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ABDUL
QAYUM
v.
ABDUL
RAHMAN

*Nanavutty
and
Smith, J.J.*

whereby he (Nabi Jan) purported to give up all his rights in these two villages in favour of Ahmad Azim. Chaudhri Nabi Jan and Chaudhri Safi Jan, who are old and respectable gentlemen of Sandila, would be well advised if they amicably settled all disputes with their nephews out of Court, for otherwise litigation will be the ruin of all of them. We agree with the learned Subordinate Judge that "it has still to be determined to whom the share of Muhammad Jan passed", and that the share to which each set of defendants is entitled cannot be determined in this suit. We, therefore, uphold the finding of the lower court on issue No. 6 that only a joint decree can be passed in favour of the plaintiffs against all the defendants, in respect of the property entered in list A attached to the plaint.

No plea concerning issue No. 7 has been taken by the appellants in their memorandum of appeal. We have discussed all the pleas taken in the two memoranda of appeal, and we have decided them against the appellants.

The result is that both appeals fail and are dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

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December, 17

WAJID ALI, SHAIKH (OPPOSITE PARTY-APPLICANT) v. KING-EMPEROR THROUGH M. FARIDUDDIN AHMAD (COMPLAINANT-OPPOSITE PARTY)*

Criminal Procedure Code (Act V of 1898), section 476—Indian Penal Code (Act XLV of 1860), sections 193 and 211—Perjury—Bringing a false complaint—Court which can take action under section 476 of the Code of Criminal Procedure—Court of session, when can take action under section 476B.

It is only the court before whom the offences of perjury and bringing a false complaint under sections 211 and 193 of the

*Criminal Revision No. 93 of 1932, against the order of Rai Bahadur Thakur Rachhpal Singh Sessions Judge of Bara Banki, dated the 17th of August, 1932.

Indian Penal Code are said to have been committed that can take action under section 476 of the Code of Criminal Procedure.

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Where no application under section 476 of the Code of Criminal Procedure was filed in the court of the Sub-Divisional Magistrate requesting him to make a complaint against the person alleged to have committed the offence under sections 211 and 193 of the Indian Penal Code before him nor did he therefore make any inquiry or pass any order but an application was made to the District Magistrate for making a complaint under section 476, the District Magistrate had no authority to make a complaint in respect of the offence said to have been committed in the court of a Deputy Magistrate.

The jurisdiction of the court of session only arises under section 476B when a court subordinate to it has directed the filing of a complaint or refused to make a complaint under section 476 or 476A of the Code of Criminal Procedure.

Messrs. *R. F. Bahadurji* and *Muhammad Husain Usmani*, for the applicant.

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

Mr. H. G. Walford, for the opposite party.

NANAVUTTY, J. :—This is an application for revision of an order, dated the 17th of August, 1932, passed by the learned Sessions Judge of Bara Banki purporting to be under section 476B of the Code of Criminal Procedure, sanctioning the filing of a complaint for offences under sections 211 and 193 of the Indian Penal Code against Shaikh Wajid Ali.

The facts out of which this application for revision arises are briefly as follows :

One Shaikh Wajid Ali made a complaint on the 19th of March, 1932 alleging that Khan Sahib Shaikh Fariduddin Ahmad with his servants and others had collected together in front of a certain *khaliyan* or threshing floor belonging to the complainant and praying that the Sub-Divisional Magistrate should direct the police to go at once and disperse this gathering otherwise the complainant feared that his life and property would be in serious danger. This complaint of Shaikh Wajid Ali

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was sent to the police for an inquiry and report. The Sub-Inspector in charge of police station Kursi made a report on the 12th of April, 1932, and he examined the complainant Shaikh Wajid Ali on the 21st of March, 1932, and made other inquiries into the complaint on subsequent days. The statement of Shaikh Wajid Ali before the Sub-Inspector was to the effect that Khan Sahib Shaikh Fariduddin Ahmad was not on the spot but that it was his men who had gathered together and were threatening to remove the crops of Shaikh Wajid Ali from the threshing floor belonging to him. The Sub-Inspector of Police further reported that there was no fear of a breach of the peace, although there was no doubt that a dispute between Shaikh Wajid Ali and Khan Sahib Shaikh Fariduddin Ahmad concerning the ownership and possession of the *sahan* or courtyard in front of the house of Shaikh Wajid Ali did exist.

