

APPELLATE CRIMINAL.

Before Adami and Chatterji, JJ.

HAREKRISHNA PARIDA

v.

KING-EMPEROR.*

1929.

Jan., 29.

Code of Criminal Procedure, 1898 (Act V of 1898), section 476—application to prosecute withdrawn—subsequent complaint by court.

A complaint in respect of a forged document may be made by the court under section 476, Criminal Procedure Code, even when it is moved to do so by a person who was not a party to the proceedings in which the document was used.

A person may be called upon under section 476, Criminal Procedure Code, to show cause why he should not be prosecuted in respect of an offence to which that section is applicable even though a previous proceeding under section 476 at the instance of a party has been dismissed for non-prosecution.

Chamari Singh v. Public Prosecutor(1), referred to.

The facts of the case material to this report are stated in the judgment of Chatterji, J.

S. P. Varma (with him *G. P. Das*), for the appellant.

G. P. Cammiade (for Assistant Government Advocate), for the Crown.

CHATTERJI, J.—This is an appeal from an order of the District Judge of Cuttack under section 476 of the Criminal Procedure Code making a complaint for the prosecution of the appellant under section 471 of the Indian Penal Code.

The appellants brought a suit (no. 600 of 1926) in Jajpur Munsif's Court against two persons, Kalindi

*Criminal Appeal no. 250 of 1928, from an order of H. R. Meredith, Esq., I.C.S., District Judge, Cuttack, dated the 30th September, 1928, reversing an order of N. N. Das, Munsif, Cuttack, dated the 4th May, 1928.

(1) (1925) 6 Pat. L. T. 225.

Naik and Baidhar Samal, for a declaration of their raiyati right in 9.41 acres of land appertaining to Khata no. 461 of mauza Mahakalpara, bearing tauzi no. 1646 of the Cuttack Collectorate. The zamindari in the village originally belonged to one Nani Mohan Banerji from whom Kusum Naik, father of one Murlidhar Naik, purchased 12 annas share and the appellant Harekrishna Parida purchased the remaining four annas share.

1929.

HARE-
KRISHNA
PARIDA
v.
KING-
EMPEROR.

CHATTERJI,
J.

Along with the plaint filed by the appellants were filed 13 rent-receipts, one of which is dated the 23rd Magh 1320 and the other 19th Baisakh 1321. Both the receipts purported to have been granted by Narain Parida, son of the appellant no. 1 Harekrishna Parida, as tahsildar of Shaikh Hyder Ali, ijaradar of the zamindar Nani Mohan Banerji. It is these two receipts which have given rise to the present proceeding. It is stated that these two receipts could not possibly have been genuine because the malik zamindar leased out the village to Shaikh Hyder Ali from the beginning of the year 1322 Fasli and one Mr. Moore realized the rent as ijaradar for the year 1320 and the malik Nani Mohan Banerji retained the mahal in khas possession in the year 1321.

During the pendency of the suit no. 600 of 1926 in the Jajpur Munsif's Court the defendants Kalindi Naik and Baidhar Samal filed an application that the receipts were forged. After that the plaintiffs of the suit (namely, the appellants before us) filed a petition stating that the value of the suit exceeded Rs. 1,000 the maximum jurisdiction of the court and prayed to withdraw the suit for filing it in the proper Court. At the same time the defendants filed a petition praying that the documents filed by the plaintiffs should not be returned to them as they were forged. The learned Munsif returned the plaint for presentation to the proper court, and fixed a date, 1st September, 1927, by which the defendants were to prove that the documents filed by the plaintiffs were forged.

1929.

HARE-
KRISHNA
PARIDA
v.
KING-
EMPEROR.

CHATTERJI,
J.

On the 29th August, 1927, the defendants filed an application under section 476, Criminal Procedure Code, for the prosecution of the plaintiffs and thereupon the plaintiffs were called upon to show cause why they should not be prosecuted. On the 14th December, 1927, the defendants withdrew their application for the prosecution of the plaintiffs and on the 16th December, 1927, the Munsif dismissed the case for non-prosecution. The 13 receipts were returned on the 14th December, 1927, on the application of the plaintiffs when the petition of withdrawal was filed by the defendants.

