

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for the appellant : *Hy. S. L. Polak and Co.*

Solicitors for the respondent : *A. J. Hunter and Co.*

1937.

RAJA
BRAJA
SUNDER
DER
v.
RAJA
RAJENDRA
NARAYAN
BHANJI
DEO.

SIR
GEORGE
RANKIN.

FULL BENCH.

Before Courtney Terrell, C.J., James and Manohar Lall, JJ.

KESHARINANDAN RAMANI

v.

KING-EMPEROR.*

1937.

November,
8.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 476 and 476B—order directing prosecution passed by an appellate court under section 476B, if appealable.

An order passed on appeal under section 476B of the Code of Criminal Procedure, 1898, is not appealable.

Ahamadar Rahman v. Dwip Chand Chowdhury(1), *Hikmatullah Khan v. Sakina Begum*(2), *Moideen Rowthen v. Miyassa Pulavar*(3), *Govind Hari Prabhu Mirashi v. Emperor*(4), *Ma On Khin v. N. K. M. Firm*(5) and *Muhammad Idris v. The Crown*(6), followed.

Ranjit Narayan Singh v. Ram Bahadur(7) and *Narayan Meher v. Dhana Meher*(8), overruled.

Appeal from an appellate order passed under section 476B of the Code of Criminal Procedure, 1898.

*Criminal Appeal no. 3 of 1937, from an order of A. D. Banarji, Esq., District Magistrate of Patna, dated the 4th May, 1937.

- (1) (1927) I. L. R. 55 Cal. 765.
- (2) (1930) I. L. R. 53 All. 416.
- (3) (1928) I. L. R. 51 Mad. 777.
- (4) (1934) I. L. R. 59 Bom. 340.
- (5) (1927) I. L. R. 5 Rang. 523.
- (6) (1924) I. L. R. 6 Lah. 56.
- (7) (1926) I. L. R. 5 Pat. 262.
- (8) (1930) I. L. R. 10 Pat. 446.

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The case was first heard by Madan, J. who referred it to a Division Bench by the following judgment :

The applicant Kesharinandan was prosecution witness in a criminal case brought against the opposite party who were acquitted on appeal. The opposite party applied before the trying Magistrate for the prosecution of the applicant for perjury. This application was allowed on appeal by the District Magistrate, and this Court is being moved against that order. Mr. K. N. Moitra for the applicant informs me that his intention was to file an application in revision against the District Magistrate's order, and he maintains that that is in fact the correct procedure which ought to be followed. He, however, converted the application into an appeal on the strength of *Ranjit Narayan Singh v. Ram Bahadur*(1) where a Division Bench of this Court has held that where the trying court rejects an application for prosecution, but the appellate court allows it, there is also an appeal against the order of the appellate court, in which case the present appeal ought to have been filed before the Sessions Judge, and not before this Court. The decision mentioned above was followed by another Division Bench of this Court in *Narayan Meher v. Dhana Meher*(2) but the attention of their Lordships in that case was not drawn to a case of this Court, *Ramchandra Padhi v. King-Emperor*(3) where Macpherson, J. doubted the correctness of the earlier decision and suggested that on a proper case arising that authority might require re-examination by the Patna High Court. Since then all the other High Courts of India have dissented from the view taken by the Patna High Court and have held that no appeal lies.

I would refer to *Ahamadar Rahman v. Dweep Chand Chowdhury*(4), *Hikmat-Ullah Khan v. Sakina Begam*(5), *Moideen Rowthen v. Miyassa Pulavar*(6), *Govind Hari Prabhu Mirashi v. Emperor*(7), *Ma On Khin v. N. K. M. Firm*(8) and *Muhammad Idris v. The Crown*(9). In all these cases, except the Lahore case, the Patna authorities have been referred to but not followed. I therefore find this is a fit case for reference to a Division Bench which may consider whether the matter is suitable for being placed before the Full Bench.

The case then came on for hearing before James and Madan, JJ. who referred it to a larger Bench.

On this reference.

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- (1) (1926) I. L. R. 5 Pat. 262.
 - (2) (1930) I. L. R. 10 Pat. 446.
 - (3) (1928) I. L. R. 8 Pat. 428.
 - (4) (1927) I. L. R. 55 Cal. 765.
 - (5) (1930) I. L. R. 53 All. 416.
 - (6) (1928) I. L. R. 51 Mad. 777.
 - (7) (1934) I. L. R. 59 Bom. 340.
 - (8) (1927) I. L. R. 5 Rang. 523.
 - (9) (1924) I. L. R. 6 Lah. 56.