On learning of this complaint of Shaikh Wajid Ali against himself Khan Sahib Shaikh Fariduddin Ahmad, Deputy Magistrate of Ghazipur, sent a petition to the District Magistrate of Bara Banki, through the Collector of Ghazipur under whom he was serving requesting that the complaint of Shaikh Wajid Ali against him may be taken on the file of the District Magistrate himself and dismissed under section 203 of the Code of Criminal Procedure, and asking that Wajid Ali be prosecuted under sections 211 and 193 of the Indian Penal Code and proceeded against also under section 250 of the Code of Criminal Procedure, and further that exemplary and deterrent measures should be taken against Wajid Ali for the safety of respectable people like the Deputy Magistrate himself. At the same time Khan Sahib Shaikh Fariduddin Ahmad also filed through his mukhtar Alimuddin a criminal complaint against Shaikh Wajid Ali and 9 others under sections 147, 352, 435 and 445 of the Indian Penal Code.

This complaint of the general agent of Khan Sahib Shaikh Fariduddin Ahmad, Deputy Magistrate as well as the complaint of Shaikh Wajid Ali were dismissed by one order of the Deputy Magistrate Khan Sahib M. Bashir Ahmad on the 30th of May, 1932, on the ground that even though the facts alleged in these complaints be held true they did not constitute any offence or any attempt to commit an offence under the Indian Penal Code and, therefore, both the complaints were dismissed under section 203 of the Code of Criminal Procedure.

As regards the letter sent by Khan Sahib Shaikh Fariduddin Ahmad to the District Magistrate of Bara Banki through the District Magistrate of Ghazipur the only order which the District Magistrate chose to pass on it was that he would like to have a report on paragraph 11 of the letter received by him from the Sub-Divisional Magistrate of Nawabganj. Thereupon Khan Sahib M. Bashir Ahmad, Sub-Divisional Magistrate of Nawabganj sent a report dated the 20th of June, 1932, to the Deputy Commissioner of Bara Banki setting forth some of the facts concerning the dispute between Shaikh Wajid Ali and Khan Sahib Shaikh Fariduddin Ahmad and giving out his opinion that Shaikh Wajid Ali was careless in making his statement before him on the 19th of March, 1932, and that the prosecution of Shaikh Wajid Ali might not be successful in view of the report of the Sub-Inspector of Police that Shaikh Wajid Ali had definitely told that officer on the 21st of March, 1932, that Khan Sahib Shaikh Fariduddin Ahmad was not among the rioters and had not been seen by Shaikh Wajid Ali on the 19th of March, 1932. The only order passed by the District Magistrate of Bara Banki upon this report of the Sub-Divisional Magistrate of Nawabganj was to write the word "seen" and put his initials to it and date it, and subsequently the Sub-Divisional Magistrate dismissed the complaints of Shaikh Wajid Ali as well as of M. Alimuddin, the

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general agent of Khan Sahib Shaikh Fariduddin Ahmad.

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* There was an application for revision filed by M. Alimuddin against the order of Khan Sahib M. Bashir Ahmad, Deputy Magistrate of Bara Banki, dated the 30th of May, 1932, dismissing the complaint of the applicant under section 203 of the Code of Criminal Procedure. This application for revision was dismissed by the learned Sessions Judge on the 9th of July, 1932.

Khan Sahib Shaikh Fariduddin Ahmad on the 18th of July, 1932, himself filed through his counsel Babu *Sri Ram Nigam* an appeal in the Court of the Sessions Judge of Bara Banki under section 476B against what he called the order of Khan Sahib M. Bashir Ahmad, Sub-Divisional Magistrate of Nawabganj, refusing to make a complaint under section 476 of the Code of Criminal Procedure against Shaikh Wajid Ali. This appeal was allowed by the learned Sessions Judge of Bara Banki by his order, dated the 17th of August, 1932, and he set aside what he called the order passed by the Deputy Magistrate and directed that a complaint should be filed against Shaikh Wajid Ali charging him with having committed offences under sections 211 and 193 of the Indian Penal Code, and directing that the Government Pleader should appear in the lower court on behalf of the prosecution against Shaikh Wajid Ali. It is in respect of this order of the learned Sessions Judge, dated the 17th of August, 1932, that the present application for revision has been filed in this Court.

The facts set forth above will clearly show that the whole procedure adopted on behalf of Khan Sahib Shaikh Fariduddin Ahmad was absolutely irregular, not to say illegal. There was no application under section 476 of the Code of Criminal Procedure filed in the Court of the Sub-Divisional Magistrate of Nawabganj, namely Khan Sahib M. Bashir Ahmad requesting that officer to make a complaint against Shaikh Wajid