Meanwhile, the plaint had been refiled in the Court of 2nd Munsif, Cuttack, and it was eventually dismissed by the Munsif on the 31st August, 1928, after contest. In that court only 11 of the receipts were filed and the two rent-receipts referred to above were not produced. In that suit before the Munsif of Cuttack it was pleaded by the defendants that the plaintiffs were estopped from questioning the raiyati right of the defendants because they had executed a nadabi in their favour on the 10th December, 1927. The additional Munsif who dismissed the case did not accept the contention on the ground that the consideration of the nadabi deed was the dropping of the proceeding against the plaintiff no. 1.

Murlidhar Naik who, as I have already stated, became the proprietor of the village to the extent of 12 annas share by virtue of a purchase from the original proprietor, Nani Mohan Banerji, moved the Munsif of Jajpur under section 476 of the Criminal Procedure Code for the prosecution of the appellants. He asserted that the receipts of 1320 and 1321 purporting to have been granted to the plaintiffs on behalf of Shaikh Hyder Ali as ijaradar were obviously forgeries and that the defendants Kalindi and Baidhar had been induced by the defendants to withdraw their application under section 476, Criminal Procedure Code, by the execution of a deed of sale in respect of one anna out of the defendants' 4 annas

share in the zamindari and also by the execution of a nadabi deed regarding the land which was the subject-matter of the suit no. 600 of 1926 and that the application for withdrawal was a collusive transaction.

The Munsif rejected the petition on the grounds (1) that the applicant was not a party to the original proceeding and had no locus standi to make the application; (2) that the application was for review of the order, dated the 16th December, 1927, in the previous miscellaneous case but the Code of Criminal Procedure makes no provision for a review; (3) that the documents alleged to have been forged were not on the record and were said to have been destroyed; and (4) the object of the petition was to harass and blackmail the opposite party. A further ground was given by him that the suit in the 2nd Munsif's Court at Cuttack was still pending. But that point does not arise because the suit had been disposed of before the order under appeal was passed by the learned District Judge.

Section 476 of the Criminal Procedure Code provides that the complaint may be made by a court either on an application or otherwise. Therefore it is immaterial whether the present application is made by a person who was not a party to the original suit. Besides he is a co-sharer malik of the village. There is no reason to refuse to take action because he brings the fact to the notice of the court if it is expedient in the interest of justice that an enquiry should be made into the offence referred to. In fact, this ground is not pressed before us by the learned Counsel for the appellant.

The points urged by him are firstly, that the proceeding having once been dropped by the Munsif of Jajpur by his order passed on the 16th December, 1927, the matter cannot be re-opened, and secondly, that the documents alleged to have been forged not being on the record there is no possibility of a conviction.

1929.

HARE-
KRISHNA
PARIDA

v.

KING-
EMPEROR.CHATTERJI,
J.

1929.

HARE-
KRISHNA
PARIDA
v.
KING-
EMPEROR.
CHATTERJI,
J.

It is undisputed that there is no provision for review in the Code of Criminal Procedure and it goes without saying that the court cannot revise its final order except in such cases for which provision has been made in the Code, for example, in sections 395 and 484 of the Code. But the point is: What is the scope of section 476, Criminal Procedure Code? It provides that in the matter of certain offences committed in or in relation to a proceeding in a court such court may make a complaint thereof in writing and shall forward the same to a Magistrate of the 1st class who shall proceed according to law as if the complaint is one made under section 200, Criminal Procedure Code. Thus, the proceeding under section 476, Criminal Procedure Code, terminates in a mere complaint which can be taken cognizance of by the Magistrate as in the case of an ordinary complaint made under section 200, Criminal Procedure Code. A person can change his mind as to whether he will file a complaint or not; on the same principle it may quite properly be stated that the complaining Court may also alter its mind and decide, on proper materials being placed, that it would make a complaint. The crucial point to be remembered always is whether it is expedient in the interests of justice that an enquiry should be made into any particular offence. It is not a case of any final order and, therefore, no question of the absence of any provision for review in the Code of Criminal Procedure would arise.

