

CIVIL REFERENCE.

*Before Mr. Justice Shadi Lal, Chief Justice, and Mr. Justice
Abdul Raouf.*

DINA NATH, GAUTAM—*Petitioner*

versus

MUHAMMAD ABDULLA—*Respondent.*

Civil Reference No. 44 of 1920.

*Criminal Procedure Code, Act V of 1898, section 195 (7) (a)—
Whether the Court of a Munsif is subordinate to the Subordinate Judge
or the District Judge.*

An application was made for sanction to prosecute a witness for a false statement alleged to have been made by him in a civil suit before a Munsif. The Munsif had been transferred from the district and sanction could therefore be given only by the Court to which the Court of the Munsif was subordinate and the question was referred to the High Court whether the application was cognizable by the Subordinate Judge or the District Judge.

Held that having regard to clause (a) of sub-section (7) of section 195 of the Code of Criminal Procedure, 1898, the Munsif must, for the purposes of the section, be deemed to be subordinate only to the Court of the Subordinate Judge of the 1st class.

Bure Khan v. Queen Empress (1), *Labnu Ram v. Nand Ram*, (2), and *Boddu Ramayya v. Chitturi Surayya* (3), followed.

Sundar Singh v. Phuman Singh (4), disapproved.

*Case referred by the District Judge of Ferozepore
by his order dated 4th October 1920.*

Nemo for Petitioner.

Respondents in person.

Herbert, Government Advocate, for the Crown.

The order of the Court was delivered by—

SHADI LAL, C. J.—The question of law upon which we are invited to pronounce our opinion, is whether an application for sanction to prosecute a witness in respect of a false statement alleged to have been made by him in a civil suit before a Munsif, who has been transferred from the district, is cognizable by

(1) 16 P. R. (Cr.) (1898).

(2) 29 P. R. (Cr.) (1918).

(3) (1915) 29 Indian Cases 71.

(4) (1920) 56 Indian Cases 591.

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the Subordinate Judge or the District Judge. Now clause (b) of sub-section (1) of section 195, Criminal Procedure Code, provides that sanction may be given either by the Court before which the alleged offence was committed or by some other Court to which that Court was subordinate. As stated above, the Munsif before whom the offence is alleged to have been committed has left the district, and it is common ground that the application can be entertained only by the Court to which the Munsif's Court was subordinate.

Now, the test laid down by the Court for determining the question of subordination is that a Court is subordinate to another Court if appeals from the former lie to the latter. To find out the form of appeal, we must consult the relevant provisions of the Punjab Courts Act, 1918. Now, section 39 of the Act, which deals with the law on the subject, prescribes that an appeal from a decree or order of a Munsif shall lie to the District Judge. There is, however, another provision in that section which has an important bearing upon the point before us. That provision is to be found in sub-section (4), which runs as follows :—

“The High Court may, with the previous sanction of the Local Government, by notification in the local official Gazette, direct that appeals lying to the District Court from all or any of the decrees or orders passed in an original suit by any Munsif shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.”

In pursuance of this sub-section a notification has been issued directing that all appeals from original decrees passed by any Munsif in a small cause of value not exceeding Rs. 500 or an unclassified suit of value not exceeding Rs. 100 may be preferred to the Subordinate Judge of the first class, exercising jurisdiction within the district.

The result is that, as the Munsif had jurisdiction to try all suits not exceeding Rs. 1,000 in value, we have two appellate Courts to which he was subordinate, namely, the Court of the Subordinate Judge in respect of suits specified in the notification and the Court of

the District Judge *quâ* the remaining cases cognizable by him. It is to be observed that, though the sub-section says that the Court of Subordinate Judge hearing appeals from the Court of a Munsif "shall be deemed to be a District Court for the purposes of all appeals so preferred," the Court of such Subordinate Judge is nevertheless essentially different from the Court of the District Judge. The very fact that the Subordinate Judge is treated as a District Judge for certain purposes shows that he is not a District Judge. The obvious intention of the provision is that with respect to the appeals entertained by him the Subordinate Judge shall exercise the same functions as the Court of the District Judge. The result of section 39 of the Punjab Courts Act taken with the notification mentioned above is that there are two appellate Courts *quâ* the decisions of the Munsif; and the question arises whether the latter is, for the purposes of section 195, Criminal Procedure Code, subordinate to the District Judge or the Subordinate Judge.

In order to solve the difficulty arising from the competing claims of two appellate Courts, the Criminal Procedure Code of 1882 enacted the following provision :—

"For the purposes of this section," (*viz.*, section 195) "every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie."

The Code did not contain any explanation of the term "ordinarily," but the High Courts interpreted it to mean "in the majority of cases." This interpretation, while solving the difficulty to some extent, chiefly in connection with the Criminal Courts, did not furnish any certain guide in choosing between two appellate Courts in respect of civil cases. It was for this reason that the Code of 1898 added a clause to sub-section (7) of section 195 by the way of an explanation of the expression "ordinarily." This clause, which deals with the case of an original Court against whose decisions appeals lie to two Courts of different grades, lays down that "the appellate Court of inferior jurisdiction shall be the Court to which such "Court," namely, the original Court, "shall be deemed to be subordinate."

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The clause is intended to furnish a complete definition of the term "ordinarily" for all cases which come within its purview, namely, cases where appeals from a lower Court lie to more than one higher Court; and there is, therefore, no necessity for considering the question whether appeals lie "ordinarily" or in the majority of cases to one Court or the other. The Legislature has settled the matter finally by laying down in express terms that in such cases the appellate Court of inferior jurisdiction must be taken to be the Court to which the original Court is subordinate for the purposes of section 195.

In view of the explanation added by the Code of 1898, it is unnecessary to refer to the cases decided under the old Code. Of the judgments under the new Code there are two Single Bench cases decided by the Punjab Chief Court which lay down the rule that the Court of inferior jurisdiction, namely, the Subordinate Judge, is the Court to which the Munsif shall be deemed to be subordinate,—*vide Bure Khan v. Queen-Empress* (1) and *Labhu Ram v. Nand Ram* (2). The same view has been taken by the Madras High Court in *Boddu Ramayya v. Chitturt Surayya* (3). There is, however, a Single Bench ruling of this Court in Criminal Revision No. 233 of 1920 *Sundar Singh v. Phuman Singh* (4) in which the contrary view was adopted; but the learned Judge, who decided that case, based his conclusion upon the use of the expression "ordinarily" in sub-section (7) of section 195, and made no reference to the clause which has been added to that sub-section in 1898 with the express object of making a choice between two Courts hearing appeals from the decisions of the same original Court.

The clause mentioned above furnishes a clear answer to the question referred to us for decision; and it is, therefore, unnecessary to speculate whether appeals lie in the majority of cases to the District Judge or to the Subordinate Judge. Accordingly the Munsif must, for the purposes of section 195, Criminal Procedure Code, be deemed to be subordinate only to the Court of the Subordinate Judge of the first class.

(1) 16 P. R. (Cr.) (1898).

(2) 29 P. R. (Cr.) (1918).

(3) (1915) 29 Indian Cases 71.

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