Ali, who had filed an alleged false complaint against Khan Sahib Shaikh Fariduddin Ahmad and his men on the 19th of March, 1932. The letter to the District Magistrate of Bara Banki sent by Khan Sahib Shaikh Fariduddin Ahmad may perhaps be treated as a complaint within the meaning of clause (H) of section 4 of the Code of Criminal Procedure, but that complaint was not made to the court concerned before whom offences under section 211 and section 193 of the Indian Penal Code are said to have been committed and it is only the court before whom the said offences of perjury and bringing a false complaint are said to have been committed that could take action under section 476 of the Code of Criminal Procedure. The District Magistrate of Bara Banki had in fact no authority to make a complaint in respect of the offences said to have been committed in the Court of a Deputy Magistrate of Bara Banki. No application having been made to Khan Sahib M. Bashir Ahmad on behalf of Khan Sahib Shaikh Fariduddin Ahmad that officer was not called upon to express any opinion whether it was expedient in the interest of justice that an inquiry should be made into any offence referred to in section 195 of the Code of Criminal Procedure, nor was he called upon to record any finding to that effect and make a complaint thereof in writing and signed by him as presiding officer of the court. These are the necessary steps laid down in section 476 of the Code of Criminal Procedure before a complaint could be filed by the Sub-Divisional Magistrate of Bara Banki against Shaikh Wajid Ali. The learned Sessions Judge has treated the report which the Deputy Magistrate Mr. Bashir Ahmad submitted to the Deputy Commissioner of Bara Banki in compliance with the latter's executive order, dated the 12th of April, 1932, as an order passed by that Deputy Magistrate under section 476 of the Code of Criminal Procedure. In fact if one reads that report of the Deputy Magistrate, dated the 20th of June, 1932,

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one finds that the Deputy Magistrate has expressed no opinion one way or the other as to whether Shaikh Wajid Ali should or should not be prosecuted for the alleged offence of perjury and of bringing a false complaint, nor is there any indication in this report of the Deputy Magistrate as to whether he intended or did not intend to file any complaint against Shaikh Wajid Ali for the alleged commission of offences under sections 193 and 211 of the Indian Penal Code.

The jurisdiction of the Court of Session only arises under section 476B when a court subordinate to it has directed the filing of a complaint or refused to make a complaint under section 476 or 476A of the Code of Criminal Procedure. It is, therefore, clear to my mind in view of the facts set forth above that the order of the learned Sessions Judge, dated the 17th of August, 1932, was absolutely without jurisdiction and was, therefore, *ultra vires* and illegal.

Coming now to the facts themselves, I find that there was really no intention on the part of Shaikh Wajid Ali to put the criminal law into motion against Khan Sahib Shaikh Fariduddin Ahmad or his servants, but that Shaikh Wajid Ali desired that the Sub-Divisional Magistrate should ask the police to disperse the men who had assembled in the *sahan* or courtyard in front of the complainant's house. The words used in the complaint of Shaikh Wajid Ali of the 19th of March, 1932, are merely that the gathering be dispersed "*majma rok diya jaye.*" Even when his deposition was recorded on the 19th of March, 1932, on the back of the complaint, all that the complainant desired was that the police should be asked to protect his life and property by dispersing the persons who had assembled in the *sahan* or the courtyard in front of his house and which was used by him as his *khaliyan* or threshing floor. Whatever doubts one may entertain as to the intention of Shaikh Wajid Ali in filing his complaint, dated the 19th of March, 1932, the fact that he had no intention to implicate Khan Sahib Shaikh

Fariduddin Ahmad is perfectly clear from his statement made before the Sub-Inspector of Police of Thana Kursi M. Ram Charan Lal on the 21st of March, 1932, that Khan Sahib Shaikh Fariduddin Ahmad was not seen by him in the gathering on the 19th of March, 1932. It is therefore clear that upon these materials no criminal court could possibly have held Shaikh Wajid Ali guilty of committing perjury or of filing a false complaint.

Again it is admitted on all hands that a *bona fide* dispute as to the ownership and possession of the plot of land in front of the house of Shaikh Wajid Ali does exist between Shaikh Wajid Ali and Khan Sahib Shaikh Fariduddin Ahmad. The learned Sessions Judge in his order, dated the 9th of July, 1932, dismissing the application for revision of M. Alimuddin, mukhtar of Khan Sahib Shaikh Fariduddin Ahmad, has himself stated that he did not understand why the two parties instead of wasting their time in criminal courts did not go to the civil courts to have the matter in dispute determined. It is, therefore, clear that if any criminal complaint was filed by a court against Shaikh Wajid Ali in respect of the alleged commission of offences under sections 211 and 193 of the Indian Penal Code that would not really be in the interests of justice but would merely be in the personal interests of Khan Sahib Shaikh Fariduddin Ahmad, who is eager to pursue his personal vendetta against Shaikh Wajid Ali; and it has always been held that a criminal prosecution by a public servant should never be launched merely to feed the grudge of some private individual.

For the reasons given above I allow this application for revision, set aside the order of the learned Sessions Judge of Bara Banki, dated the 17th of August, 1932, and direct that the complaint, if any, filed against Shaikh Wajid Ali for offences under sections 211 and 193 of the Indian Penal Code be consigned to the record room without any further inquiry into it.

Application allowed.

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