In the next place, when the defendants in suit no. 600 of 1926 filed the petition to withdraw their application under section 476, the court merely dismissed it for non-prosecution. The order runs as follows:

"Petitioner's petition, dated the 14th December 1927, put up. Ordered. Allowed. The case be dismissed for non-prosecution."

Therefore the court merely dismissed the application of the defendants for the prosecution of the appellants. The learned Munsif did not apply his judicial mind to the question whether it was expedient in the

interests of justice that an enquiry should or should not be made. The application of a particular party was merely dropped. This cannot, in my opinion, take away the jurisdiction of the court to make a complaint if satisfied on proper materials being placed that it is expedient in the interests of justice that the matter should be enquired into. That there is no finality to the dropping of a proceeding like this will appear from a consideration of the case of *Chumari Singh v. Public Prosecutor*(¹). In that case, an application under section 476, Criminal Procedure Code, was made by a party to a proceeding under section 83 of the Transfer of Property Act for the prosecution of the opposite party who had made a deposit on the strength of a mortgage which was alleged to have been forged. The Subordinate Judge before whom the application had been made refused to take action under section 476, Criminal Procedure Code, as he held that the proceedings under section 83 of the Transfer of Property Act were not judicial proceedings. After the amendment in 1923 of the Code of Criminal Procedure a fresh application for the prosecution was ultimately ordered in spite of the previous proceeding refusing to prosecute the man. Their Lordships held in this case that the fact that no action could be taken under section 476, Criminal Procedure Code, as it stood prior to the amendment of the Code, and the proceedings had accordingly to be dropped before an enquiry was made, did not preclude an action under the section as amended. If the proceedings could be re-opened after the amendment in spite of the previous rejection of the application under section 476, Criminal Procedure Code, I fail to see why a Judge acting under section 473, Criminal Procedure Code, would be debarred from making a complaint if satisfied that there is a prima facie case merely because an order was previously passed dismissing for non-prosecution the application of a particular party under section 476. In my opinion, the first contention is not well-founded.

1929.

HARE-
KRISHNA
PARIDA
v.
KING-
EMPEROR.

CHATTERJI,
J.

(1) (1925) 6 Pat. L. T. 225.

1929.

HARE-
KRISHNA
PARIDA
v.
KING-
EMPEROR.
CHATTERJI,
J.

There is no substance also in the second contention. Had the case proceeded on the basis of an alteration in the receipts, the absence of the originals would have made a successful prosecution impossible. But in this particular case, the certified copies of the receipts have been produced and as the learned District Judge points out evidence will be forthcoming that these are the correct copies of the originals. Then the list of documents filed by the plaintiffs in the original suit must be on the record. It can be proved by examining the pleader or any other credible witnesses that the plaintiff filed the receipts in question. Whatever that may be, it cannot be said that there is no reasonable probability of a conviction. The matter is one which should go before the Criminal Court. The learned District Judge has gone carefully into the whole matter and I agree with him that it is expedient in the interests of justice, that there should be a complaint for prosecution as made by him.

The appeal is dismissed.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Ross and Chatterji, JJ.

1929.

THE SECRETARY OF STATE FOR INDIA IN
COUNCIL

Jan., 7, 8,
29.

v.

GYANENDRA CHANDRA PANDE.*

Land Acquisition Act, 1894 (Act I of 1894), section 6—acquisition of land for quarries required in connection with a particular construction—minerals not required for the construction excepted—construction of declaration—Land Acquisition (Mines) Act, 1885 (Act XVII of 1885), section 3(1).

*Appeal from Original Decree no. 218 of 1927, from a decision of Babu Raj Narain, Subordinate Judge of Bhagalpur, dated the 16th of September, 1927.