

CIVIL RULE.

*Before the Hon'ble Mr. R. F. Rampini, Acting Chief Justice and
Mr. Justice Ryves.*

HEM CHANDRA RAY

v.

ATAL BEHARI RAY.*

1908
May 29.

*Criminal Procedure Code (Act V of 1898), s. 476—Jurisdiction of High Court
Civil jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 622—
Charter Act (24 and 25 Vict. C. 104), s. 15—Nature of High Court's
revisional jurisdiction—Criminal proceedings, stay of, pending civil appeal
—Stay not justifiable, when it would defeat ends of justice.*

Where the District Judge has initiated proceedings under s. 476 of the
Criminal Procedure Code,—

Held, first, that it is doubtful, if the High Court exercising civil jurisdiction
has power to stay the criminal proceedings;

Held, secondly, that the provisions of s. 15 of the Charter Act of 1861 do not
appear to give the High Court power to interfere in the case;

Raj Kumari Debi v. Bama Sundari Debi(1) followed.

Held, thirdly, that the High Court must have regard to the nature of
the revisional jurisdiction and must not allow what would virtually be an appeal
from the order;

In re Alamdar Husain(2), followed in principle.

Held, lastly, that when on the evidence in a case, the Court below is of opinion
that it is in the highest degree desirable that the enquiry should be conducted both
in the interests of justice as well as of the accused and of all parties concerned
as speedily as possible, the High Court would not be justified in staying proceed-
ings, merely because a civil appeal from the judgment, out of which the criminal
proceedings were initiated, is pending in the High Court.

In re Bal Gangadhar Tilak(3), followed.

CIVIL RULE.

This was a Rule obtained by the petitioners to show cause, why
the order of the District Judge of Murshidabad sanctioning pro-
secution of the petitioners under s. 193 of the Indian Penal Code

* Civil Rule No. 1587 of 1908, against the Order passed by C. E. Pittar,
District Judge of Murshidabad, dated the 7th March 1908.

(1) (1896) I. L. R. 23 Calc. 810.

(2) (1901) I. L. R. 23 All. 249.

(3) (1902) I. L. R. 26 Bom. 785.

