

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

1934
November 2

GOVIND HARI PRABHU MIRASHI (ORIGINAL ACCUSED),
APPELLANT v. EMPEROR.*

Criminal Procedure Code (Act V of 1898), sections 476 and 476B—Appeal—Appeal in High Court from appellate order making a complaint—No appeal lies.

There is no right of appeal to the High Court from the District Court in respect of an order made under section 476B, of whatever character that order may be. It makes no difference whether the result of the District Court's order is to quash a projected prosecution or to initiate a prosecution.

Somabhai Vallabhbai v. Aditbhai Parshottam,⁽¹⁾ referred to.

Ranjit Narain Singh v. Rambahadur Singh⁽²⁾ and *Narayan Meher v. Dhana Meher,*⁽³⁾ dissented from.

Ahamadar Rahman v. Dwip Chand Chowdhury,⁽⁴⁾ approved.

APPEAL against the order made by N. R. Gundil, District Judge of Ratnagiri, setting aside an order made by R. M. Shetye, Subordinate Judge of Devgad.

Application for sanction.

The appellant, who was a khot, obtained a decree against the respondent for Rs. 100 for arrears of khoti dues with costs. The decretal amount was made payable in six monthly instalments of Rs. 20 each.

The first three instalments were paid out of Court and in respect of the fourth instalment there was a default. The appellant, therefore, filed a darkhast No. 115 of 1928 to recover the same. Before the warrant could be executed Rs. 9 were paid by the judgment-debtor and the darkhast was disposed of.

After the disposal of the said darkhast the judgment-debtor paid out of Court two sums of Rs. 11 and Rs. 20, the former being the balance of the fourth instalment and the latter in full payment of the fifth instalment. The appellant

*Criminal Appeal No. 401 of 1934 (with Criminal Revision Application No. 483 of 1934).

⁽¹⁾ (1924) 48 Bom. 401.

⁽²⁾ (1925) 5 Pat. 262.

⁽³⁾ (1930) 10 Pat. 446.

⁽⁴⁾ (1927) 55 Cal. 765.

filed another darkhast No. 100 of 1928 for realizing a sum of Rs. 22-9-9 which represented the aggregate of the costs of suit and execution. The respondent paid a further sum of Rs. 20 in the course of this execution and the darkhast was disposed of as partly satisfied.

The appellant presented a fresh darkhast No. 170 of 1932 claiming from the respondent a sum of Rs. 34-1-9. On that date the amount really due was only Rs. 3-1-9 for costs, nevertheless the darkhast included the two sums of Rs. 20 and Rs. 11 which had been paid out of Court. On the day fixed for the hearing of the application the pleader for the decree-holder filed a statement pointing out that the two payments of Rs. 20 and Rs. 11 were inadvertently included in the darkhast and he applied to the Court to mark the darkhast as satisfied. On that date the respondent put in his objections to the darkhast. The darkhast was subsequently disposed of on July 23, 1932.

On April 1, 1933, the respondent made an application under section 195 of the Criminal Procedure Code, to prosecute the appellant for offences under sections 193, 209 and 413 of the Indian Penal Code, alleging that the appellant dishonestly and fraudulently did not duly record the satisfaction made by the respondent in darkhasts Nos. 100 of 1929 and 170 of 1932 and tried to recover the amounts already paid in full.

The Subordinate Judge held on the evidence that the appellant had no dishonest motive or intention; that there was a *bona fide* mistake on the part of his pleader and the mistake was rectified at the earliest possible opportunity and that the respondent was actuated by malice in presenting the application. He, therefore, dismissed the application.

Against this order the respondent presented an appeal to the District Court at Ratnagiri. The District Judge held

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that there was a sufficient *prima facie* case against the appellant justifying proceedings under section 193 or 209 of the Indian Penal Code. He therefore set aside the Subordinate Judge's order and directed that a complaint should be lodged against the appellant in the Court of the Sub-Divisional Magistrate, S. D., Ratnagiri.

Against this order the appellant presented an appeal to the High Court.

A preliminary objection was taken by the Government Pleader that no appeal lay to the High Court.

