

REVISIONAL CRIMINAL.*Before Broadway, Zafar Ali and Bhide JJ.***THIRAJ**—Petitioner.*versus***THE CROWN**—Respondent.**Criminal Revision No. 2214 of 1928.**

Criminal Procedure Code, Act V of 1898, sections 476, 476-A, 476-B, and 195—Offences affecting administration of justice—Complaint by Court acting suo motu—Appeal—whether competent.

Held, that the provisions of section 476-B of the Criminal Procedure Code, give a right of appeal to any person against whom a complaint has been made by a Court acting under the provisions of sections 476 or 476-A of the Code, and that it is immaterial whether the Court acts suo motu or on an application made to it by some interested person.

Fitz Holmes v. Crown (1), referred to.

Application for revision of the order of Khan Bahadur Sheikh Din Mohammad, Sessions Judge, Lyallpur, dated the 22nd November 1928, on appeal from the order of Alan Mitchell, Esquire, District Magistrate, Lyallpur, dated the 28th May 1928, holding that no appeal is competent under section 476-B of the Criminal Procedure Code.

SLEEM, for Petitioner.

R. C. SONI, for Government Advocate, for Respondent.

At the hearing of the case before a Division Bench the Judges differed upon the question as to whether an appeal was competent. The differing judgments were as follows:—

ZAFAR ALI J.—The question whether a person against whom a complaint has been made under section 476 or 476-A of the Criminal Procedure Code

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otherwise than on an application, is given the right of appeal by section 476-B, came up before me once previously and my decision was that he is not. When the present application in revision involving the same question came up I referred it to a Division Bench for an authoritative decision as no ruling of any High Court could be found on this point.

After giving due weight to the argument advanced by Mr. Sleem who appeared for the petitioner I adhere to the view formerly taken by me that the phrase "such a complaint" that occurs in section 476-B contemplates a complaint made on an application and not "a complaint generally under section 476 or 476-A" whether made *suo motu* or on an application.

It may be observed first of all that it was by the amending Act of 1923 that the old sections 195 and 476 were altered and the new sections 476-A and 476-B were enacted. As observed by Maclean, C.J., *Begu Singh v. Emperor* (1), there was no right of appeal against an order under section 476, Criminal Procedure Code of 1898. The framers of the present section 476, *i.e.*, the Select Committee responsible for the amending Act of 1923, made the following remark *inter alia* in respect of the amended section 476 :—

"In order to give effect to the decision arrived at in our consideration of clause 114 that the proceedings under section 476, etc., should be subject to revision, we have introduced words which will make it necessary for the Court to record an order." From this remark it is clear that the framers of the present section 476 did not contemplate to create a right of appeal where it did not previously exist.

(1) (1907) 1. L. R. 34 Cal. 551, 556 (F.B.).

It may further be observed here that the main object of the alterations made in the old sections 195 and 476 and of the supplementary sections 476-A and 476-B evidently was to assign the function of launching a prosecution to the public officer or the Court concerned where previously it was left to the person who moved by application for sanction to prosecute. With this object in view clauses (A), (B) and (C) of sub-section (1) of section 195 were altered and sub-sections (4), (5) and (6) were cancelled so that in section 195 as it now stands the word 'sanction' does not occur anywhere. Section 476 provides that a Court may make a complaint *suo motu* or on an application. The Courts to which the Courts mentioned in section 476 are subordinate are conferred the same powers by section 476-A, *i.e.*, the Courts of either class can launch a prosecution either *suo motu* or on application. Thus the old section 476 covers the present sections 476 and 476-A. Section 476-B corresponds mainly to clause (6) of the old section 195. With these remarks let us now turn to the phraseology of section 476-B to determine its scope. It runs thus:—

“ Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476-A, or against whom such a complaint has been made, may appeal * * * * ”.