1908
 ~~~~~  
 HEM  
 CHANDRA  
 RAY  
 v.  
 ATAL  
 BRIHARI  
 RAY.

should not be set aside, or why the criminal proceedings should not be stayed pending the disposal of the appeal in the probate case. The petitioner No. 1 and two others opposed the application for probate by the opposite party here of a will alleged to have been executed by one Anandamayee Deboo. Petitioners Nos. 2 and 3 were examined in that probate case as witnesses on behalf of the objectors. The District Judge disallowed the objections of the objectors and granted the probate asked for and took proceedings under s. 476 of the Criminal Procedure Code against the petitioners and called upon them to show cause why they should not be prosecuted under s. 193 of the Indian Penal Code. The objectors filed an appeal to this Court almost immediately against the order of the District Judge granting probate. Later on the petitioners, in showing cause against the proceedings initiated under s. 476 of the Criminal Procedure Code, asked the District Judge to postpone directing the prosecution, pending the appeal to the High Court. The District Judge found against the petitioners on the merits of the case and refused to postpone further proceedings, holding that the ends of justice would be defeated by postponement in such cases or by trial by any other officer.

*The Senior Government Pleader (Babu Ram Charan Mitra)* showing cause said that the application, upon which the Rule was obtained, was evidently under s. 623 of the Civil Procedure Code. Here the District Judge had no doubt jurisdiction to order prosecution. Therefore s. 622 has no application. The High Court on the civil side cannot stay criminal proceedings: *Raj Kumari Debi v. Bama Sundari Debi*(1) and *In the matter of the petition of Ramaprasad Hazra*(2). See also *In re Bal Gangadhar Tilak*(3). The High Court should not interfere in such cases and has no jurisdiction to revise the order: *In the matter of the Petition of Bhup Kumar*(4) and *Paohai Annal*(5). It is only the Civil Bench that has jurisdiction in such a case, if at all: *Kali Prasad Chatterjee v. Bhuban Mohini Dasi*(6). An order staying proceedings would defeat the ends of justice.

(1) (1896) I. L. R., 23 Calc. 610.

(4) (1903) I. L. R., 26 All. 249.

(2) (1866) B. L. R. F. B. Vol. 426.

(5) (1902) I. L. R. 26 Mad. 189.

(3) (1902) I. L. R. 26 Bom. 785.

(6) (1908) 8 C. W. N. 78.

*Mr. A. Chaudhuri (Babu Jadu Nath Kanjilal with him)* in support of the Rule. The High Court has every power to interfere and has as a practice of the Court always done so. While an appeal is pending, it is not proper or safe to order a prosecution, for the Appellate Court may believe the appellants. An order of stay would be the best course, and the High Court may revise or revoke the order: *In the matter of the petition of Khepu Nath Sikdar v. Grish Chunder Mukerji*(1), *Chaudhari Mahomed Isharul Huq v. Queen-Empress*(2), *Queen-Empress v. Srinivasulu Naidu*(3), *Ram Charan Singh v. King-Emperor*(4), and *Jadu Lal Sahu v. Louis*(5). See also *Mahomed Bhakku v. Queen-Empress*(6). If s. 622 of the Civil Procedure Code does not apply, this Court may proceed under s. 15 of the Letters Patent.

1908  
 HEM  
 CHANDRA  
 RAY  
 v.  
 ATAL  
 BEHARI  
 RAY.

*Cur. ad. vult.*

RAMPINI, A. C. J. AND RYVES J. In probate case No. 101 of 1907 before the District Judge of Murshidabad, the present petitioners, among others, opposed the grant of probate. The District Judge, after hearing the evidence of both parties, held that the will propounded had been duly executed and that Hem Chandra Roy, Adhar Chandra Mandal and Sarat Sardar, the petitioners, had conspired to prevent the grant of probate and had given false evidence in furtherance of that conspiracy.

He, thereupon, under the provisions of section 476 of the Code of Criminal Procedure, called on them to show cause why they should not be prosecuted for perjury; with the result that he directed their prosecution under section 193 of the Indian Penal Code in respect of statements made by them, which are set out in his order.

The order of the District Judge granting probate was passed on the 7th March 1908. An appeal against that order was filed in this Court on the 16th March 1908 and is still pending. On the 4th May 1908 the present petitioners obtained a rule

(1) (1889) I. L. R. 16 Calc. 730.

(4) (1906) 5 C. L. J. 233.

(2) (1892) I. L. R. 20 Calc. 349.

(5) (1907) I. L. R. 34 Calc. 348.

(3) (1897) I. L. R. 21 Mad. 124.

(6) (1856) I. L. R. 23 Calc. 532.

1908  
 HEM  
 CHANDRA  
 RAY  
 v.  
 ATAL  
 BEHARI  
 RAY.

calling on the learned District Judge of Murshidabad to show cause why his order under section 476 of the Criminal Procedure Code should not be set aside or why the proceedings should not be stayed pending the disposal of the appeal in the probate case.

The rule has come before us for disposal and we have heard learned counsel on both sides.

A large number of reported cases have been cited to us on both sides on the question whether we have power to interfere, either in criminal or civil revision, with the orders of a subordinate civil court passed under section 476 of the Criminal Procedure Code: but, in the view which we take in this case, it is unnecessary to refer to them. The rule itself was granted by a Bench of this Court exercising civil jurisdiction; and the application itself purports to be for "civil revision." We think that it is clear that, if we can interfere only under the provisions of section 622 of the Civil Procedure Code, then no case has been made out for interference. It is manifest that the learned District Judge had jurisdiction to pass the order, and it is not even alleged that there was any material irregularity in his procedure, though, it is suggested, that as an appeal was pending against his order granting probate he should, in the exercise of a wise discretion, have postponed the enquiry under section 476, till that appeal had been decided. Mr. Chaudhuri, however, contends on behalf of the petitioners that we have power at least to stay proceedings, if not under section 622 of the Civil Procedure Code, then under section 15 of the Court's Charter of 1861 or under the revisional power provided by the Code of Criminal Procedure, and he has asked us to treat his application as one under the Criminal Procedure Code.

We are sitting here as a Bench exercising Civil jurisdiction and it seems difficult to accede to his request, even assuming that the order in this case is open to revision on the criminal side. In *Raj Kumari Debi v. Bama Sundari Debi*(1), it was held by one of the members of the present Bench that "the provisions of section 15 of this Court's Charter of 1861 would not seem to give us power to interfere" in a similar case. But assuming, without however deciding, that we have power to stay these

proceedings under one or other of the sections, to which we have been referred, we do not think we should interfere in this case.

The learned District Judge, who had the benefit of seeing and hearing the witnesses has come, on the evidence before him, to the deliberate conclusion that these petitioners have committed perjury, and has taken upon himself the responsibility of directing their prosecution. That being so, it is expedient for the ends of justice that the trial be held with all possible despatch, while the facts deposed to by the witnesses on both sides are as fresh as possible in their memory. In the case of *Alamdar Hussain*(1) Strachey C.J. observed at page 251 of the report "It has been held by this Court that the High Court has power in revision to set aside an order passed by a subordinate civil, criminal or revenue court under section 476 of the Code of Criminal Procedure, and I assume that this view is correct. Still one must have regard to the nature of the revisional jurisdiction and must not in a case arising under section 476, any more than in any other case, allow what would virtually be an appeal from the order of the Court below. The condition of his acting under section 476 is his forming the opinion that there was ground for enquiring into an offence referred to in section 195. The test is his opinion and not the opinion of any superior Court: and, if he has formed a real opinion to the effect stated, he has power to act under the section.....even though another Court may think the opinion erroneous..... The opinion spoken of in section 476, no doubt, is a judicial opinion founded on evidence. If such an opinion has been formed, this Court ought not in revision to interfere merely on the ground that it disagrees with it: the case must go on."

We would also refer to the observations of Crowe and Batty, JJ., *In re Bal Gangadhar Tilak*(2), which was a very similar case to the present one. In that case the High Court was moved under-section 439 of the Criminal Procedure Code to stay proceedings in a prosecution for perjury, which had been instituted by an order of a Civil Court under section 476. Their Lordships observed: "It is not contended that the order (*i.e.* under section 476) is incorrect or illegal, and the only ground on which its

1908  
 ~~~~~  
 HIRSH
 CHANDRA
 RAY
 v.
 ATAL
 BHARAT
 RAY.

(1) (1901) I. L. R. 23 All. 249.

(2) (1902) I. L. R. 26 Bom. 785.

1908
 HEM
 CHANDRA
 RAY
 v.
 ATAL
 BEHARI
 RAY.

propriety is impugned is that it directs an enquiry into certain alleged offences while, as a matter of fact, a civil appeal is pending. The Court, if such an offence as is described has been committed before it or is brought to its notice in the course of a judicial proceeding, is justified in taking immediate action; and it seems to us in the highest degree desirable that the enquiry should be conducted both in the interests of justice as well as of the accused and of all parties concerned as speedily as possible." The learned District Judge in this case was asked to postpone passing orders under section 476, until the disposal of the appeal in this Court. In our opinion he has given good grounds for taking immediate action. We therefore discharge the rule with costs.

Rule discharged.

S. M.