K. N. Moitra, for the appellant: An order passed on appeal under section 476B, Code of Criminal Procedure, is not appealable.

The decisions in *Ranjit Narayan Singh v. Ram Bahadur*⁽¹⁾, *Faujdar Rai v. The King-Emperor*⁽²⁾ and *Narayan Meher v. Dhanu Meher*⁽³⁾ are contrary to the meaning and scope of section 476B. The correctness of the decision in *Ranjit Narayan Singh v. Ram Bahadur*⁽¹⁾ was doubted by Macpherson, J., in *Ramchandra Padhi v. King-Emperor*⁽⁴⁾.

I rely on *Ahamadar Rahman v. Dwip Chand Chowdhury*⁽⁵⁾, *Govind Hari Prabhu Mirashi v. Emperor*⁽⁶⁾, *Moideen Rowthen v. Miyassa Pulavar*⁽⁷⁾, *Hikmatullah Khan v. Sakina Begam*⁽⁸⁾, *Muhammad Idris v. The Crown*⁽⁹⁾ and *Ma On Khin v. N. K. M. Firm*⁽¹⁰⁾.

The Assistant Government Advocate, for the Crown, conceded that no appeal lay.

S. A. K.

COURTNEY TERRELL, C.J., JAMES AND MANOHAR LALL, JJ.—The appellant Kesharinandan moved this Court against an order of the District Magistrate directing his prosecution for an offence under section 193 of the Indian Penal Code passed in an appeal from the order of the Sub-Deputy Magistrate of Patna City refusing to take action under the provisions of section 476 of the Code of Criminal Procedure. Upon the appeal being placed for final hearing before a Judge of this Court, a preliminary objection was

(1) (1926) I. L. R. 5 Pat. 262.

(2) (1925) 7 Pat. L. T. 199.

(3) (1930) I. L. R. 10 Pat. 446.

(4) (1928) I. L. R. 8 Pat. 428.

(5) (1927) I. L. R. 55 Cal. 765.

(6) (1934) I. L. R. 59 Bom. 340.

(7) (1928) I. L. R. 51 Mad. 777.

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(9) (1924) I. L. R. 6 Lah. 56.

(10) (1927) I. L. R. 5 Rang. 523.

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taken on behalf of the Crown that the appellant ought to have appealed to the Sessions Judge before coming to this Court. The objection was apparently based upon the decision of this Court in *Ranjit Narayan Singh v. Ram Bahadur*⁽¹⁾ which was followed in *Narayan Meher v. Dhana Meher*⁽²⁾. It was brought to the notice of the learned Judge before whom this objection was taken that this view of the law has been dissented from in almost every other High Court in India whereupon he referred the case to a Division Bench, which, in view of the importance of the question involved, has referred the matter to this Full Bench.

Before dealing with the cases which cluster round the section, it is necessary to read and consider the relevant sections themselves. Section 476 is a general section which gives the court (civil, criminal or revenue) the right to take action against any person where the court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in section 195, and it also empowers such a court, after any preliminary inquiry which it may deem fit to make and after recording a finding to the effect that it is expedient in the interest of justice to do so, to make a complaint in writing as provided in the section. It is important to note that the concluding words of the section, which have given rise to some confusion, are that after a complaint has been made the court

"shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate, or, if the alleged offence is non-bailable, may send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate".

When this has been done, the person aggrieved by a complaint being ordered to be made against him or the person on whose application the Court has refused

(1) (1926) I. L. R. 5 Pat. 262.