The position of the phrase “ or against whom such a complaint has been made ” is significant, and its interpretation must clearly depend upon what has preceded the word “ or.” If an application is made, one of the two things must happen, *i.e.*, either the application is refused or a complaint is made. The first part of the section deals with a refusal and the second with the other eventuality. The conjunction,

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used is "or" not "and." If the intention of the Legislature had been to allow an appeal in either case, *i.e.*, whether the complaint was made on application or *suo motu*, this could have been easily expressed by changing the order of the phrases which "or" connects, and the section might have been worded thus:—

"Any person against whom any Civil, Revenue or Criminal Court has filed a complaint under section 476 or section 476-A, and any person whose application to make such a complaint has been refused, may appeal to * * * * *"

The following is the comment on section 476-B in Sohni's Code of Criminal Procedure, 12th edition, pages 1005-06:—

'(3) Section 476-B has the words 'Any person on whose *application*.' The word *application* is very important and clearly indicates the circumstances under which an appeal is allowed under section 476-B.'

"Under this section an appeal is only allowed in the following cases:—

"(a) When an application is made under section 476 to the trial Court, *i.e.*, Subordinate Judge, and he refused to grant it."

"(b) When an application is made for the first time to the District Court under section 476 (where no application was made to the trial Court, *i.e.*, Subordinate Judge) and the District Court acts under section 476-A."

"For purposes of appeal, section 476-B contemplates an order refusing a complaint or making a complaint on an *application* by a party either under

section 476 or 476-A. Over such an order on such an application only a right of appeal is allowed under section 476-B.''

Further, according to no principle of Criminal Jurisprudence is there a right of appeal against the act of making a complaint, and it need not be stated that if a complaint is lodged by a private person the accused has no right of appeal against it. Why then should there be a right of appeal to the person against whom a Court or a public servant feels aggrieved and makes a complaint *suo motu*. Therefore the contention that section 476-B gives a right of appeal even to a person against whom a complaint is made *suo motu* does not receive support either from the construction of the section or from general principles.

I am therefore of opinion that the appeal was incompetent as the District Magistrate had made the complaint *suo motu*. I would, therefore, dismiss this petition.

Before concluding this judgment a word may be said about the Crown lawyer who rose only to support the petitioner's counsel. The position taken up by the Crown in the Court of Session as well as before me in the previous connected petitions was that no appeal lay. It is a question how far it is open to Crown lawyers to propound inconsistent opinions. The section is no doubt not happily worded, but the point involved was not such as could not admit of two opinions. It is, therefore, a question whether a Crown lawyer in view of his personal opinion is justified in throwing overboard the case for the Crown which he could have argued to be of assistance to the Court in deciding which of the two possible views was the more acceptable.

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BHIDE J.—The petitioner Thiraj along with certain other persons appeared as a witness in a case under section 376 of the Indian Penal Code before the District Magistrate, Lyallpur, who found the complaint to be false and purporting to act *suo motu* under section 476 of the Criminal Procedure Code, instituted complaints under section 193 of the Indian Penal Code against the complainant as well as her witnesses. These persons appealed to the Sessions Judge, who held that no appeal is competent under section 476-B of the Criminal Procedure Code when a Court acts *suo motu* under section 476 and dismissed the appeals. A petition for revision was presented to this Court by some of them, but was dismissed by my learned brother, who upheld the view taken by the learned Sessions Judge. Later on, the present petitioner filed an application for revision and when this came up before my learned brother he thought it advisable to refer it to a Division Bench, as there was apparently no authoritative ruling of any High Court on the point of law involved which is important.

When the case came up before us, the learned counsel for the Crown conceded the correctness of the petitioner's contention that an appeal does lie under section 476-B, even when a Court acts *suo motu* under section 476. Consequently, we had not the advantage of hearing arguments in favour of the view taken by my learned brother; but I have given my best consideration to the question in view of its importance and the difficulty I have felt in adopting the view taken by my learned brother.

The point of law which requires decision in this case turns on the proper construction of the language of section 476-B which was introduced in the Criminal

Procedure Code by the amending Act of 1923. The section runs as follows :—

“Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476-A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, subsection (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, 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.”

