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Court : Allahabad

Decided On : Jan-11-1927

Reported in : AIR1927All469

Appellant : Rameshar Lal

Respondent : Rajdhari Lal

Judgement :

Ashworth, J.

1. This is an application in revision under Section 115 of the Civil P. C. impugning an order dated the 30th of October 1926 passed by the District Judge of Ghazipur, The order in question is one purporting to be passed under Section 24 of the Civil P. C. transferring a pending proceeding on an application to the Munsif of Saidpur made under Section 476 of the Code of Criminal Procedure that the Munsif should make a complaint against a party to a suit on a charge of forgery. The order directs that the proceeding should be transferred to the Subordinate Judge of Ghazipur.

2. The applicant contends that Section 476 of the Code of Criminal Procedure only contemplates a proceeding under Section 476 being conducted by the Court wherein the forgery was committed or a Court to which appeals from that Court ordinarily lie. It is admitted by the counsel for the opposite party that appeals do not ordinarily lie to the Subordinate Judge from the Munsif, but he urges that under

Section 24 of the Civil P. C. the District Judge independently of Section 476 of the Code of Criminal Procedure had power to transfer the proceeding from the Court of the Munsif.

3. It cannot be denied that according to the Full Bench decision of this Court, *Banwari Lal v. Jhunka* : AIR1926 All229 , the proceeding under Section 476 is to be regarded as a proceeding by a civil Court. Nor is there any restriction placed on the power of transfer conferred by Section 24 of the Code of Civil Procedure in respect of proceedings. The only question is whether Section 24 of the Civil P. C. can apply to a proceeding of a civil Court arising out of the power conferred on a civil Court by Section 476 of the Criminal P. C. In my opinion Section 476 of the Code of Criminal Procedure must be construed as self-contained and exhaustive, in respect of the matter of a Court making complaint against litigants on the ground of perjury or forgery. I construe the word 'proceeding' in Section 24 of the Code of Civil Procedure to cover all proceedings contemplated at the date when the Civil P. C. was passed and not to cover a special proceeding not then in contemplation but established by a subsequent Act, namely the Criminal Procedure Amendment (Act 18 of 1923). It is perfectly clear from the terms of Section 476 of the Code of Criminal Procedure that the legislature did not intend the power of making a complaint conferred by this section to be exercised by anyone but the Court before whom the offence has been committed or a Court to which appeals from that Court ordinarily lie. It must be deemed to exclude such a Court as that of the Subordinate Judge on the principle that general provisions cannot override special provisions. I hold that Section 24 of the Code of Civil Procedure cannot be invoked to allow a Court other than the Court, in the course of proceedings in which, a perjury or forgery was committed, or a Court to which appeals ordinarily lie from that Court, to entertain the question of preferring a criminal complaint.

4. In any case it appears to me very undesirable to pass such an order of transfer. Section 476 appears to me to contemplate that ordinarily the Court to prefer the complaint shall be the original Court which heard the case and that an appellate Court should only make a complaint when the suit has been before it on appeal or when the original Court has granted or refused a complaint and its order is appealed from to the appellate Court. It was not intended by the legislature that

while proceedings were going on before the original Court the appellate Court should step in and deal with the matter. The District Court, apart from its powers as an appellate Court under Section 476(B), can only consider the desirability of itself preferring a complaint, if there is some prima facie ground for its so doing. Such prima facie ground will not exist if the original Court is considering the matter and certainly will not exist, if, as in the present case, the appellate Court has no reason to believe that sanction should be granted.

5. In the present case it would appear sufficient for the District Judge to direct the Munsif to conclude his proceeding without delay. Then, if the Munsif decided to make a complaint, the present applicant can appeal to the District Judge.

6. For the above reasons I allow this application but, in the circumstances I make no order as to costs.

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