the courts that such proceedings should not be undertaken on the application of private persons unless the prosecution is clearly in the interest of the State and is reasonably certain to result in a conviction. I have been very carefully through the facts of this case. The Judge was under the impression that the assault took place in a certain field which is No. 440 and that it arose out of a dispute as to tenancy rights in that field between Tula on the one side and Shambhu Nath on the other. I find on the contrary that in the report made by Shambhu Nath no particular field is mentioned. It is only stated that Shambhu Nath heard that his *jundhari* crop had been cut, that he went to verify the fact and that he was waylaid by Tula and others, but the scene of the occurrence is not placed on this field. Tula made a counter-complaint and he also stated that he was attacked when on his way back from his field. The evidence was recorded in court on the 8th of November. The complainant examined himself and six other witnesses. None of them mentioned the number of the field and it is very clear from the evidence that the matter in dispute was the assault, not the field. On the 25th of November, Shambhu Nath was cross-examined by Babu Shankar Sahai who was counsel for the accused. He was tied down in cross-examination to a description of the field which could be verified, but even on that day no number was assigned to the field. On the following day—the 26th of November—the village patwari was examined. He located the field from Shambhu Nath's description as No. 440 and he stated that this field was

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partly cultivated by Babu Shankar Sahai, who is the lambardar of the village, and was partly fallow. He did not bear out Shambhu Nath's assertion that he (Shambhu Nath) had obtained this field by relinquishment from a former tenant Badlay. It is at this stage of the proceedings that Babu Shankar Sahai, who had withdrawn from the case on the previous day, was examined as a witness and he said that Badlay's field No. 440 had been relinquished in his own favour and he had himself given it on lease to Tula accused on the 25th of June, 1929, and he verified the lease which was produced. The view taken by the learned Sessions Judge is that Babu Shankar Sahai got this lease prepared during the trial of the case in order to establish the defence of Tula and it is on this belief that he has instituted proceedings against him. From the facts which I have stated it is evident that the field was not the matter of dispute until the 25th of November. Shambhu Nath had up till then made vague statements only about the cutting of his crops and it was not until he was forced to give the boundaries and description of the field which he alleged to have been cut that the other side had any opportunity to prove their possession over that field. Thus the production of the lease was not an afterthought as stated in his judgment in appeal by the learned Sessions Judge. It could not have been produced any earlier and his reason for supposing that the lease is ante-dated falls to the ground. I cannot myself see any other reason for supposing the lease to be ante-dated. When proceedings were taken under section 476, Babu Shankar Sahai asked to produce witnesses to prove the lease, but he was not allowed to do so. He had also offered in court to produce the deed of relinquishment said to have been executed in his own favour by Badlay, but the deed of relinquishment produced by Shambhu Nath was produced and not that said to have been executed in favour of Shankar Sahai. It is, therefore, a matter still open to question whether, this field was

relinquished by Badlay in favour of Babu Shankar Sahai who is the lambardar or Shambhu Nath who had purchased some land in the village, and is apparently disliked by the former zamindars. In my opinion there is no presumption that the lease produced by Babu Shankar Sahai was a forgery and there is certainly no evidence to prove that it was not executed as stated on the 25th of June, 1929. Thus, in my opinion, the prosecution for forgery was bound to fail. There is nothing on which the court could base a conviction. Apart from that the learned Sessions Judge acted without jurisdiction. Under section 476 of the Code of Criminal Procedure he could take action by way of complaint where in his opinion an offence referred to in section 195 sub-section (1) clause (b) or (c) "appears to have been committed in relation to a proceeding in that court." But section 196(c), which is the relevant clause, forbids any court from inquiring into an offence described in section 463 where such an offence is alleged to have been committed "by a party to a proceeding in any court" except on the complaint in writing of the court. I find no clause under which the court can take proceedings against a person who is not a party and Babu Shankar Sahai was not a party to the proceedings in the court of the Magistrate on which action has been taken by the Sessions Judge. No doubt the learned Judge was empowered to take proceedings in respect of an alleged offence under section 193 but the only statement which he considers to constitute perjury was the following:—

*"Main ne No. 440 ka patta 25th June, 1929 ko  
Tula Ram mulzim ko dia".*

The Judge himself describes the perjury charge as a mere corollary to the charge of forgery. In my opinion the complaint of the offence of forgery was without jurisdiction and neither a charge of forgery nor a charge of perjury can possibly be made out on the materials

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given by the learned Sessions Judge. When such complaints are made under section 476 the officer making them must state the evidence on which he relies, otherwise the Magistrate to whom the case is referred for decision has no means of ascertaining what the evidence is on which the prosecution case is based. As far as I can see the Magistrate, who is required to act on the complaint in the present case, would start and end with the opinion of the Sessions Judge that this lease was ante-dated and that Babu Shankar Sahai had made a false statement about it. I am at a loss to see how either opinion of the learned Sessions Judge was to be established by legal evidence. I consider that the whole order was misconceived. There was no justification for the prosecution of Babu Shankar Sahai either under section 193 or section 465 of the Indian Penal Code; and under section 476B of the Code of Criminal Procedure I direct the withdrawal of the complaint.

*Appeal allowed.*

### REVISIONAL CRIMINAL.

*Before Mr. Justice A. G. P. Pullan.*

LALA AND OTHERS (ACCUSED-APPLICANTS) v. KING-  
EMPEROR (COMPLAINANT-OPPOSITE PARTY).\*

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April, 24.

*Gambling Act (XVIII of 1867), section 13—Public place, meaning of—Verandah of a shop on a public road, whether a public place within the Gambling Act.*

A public place for the purposes of the Gambling Act is a place which is in full view of the public and to which the public have a right of access and the question of ownership is immaterial.

Therefore the verandah of a shop on a public road is not a public place within the meaning of the Gambling Act for though it be in a public situation the owner might have refused to allow the public to go there and so the public had no right of access to it.

\*Criminal Reference No. 15 of 1930.