It is an elementary rule of construction of statutes that phrases and sentences in a statute should be construed according to the ordinary rules of grammar (*vide* Maxwell on the Interpretation of Statutes, page 1). In the present instance, the decision of the question whether a right of appeal is given only when a Court files a complaint on the application of some person or even when it acts *suo motu* depends on the meaning of the words ‘or against whom such a complaint has been made’ occurring in the above section. It seems to me that, according to the plain grammatical construction of the language of the section, the words ‘such a complaint’ would mean a complaint under section 476 or 476-A and nothing more. It is true that the words ‘on whose application’ occur in the preceding clause, but these words do not qualify the word ‘complaint’ occurring in that clause. They seem to be merely descriptive of the person to whom a right of appeal is given by the first clause. The question of a right of appeal when a

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Court refuses to make a complaint under section 476 of the Criminal Procedure Code can only arise when there is an application by some person before the Court and it is rejected, and hence for the purposes of the first clause, it was necessary to define the person to whom the right is given. When, however, a Court makes a complaint, the contingency would arise whether the Court acts on an application by some person or *suo motu*. It was, therefore, sufficient to use the words 'such a complaint' in the second clause, the reference being to the words 'complaint under section 476 or section 476-A' used in the preceding clause. If the intention of the Legislature were to confine the right of appeal to cases in which an application is made, the intention would probably have been expressed by giving prominence to it in the opening clause, *e.g.*, by such language as follows:—

“When on the application of any person a Court makes or refuses to make a complaint under section 476 or 476-A the aggrieved party may appeal, etc. etc.”

Or, the meaning could have been made clear even in the section as it stands by inserting the words 'on an application' after the words 'or against whom such a complaint has been made.'

The section as it stands seems to cover all the classes of cases under section 476 of the Criminal Procedure Code in which the question of a right of appeal is likely to arise, and so far as I can see there is nothing repugnant to the above construction in the language of the section itself. Nor do I see any good reason why the right of appeal should be confined to cases where a Court acts on an application.

It is true that under the old law a right of appeal was given in cases where sanction for prosecution was granted under section 195 while there was no right of appeal from an order passed under section 476 of the Criminal Procedure Code. But under the old law, the prosecution was left in the hands of the applicant and the Court had only to see whether the bar created by section 195 should be removed. By the amending Act of 1923, the procedure by way of sanction was abolished and the matter is left entirely in the hands of the public servant or the Court concerned. Whether the Court takes action on an application or *suo motu*, the principle on which it has to act under section 476 of the Criminal Procedure Code is precisely the same. In either case, the Court is bound to see whether it is expedient in the interests of justice that an enquiry should be made into the offence in question and has to record a finding to that effect. In either case, it is ultimately the *complaint of the Court* that sets the law in motion and on principle, there seems no reason why the action of the Court should be subject to appeal in the one case but not in the other. It is true that there is no right of appeal in the case of the mere filing of a complaint in ordinary cases; but the law creates an exception in the case of offences referred to in section 476 of the Criminal Procedure Code and lays it down that no complaint should be taken cognizance of in respect of these offences, unless it is filed by a Court in the manner prescribed in that section after recording a finding that 'it is expedient in the interests of justice that an enquiry should be made.' The act of filing a complaint is thus a judicial act and stands on a different footing than an ordinary complaint. It must also be remem-

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bered that in the case of a complaint by a private individual if the complaint is false, the person who makes the complaint is liable to be prosecuted under section 211 of the Indian Penal Code, while no such remedy is available when a complaint is filed by a Court.

It is a well established proposition that where the language of a statute is clear, it is not permissible to speculate as to the intention of the Legislature. In the present instance the language used in section 476-B of the Criminal Procedure Code is not perhaps happy, but I have endeavoured to show above that the plain grammatical construction is in favour of the right of appeal contended for the petitioner. It is a cardinal principle of the construction of penal statutes, that in case of doubt, the construction favourable to the subject should be preferred. In the present instance the question is about the right of appeal to an accused person, and when the plain construction of the section appears to be in favour of such a right, it should not, in my opinion, be rejected on the basis of any speculation as to the intention of the Legislature. However, I may add, that it does not appear to me that there is really any clear indication that the intention of the Legislature was different. My learned brother has referred to the report of the Select Committee on the amending bill of 1923. It seems doubtful whether it is permissible to refer to such a report (*vide* Maxwell on Interpretation of Statutes, 5th Edition, page 45). The report represents only an intermediate stage of the bill, while the Act as passed represents the final intention of the Legislature. Moreover, all that the report says is that the Court is now required to record a definite

finding in proceedings under section 476 in order to give effect to the decision arrived at, that proceedings under section 476, etc., should be subject to revision. But this cannot mean that there is no right of appeal from orders passed under section 476 of the Criminal Procedure Code. It is conceded that a right of appeal is given by section 476-B at least in certain classes of cases falling within the scope of section 476, and the recording of an order would obviously be necessary not only for the purposes of revision, but also for the purposes of such appeals. The above statement of the reasons for the amendment does not, therefore, appear to be comprehensive. Finally, it is noteworthy that the Select Committee do not say in their note on section 476-B that the right of appeal is confined to cases in which a Court acts on the application of some person.

