

REVISIONAL CRIMINAL.

Before Mr. Justice Abdul Raouf.

AMAR NATH—*Petitioner,*

versus

MAM RAJ AND JOT RAM—*Respondents.*

Criminal Revision No. 1464 of 1920.

Criminal Procedure Code, Act V of 1898, section 476—Civil Court must come to a finding as to which of the parties committed the offence.

Held, that a Civil Court ought not to take action under section 476 of the Criminal Procedure Code without coming to a finding as to which of the parties sent for trial had committed the offence.

Crown v. Pirbhu Dyal (1), followed.

Case reported by E. B. Anderson, Esquire, Sessions Judge, Karnal, with his order No. 1380 of 15th October 1920.

Nemo for Petitioner.

Nemo for Respondents.

The order of the Sessions Judge.

The facts of this case are as follows :—

“Amar Nath, plaintiff, brought a money suit for Rs. 295-5-0 on the basis of a bond dated the 15th April 1919 executed by the defendants in his favour for Rs. 250. Mam Raj, defendant, on his appearance produced a bond which he said was given over to him by the plaintiff at the time when the debt was discharged. Plaintiff denies that the bond put up by the defendant was ever given by him to the defendants.

“Defendant further alleges that the bond in question was deceitfully given to him by the plaintiff as he withheld the genuine one and gave to him a forged document. Plaintiff's contention is that the bond is forged by the defendants. In any case a forged document is produced before this Court, and I think in the interests of justice both the parties should be tried by a Criminal Court. I commit the case to the Court of the Sub-Divisional Magistrate for trial. I may note that the Civil

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suit has been dismissed on oath of the defendants offered by the plaintiff, but this fact does not mitigate the criminal offence."

The petitioners in Civil suit Amar Nath *versus* Mam Raj and Jot Ram being concluded by *Chaudhri* Kanwar Singh, exercising the powers of a Munsif of the first class in the District of Karnal, were committed by order, dated 2nd July 1920, under section 476, Criminal Procedure Code, to the Court of Sub-Divisional Magistrate, 1st class, Kaithal, to stand their trial under sections 420 and 476, Indian Penal Code.

The proceedings are forwarded for revision on the following grounds:—

The learned Munsif arrived at no decision as to which of the two parties perpetrated the forgery, and made no preliminary inquiry as contemplated by section 476, Criminal Procedure Code, to ascertain which of them was guilty of the offence. It is not to my mind the function of the Magistrate to whom the case is sent to first discover the guilty party and then proceed to try him for the offence found to be committed. It is obvious that both the plaintiff and the defendants cannot be tried together and charged in the alternative with having committed the one offence.

The case of Crown *versus* Purbhu Dyal (Criminal revision No. 733 of 1905) reported as No. 163 P. L. R. 1905 is on all fours with the present case.

It is accordingly recommended that the order of the Munsif passed under section 476, Criminal Procedure Code, be set aside.

ABDUL RAOOF, J.—This case has been reported under section 438, Criminal Procedure Code, to this Court with a recommendation that the order made by the Munsif be set aside.

The facts are somewhat peculiar. The plaintiff Amar Nath sued the defendants on the footing of a bond, dated the 15th of April 1909, for the recovery of Rs. 295-5-0. The defendants Mam Raj and Moti Ram in their defence produced a bond which they alleged to have been returned to them by the plaintiff on receipt of the money due under it. This bond was challenged by the plaintiff as a forgery, while the defendants, on the other hand, contended that it was the plaintiff who had deceitfully returned to them a forged document and had kept the real document with him. As to who had been guilty of the offence of forgery could not be determined in the civil suit inasmuch as the plaintiff offered to abide by the oath of the defendants and the suit was dismissed. Without, however, making any

enquiry into the matter the learned Munsif was of opinion that either the one or the other had been guilty of forging the document. Being of this opinion the learned Munsif sent the case under section 476, Criminal Procedure Code, to the Court of the Sub-Divisional Magistrate, Kaithal, for the trial of both plaintiff and the defendants for an offence under sections 420-471, Indian Penal Code. The learned Sessions Judge has very properly sent up the case to this Court.

Without coming to any conclusion as to which of the parties had committed the offence an action under section 476, Criminal Procedure Code, ought not to have been taken by the Munsif. This case is fully covered by the ruling in *Crown v. Pirbhu Dyal* (1). I therefore accept the recommendation of the learned Sessions Judge and set aside the order made by the learned Munsif.

Revision accepted.

(1) 163 P. L. R. 1905.

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