(2) (1930) I. L. R. 10 Pat. 446.

to make a complaint is given a right to appeal to the higher authority under the provisions of section 476B. That section is very clearly worded. It says that

“ any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate and the superior Court may thereupon direct the withdrawal of the complaint or itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint, the provisions of that section shall apply accordingly ”

(to quote only the relevant words in the section). The last provision in this section underlined above has been taken by this Court, in the decisions under consideration, to mean that the person against whom the complaint is made by the appellate Court has further the right to appeal under section 476B. In our opinion this is not the meaning. The words clearly mean that after a complaint is made on appeal the procedure to be followed in forwarding the complaint and the accused and in taking recognizance from a witness shall be as laid down in section 476. This matter appears to us to be very clear and but for the decisions of this Court which we now proceed to consider it would be difficult to conceive that any other interpretation could be put on it. The first decision of this Court on this point is in the case of *Faujdar Rai v. The King-Emperor*⁽¹⁾ where a single Judge of this Court dealt with the matter which arose before the revenue courts in this way. A Collector acting as a revenue court had set aside an order of the Sub-Deputy Collector refusing to make a complaint against the petitioner in that case and himself directed the filing of a formal complaint. Thereupon the petitioner in that case appeared before the Commissioner and presented an appeal. The Commissioner refused to entertain the appeal on the ground that no second appeal lay to him. Against that order the High Court was moved and the learned

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(1) (1925) 7 Pat. L. T. 199.

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Judge, who decided that case, held that the Collector acting as a revenue court was subject to the superintendence of the High Court and that his order was revisable under section 115 of the Code of Civil Procedure. He also held that the High Court had jurisdiction to interfere under section 107 of the then Government of India Act, and inasmuch as the Collector had refused to apply his mind to the evidence which was in favour of the petitioner the High Court held that the Collector had refused to exercise the jurisdiction vested in him and therefore set aside the order acting under section 115 of the Code of Civil Procedure as well as under section 107 of the Government of India Act. Towards the end of the judgment there is a paragraph which states that "under section 476B of the Code of Criminal Procedure it appears that when an appellate Court sets aside the order of the original court, the party prejudicially affected has a right of appeal to the Court to which appeals from that appellate court ordinarily lie". This was entirely obiter dictum and not at all necessary for the decision of that case, which was indeed decided upon its own facts.

The other cases which are referred to in the referring order are an authority for the proposition that a first appeal will lie again from an appellate court's order under section 476B when it directs the filing of a complaint on reversing the refusal of the first court. As indicated above, in our opinion this view is wrong. The crux of the matter is very clearly set out in the judgment of the Calcutta High Court in *Ahamadar Rahman v. Dwip Chand Chowdhury*⁽¹⁾ where Rankin, C.J. has dealt with the question exhaustively and with great respect we adopt that decision. In our view it was never the intention of the legislature to provide two first appeals; the language used by the legislature gives no warrant for the contrary view. The decisions of the

(1) (1927) I. L. R. 55 Cal. 765.

other High Courts in *Hikmat-ullah Khan v. Sakina Begum*(¹), *Moideen Rowthen v. Miyassa Pulavar*(²), *Govind Hari Prabhu Mirashi v. Emperor*(³), *Ma On Khin v. N. K. M. Firm*(⁴) and *Muhammad Idris v. The Crown*(⁵) are also to the same effect.

We, therefore, answer the reference in these terms that the decisions of this High Court reported in *Ranjit Narayan Singh v. Ram Bahadur*(⁶) and *Narayan Meher v. Dhana Meher*(⁷), were wrongly decided, that the appellant has no right to prefer an appeal against the order of the District Magistrate passed under section 476B of the Code of Criminal Procedure.

This appeal will now be treated as an application in revision and will be heard by a single Judge of this Court in the ordinary course.

Order accordingly.

APPELLATE CRIMINAL.

Before Courtney Terrell, C.J. and Manohar Lall, J.

PAKALA NARAYANA SWAMY

v.

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Code of Criminal Procedure, 1898 (Act V of 1898), section 162—admission made by party, how far admissible—admission by accused, not amounting to confession, if admissible—Evidence Act, 1872 (Act 1 of 1872) section 73—legality of comparison of handwriting by Judge.

*Death Reference no. 45 of 1937 and Criminal Appeal no. 268 of 1937, from the order of J. A. Byers, Esq., I.C.S., Sessions Judge, Ganjam-Puri Division, Berhampore, dated the 15th of September, 1937.

- (1) (1930) I. L. R. 53 All. 416.
- (2) (1928) I. L. R. 51 Mad. 777.
- (3) (1934) I. L. R. 59 Bom. 340.
- (4) (1927) I. L. R. 5 Rang. 523.
- (5) (1924) I. L. R. 6 Lah. 56.
- (6) (1926) I. L. R. 5 Pat. 262.
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