As I have said above, it does not appear to me that it is permissible in the present instance to speculate as to the intention of the Legislature; but even if it were, I do not see that there is no clear indication that the Legislature did not intend to give a right of appeal in cases of the present type, where a Court has taken action *suo motu*. The plain construction of section 476-B appears to me to be in favour of such a right and that construction also seems to be in consonance with principle as well as equity. There seems to be no authority in favour of the opposite view. The commentator in Sohni's Criminal Procedure Code has no doubt expressed that view, but he has done so without citing any authority or giving any good reasons in support of it. No other commentator seems to have adopted that view, so far as I have been able to ascertain.

With the greatest respect for the view expressed by my learned brother, I am, therefore, constrained to

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differ from him. In my judgment this petition for revision should be accepted and the learned Sessions Judge directed to dispose of the appeal before him on the merits.

The case was thereupon referred to Broadway J. who passed the following judgment.

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BROADWAY J.—In the course of a case under section 376, Indian Penal Code, the District Magistrate of Lyallpur, found it necessary to take action under section 476, Criminal Procedure Code, and to direct the prosecution of certain persons under sections 193 and 211, etc., Indian Penal Code, and complaints were duly made.

Some of the said persons concerned appealed to the learned Sessions Judge who held that, inasmuch as the District Magistrate had acted *suo motu*, no appeal was competent, having regard to the provisions of section 476-A.

These persons then moved this Court under section 439, Criminal Procedure Code, and their petitions came up before Mr. Justice Zafar Ali who upheld the view of the learned Sessions Judge and dismissed the petitions.

In the meantime Thiraj against whom a complaint had been filed under section 193, Indian Penal Code, also appealed to the learned Sessions Judge who held that no appeal was competent, and Thiraj then came up to this Court under section 439, Criminal Procedure Code.

The petition was heard by Mr. Justice Zafar Ali and, as the correctness of his view, as expressed in Criminal Revision No. 1407 of 1928, was challenged, he referred the question to a Division Bench. The

matter was argued before a Division Bench consisting of Mr. Justice Zafar Ali and Mr. Justice Bhide, and, as these two learned Judges have differed, the question has been referred to me.

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As I understand it the question is, whether, when a Court acts under section 476 or 476-A *suo motu*, and directs the lodging of a complaint against any person, that person has a right of appeal under section 476-B, Criminal Procedure Code? The answer involves the interpretation of section 476-B which runs as follows :—

“ Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or 476-A, or against whom such a complaint has been made, may appeal to the Court to which * * * ”

Now, to my mind this section gives a right of appeal to two different persons against two separate judicial acts of a Court, first to an applicant whose application to have a complaint lodged under section 476 or section 476-A, Criminal Procedure Code, has been refused, and second to the person against whom a complaint under section 476 or 476-A, Criminal Procedure Code, has been lodged. The present petition deals with persons falling within the second category. Thiraj has had a complaint lodged against him by a Court acting under the provisions of section 476, Criminal Procedure Code. From the moment that the complaint was filed in Court it seems to me that he became entitled to appeal, and in this view I am, to some extent, supported by *FitzHolmes v. Crown* (1).

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Turning to the words of the section dealing with a person in the position of Thiraj, we find the following:—"or against whom such a complaint has been made." In my judgment this means that the right of appeal is given to any person against whom a complaint has *actually* been made. The nature of the complaint is referred to or defined by the use of the word 'such' which to my mind clearly relates back to the words, "complaint under section 476 or 476-A."

In these circumstances, in my judgment, the provisions of section 476-B, Criminal Procedure Code, give a right of appeal to any person against whom a complaint has been made by a Court acting under the provisions of section 476 or 476-A, Criminal Procedure Code, and that it is immaterial whether the Court acts *suo motu* or on an application made to it by some interested person.

I, therefore, accept this petition and send the case back to the learned Sessions Judge with the direction that he will hear the appeal and decide it in accordance with law.

N. F. E.

Revision accepted.