

that under Hindu Law *Sudras* can adopt a sister's son and *Jats* are *Sudras* as has been pointed out, *inter alia*, in *Mst. As Kaur v. Sawan Singh* (1), and *Har Dial v. Kali Ram* (2). We are unable to accept the reasons suggested by Mr. Jagan Nath for holding that the *Riwaj-i-am* of 1879 does not effectively support the respondents' case and the Lower Appellate Court's decision. The evidence which it furnishes has not been rebutted in any way and the appeal must fail.

Accordingly we dismiss the appeal with costs.

A. R.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Martineau and Mr. Justice Zafar Ali.

MUHAMMAD IDRIS—Appellant,

versus

THE CROWN AND ANOTHER—Respondents.

Criminal Appeal No. 232 of 1924.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), sections 476, 476-A, 476-B—Appeal to High Court from an appellate order of the District Judge making a complaint which the Subordinate Judge refused to make—Whether competent.

Held, that no appeal lies under section 476-B of the Code of Criminal Procedure to the High Court from an appellate order of the District Judge making a complaint under section 476, which the Subordinate Judge might himself have made but refused to make.

Appeal from the order of D. Johnstone, Esquire, District Judge, Delhi, dated the 18th February 1924, filing a complaint against the appellant.

ABDUL RASHID, for Appellant.

SAGAR CHAND, for the Government Advocate, and
J. L. KAPUR, for the Complainant, for Respondents.

The order of Sir Henry Scott-Smith J., dated 16th May 1924, referring case to a Division Bench.

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MUHAMMAD
IDRIS
v.
THE CROWN.

Upon an application made by the Dunlop Rubber Company, Limited, Delhi, under section 476 of the Criminal Procedure Code the Subordinate Judge of Delhi ordered the prosecution of Aziz-ud-Din for an offence under section 193 of the Indian Penal Code and filed a complaint against him. An application was also made in regard to Mumtaz Ali and Muhammad Idris; but the Court refused to file complaints against them. Appeals were lodged to the District Judge under section 476-B of the Code, and he ordered the prosecution of Muhammad Idris and Mumtaz Ali for offences under section 193 of the Indian Penal Code and of Aziz-ud-Din for an offence under section 471, Indian Penal Code, as well as for the offence under section 193, Indian Penal Code, for which the Subordinate Judge had already ordered his prosecution.

An important question arises whether an appeal lies to this Court from an appellate order of the District Judge making a complaint which the Subordinate Judge might himself have made under section 476 of the Criminal Procedure Code. This is virtually a second appeal, and it is very important that the matter should be decided as soon as possible as to whether such an appeal lies or not. I think the question should be decided by a Division Bench, and I order accordingly.

The judgment of the Court was delivered by—

MARTINEAU J.—The question referred to us in this appeal and in appeals Nos. 233 and 286 of 1924 is whether an appeal lies to this Court from an appellate order of the District Judge making a complaint which the Subordinate Judge might himself have made under section 476 of the Criminal Procedure Code. Section 476-B of the Code gives a right of appeal only when a Court has made or refused to make a complaint under section 476 or section 476-A, and neither of those sections relates to a complaint made by a Court on appeal from an order of a sub-

ordinate Court refusing to make a complaint. We therefore answer the question referred to us in the negative. The appeals will be laid before the referring Judge for disposal.

A. N. C.

APPELLATE CRIMINAL.

Before Justice Sir Henry Scott-Smith and Mr. Justice Fforde.

KHEMAN—Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 702 of 1924.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), sections 164 and 533—Confession recorded by Magistrate—when admissible in evidence, and what proof of its having been duly made is required—Indian Evidence Act, I of 1872, section 80.

Held, per curiam, that if a confession of an accused person to a Magistrate is tendered in evidence and the Court finds that any of the provisions of section 164 of the Code of Criminal Procedure have not been complied with, then under section 533 the Court shall take evidence that such person duly made the statement tendered and upon such evidence it shall be admitted, if the error has not injured the accused as to his defence on the merits.

Per Fforde J.—Section 164 of the Code of Criminal Procedure, as amended by Act XVIII of 1923, contains two new provisions which must be observed by the Magistrate in recording a confession, *viz.*, that the person making it must be warned that he need not make any confession at all and that, if he does so, such confession may be used as evidence against him. If the memorandum contains the proper note at the foot of it, it shall be presumed that all necessary formalities purporting in the foot-note to have been performed have in fact been performed—*vide* section 80 of the Indian Evidence Act.

The words in section 533 of the Code “duly made the statement recorded” must mean that the statement was made

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Nov. 18.