

In Re: Nawal Singh

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SooperKanoon Citation : sooperkanoon.com/451210

Court : Allahabad

Decided On : Mar-11-1912

Reported in : (1912)ILR34All393

Judge : Banerji, J.

Appellant : In Re: Nawal Singh

Judgement :

Banerji, J.

1. This is an application for the revision of an order made by the Subordinate Judge of Saharanpur, directing the prosecution of the applicant for the offences mentioned in that order. It appears that one Sumat Prasad brought a suit against the applicant and others on two promissory notes. This was suit No. 200 of 1906. In answer to the claim, the applicant denied the genuineness of one of the promissory notes and pleaded payment of the amount of the other and produced a receipt. As regards both the promissory notes the court of first instance held the defendant's pleas to be false and found in favour of the plaintiff. The decree of that court was made on the 15th of April, 1908. On the 25th of May, 1908, the plaintiff, Sumat Prasad, made an application to the court for sanction to prosecute the defendants to the suit for falsely verifying their written statement and for committing forgery in respect of the receipt produced. Meanwhile the defendants preferred an appeal to this Court on the 12th of May, 1908. There upon, it

appears, the subordinate Judge reused to take action and directed the application to be shelved, giving leave to the plaintiff to renew his application after the decision of the appeal by this court. The appeal was dismissed by this Court on the 19th of January, 1910. The plaintiff thereupon asked the court to revive the application for sanction and to grant him the sanction he had applied for. The application was rejected on the 13th of February, 1911. But on that date the successor of the Subordinate Judge, who had originally tried the suit, made an order directing an inquiry to be made under Section 476 of the Code of Criminal Procedure. Unfortunately this Subordinate Judge was transferred from the district and the case was heard by his successor, who, on the 16th of November, 1911, ordered the prosecution of the applicant for offences under Section 193 and 471, Indian Penal Code. It is the correctness of this order which is challenged in the application before me. One of the grounds of the application is that the Subordinate Judge had no jurisdiction to make the order passed by him. This ground is, in my opinion, untenable. The word 'court' in Section 476, includes, as was held by a recent Full Bench of the Calcutta High Court in *Bahadur v. Eradatullah Mallick* (1910) I.L.R. 37 Calc 642 the successor of the Judge before whom the alleged offence was committed. The learned Subordinate Judge, therefore, had jurisdiction to make an inquiry under Section 476 and to pass an order under that section. It is next urged that on the ground of expediency and in view of the delay which has taken place in making the order, this Court ought to interfere. I am of opinion that this Court is unable to interfere with the order of the court below. In accordance with the rulings of this Court, the present application could only be preferred under Section 115 of the Code of Civil Procedure. The case does not come within the purview of that section. The Court had jurisdiction to make the order and committed no illegality in passing it. Whether the order was expedient or not is not a ground on which this Court can interfere under the provisions of the Section mentioned above. No doubt, action should be taken under Section 476 as promptly as possible. But there were circumstances in this case which might have justified the delay. However, I do not wish to go into that question inasmuch as, in my opinion, this Court cannot interfere in the matter. I dismiss the application but make no order as to costs.

