

reason has been shown in this case why there should be any extension of time and in fact counsel has not even addressed us on this point.

We dismiss the application with costs.

N. F. E.

Application dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Jai Lal.

FITZHOLMES, Appellant

versus

THE CROWN, Respondent.

Criminal Appeal No. 453 of 1925.

1925

Nov. 3.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), section 476-B—Appeal against an order making a complaint—Limitation—time from which limitation begins to run.

On the 14th June 1924 the District Judge directed that a complaint be drawn up by the Public Prosecutor against the appellant and filed in Court. This complaint was presented to the Court of the District Magistrate early in April 1925, and was sent for trial to the Additional District Magistrate on 8th April. On the same date an appeal under section 476-B of the Criminal Procedure Code was presented to the High Court. It was admitted that the period for appeal was sixty days.

Held, that the appeal was within time as section 476-B of the Code of Criminal Procedure gives a right of appeal to a person against whom a complaint *has been made*, and limitation, therefore, begins to run from the date of the making of the complaint and not from the date of the order of the District Judge directing that a complaint be drawn up.

Appeal from the order of Lieutenant-Colonel R. W. E. Knollys, Sessions Judge, Ambala, dated the 14th June 1924, directing that a complaint be made against the appellant, etc.

1925

FITZHOLES
v.
THE CROWN.

BADRI DAS and BISHEN NARAIN, for Appellant.

D. R. SAWHNY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

JAI LAL J.—This is an appeal under section 476-B of the Criminal Procedure Code against an order of the District Judge, Ambala, making a complaint under sections 193, 465 and 192 of the Indian Penal Code against the appellant. The learned Public Prosecutor, who appeared on behalf of the Crown, raised a preliminary objection that the appeal was barred by time. On the 14th June 1924, the District Judge directed that a complaint be drawn up by the Public Prosecutor and filed against the appellant in the Court of a Magistrate, 1st Class, having jurisdiction and took bail for the appearance of the appellant in Rs. 2,000 with two sureties. In pursuance of this order a complaint was filed by the Public Prosecutor in the Court of the District Magistrate, Ambala, in the beginning of April 1925. The District Magistrate sent the case for trial to the Additional District Magistrate on the 8th of April. On the same day this appeal was presented in this Court. It is admitted by the counsel on both sides that the ordinary period of appeals to this Court in such cases is *two* months, but they differ as to the date from which the limitation should begin to run. The learned Public Prosecutor contends that time should run from the 14th June 1924 when the District Judge directed that a complaint be filed against the appellant. The learned counsel for the appellant, on the other hand, contends that time should run from the date of the making of the complaint and in support of his contention relies upon the provisions of section 476-B which are as follows:—

“ Any person * * * against whom such a complaint has been made may appeal to the Court to which such Court is subordinate * * * and the superior Court may thereupon * * * direct the withdrawal of the complaint.”

In my opinion, the contention of the counsel for the appellant is correct and the appeal is within time. Section 476-B gives a right of appeal to a person against whom a complaint *has been made* and if such person succeeds on appeal, the appellate Court's order would be to direct *the withdrawal of the complaint*. This clearly contemplates that an appeal is to be filed *after* a complaint has actually been made and not before. The law does not contemplate that any great interval should elapse between the passing of a formal order directing a complaint to be made and the actual making of the same, and, therefore, an appeal is allowed not from the finding of the Court that a complaint should be made but from the making of the complaint. This view is further supported by the wording of section 476 which provides that the Court after such preliminary enquiry, if any, as it thinks necessary, may record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any offence referred to in section 195 (1) (b) and (c) and make a complaint thereof in writing. The person against whom such a finding is recorded is affected by it only when a complaint in pursuance thereof has been made. In my opinion, time begins to run from the date on which the complaint is made. I, therefore, overrule the preliminary objection.

[*The remainder of the judgment is not required for the purpose of this report.*—ED.]

Appeal accepted.

A. N. C.

1925

FITZTHOMES
v.
THE CROWN.