A. G. Desai, for the appellant.

J. G. Rele, for the complainant.

P. B. Shingne, Government Pleader, for the Crown.

BEAUMONT C. J. This is an appeal from an order of the District Judge of Ratnagiri by which he directed that the appellant should be prosecuted for an offence under section 193 or section 209 of the Indian Penal Code. The relevant facts are that an application to sanction such a prosecution by the Subordinate Judge in or in relation to whose Court the alleged offence had been committed was made under section 476 of the Criminal Procedure Code, and was rejected by the Subordinate Judge, who considered that there was no sufficient cause to direct a prosecution. Then there was an appeal to the District Judge under section 476B of the Code, and the learned District Judge took the view that there was a *prima facie* case against the present appellant for proceeding under section 209 of the Indian Penal Code, and he, therefore, set aside the lower Court's order, and directed that a complaint against the present appellant be lodged. From that order this appeal is brought, and a preliminary point is taken by the Government Pleader that no appeal lies against an order made by the lower appellate Court under section 476B. It

was held by this Court in *Somabhai Vallabhai v. Aditbhai Parshottam*⁽¹⁾ that where a prosecution had been sanctioned by the Subordinate Judge under section 476, and his order was set aside on appeal by the District Judge, there was no second appeal to this Court, and that proposition has not been contested. But it is said that where the Subordinate Judge refuses to lodge a prosecution, and that order is reversed by the District Judge under section 476B, and the District Judge himself lodges a complaint, then the District Judge is in effect acting in respect of the complaint as a Court of first instance, and a right of appeal is permitted to this Court. That view has prevailed in the Patna High Court in *Ranjit Narain Singh v. Rambahadur Singh*,⁽²⁾ where the whole question is elaborately discussed, and in *Narayan Meher v. Dhana Meher*,⁽³⁾ where the earlier decision of that Court was followed. The view of the Patna Court is that where, as in this case, the Subordinate Judge refuses to prosecute, and the District Judge sets aside the order and files a complaint under section 476B, then under the last words of that section the provisions of section 476 apply to such complaint. Then it is said that the earlier part of section 476B provides that any person against whom a complaint has been made may appeal to the Court to which the Court lodging the complaint is subordinate, and as the District Judge's Court is subordinate to the High Court, a right of appeal is given by the express words of section 476B in such a case to the High Court. That view has been dissented from by the Calcutta High Court in *Ahamadar Rahaman v. Dwip Chand Chowdhury*,⁽⁴⁾ the view of the Calcutta Court being that only one right of appeal against an order made under section 476 is allowed, and that it makes no difference whether the result of the appellate Court's order is to quash a projected

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prosecution, or to initiate a prosecution. In either case there is no right of further appeal. No doubt the result of the view taken by the Patna Court, namely, that whether there is a right of appeal against an order made under section 476B depends on the nature of such order, that is to say, whether it is an order which initiates or prevents a prosecution, is rather singular, but if on a fair construction of the section that result follows, we have no option but to give effect to it. But, to my mind, the answer upon the language of the section to the view taken by the Patna Court is this, that under section 476B a right of appeal is given to the person against whom *such a complaint* has been made, and *such a complaint* means in the context a complaint under section 476 or section 476A, and the section does not in terms give a right of appeal against a complaint made under the section itself, that is to say, under section 476B. It is clear that in the case with which we are dealing, the complaint made by the District Judge is made under section 476B. The fact that when the complaint is made under section 476B the provisions of section 476 are to apply to it does not affect the question. The District Judge can only make the complaint under section 476B, and that being so, according to the strict language of the section, no right of appeal is given. I think, therefore, that the view of the Calcutta Court is to be preferred, and that there is no right of appeal to the High Court from the District Court in respect of an order made under section 476B, of whatever character that order may be. That being so, the preliminary point must prevail, and the only question which remains is whether we ought to deal with this matter in revision.

N. J. WADIA J. I agree.

Note.—The appeal was then allowed to be treated as an application in revision and was dealt with on the merits.

J. G. R.