

**Emperor Vs. Chaiyan**

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**Court :** Allahabad

**Decided On :** Oct-26-1933

**Reported in :** AIR1934All216

**Appellant :** Emperor

**Respondent :** Chaiyan

**Judgement :**

ORDER

**Bennet, J.**

1. This is a reference by the Additional Sessions Judge at Banda at lamirpur recommending that a commitment made by a Magistrate to his Court should be quashed. The ground alleged is that no proper complaint was made under Section 476, Criminal P.C. The facts are that there was a suit for recovery of Rs. 13 before a panchayat constituted under the U.P. Village PanoHayats Act, Act 6 of 1920. The panohayat were of opinion that the date in the promissory note on which the plaintiff relied had been altered in order to bring the suit within limitation and they made a report to the Collector. It is claimed by the learned Assistant Government Advocate that this report would constitute the complaint required by Section 476, Criminal P.C. Under that section the Court making a complaint 'shall forward the same to a Magistrate of the first class having jurisdiction.' Now the report of the panohayat was not addressed to a Magistrate but to the Collector. It is true that

the Collector is also the District Magistrate, but the Collector as Collector has certain authority over panchayats under Section 71, U.P. Village Panchayats Act. Under that section he may quash any proceedings of a panchayat at any stage or cancel any order or decree passed by a panchayat. Under Section 51 of the Act if any panchayat is of opinion that any suit or case before it is of such a nature or of such intricacy or importance that it ought to be tried by a regular Court, it shall stay proceedings and report the matter to the Collector for orders. The present reference does not come directly under either of these sections but apparently the panchayat considered that this was a matter in which the Collector should pass orders as Collector. It is further a fact that the report of the panchayat does not definitely amount to a complaint under Section 476 Criminal P. C. The report sets out the facts and leaves the matter to the Collector to pass orders as to whether a complaint should be made and whether the plaintiff should be prosecuted,

aur muddai ho is ne yeh jalsazi hi hai hist adalat majaz me tadaruk Jarmaye jane ha hukum sadir framaya jave.

2. The learned Assistant Government Advocate argues that this sentence meant that the District Magistrate was to pass orders for the trial of the case by some Magistrate having jurisdiction. But I do not think that this is what was intended. The panchayat apparently intended that the Collector should pass the necessary order under Section 476, Criminal P.C., which would constitute a complaint under that section. That was the sense in which the Collector interpreted the reference as his order of 6th February 1933, stated;

The panchayat should be informed that the suit should be struck off, papers should be sent to Sub-Divisional Magistrate that inquiry should be made under Section 476, Criminal P. C., of the offence as noted in the report of the Sar Panch.

3. The Collector therefore considered that the matter was only at the stage of the enquiry under Section 476, Criminal P.C., and that the complaint had not yet been made. Accordingly an enquiry was made and the S.D.M. made a complaint on 31st March 1933. This is a formal complaint under Section 476, Criminal P.C., for the offences of Sections 467 and 471, I.P.C. The Magistrate begins his order by saying:

This case was made over to me by the order of the District Magistrate to make an inquiry against Chaiyan under Section 476, Criminal P.C.

4. On this the Magistrate passed the order : 'Chaiyan will be prosecuted and case for enquiry to Mr. Qidwai, First Class Magistrate.' Now it is clear that Mr. Eadhakant who made the complaint had no authority whatever to make it either under Section 476, Criminal P. C. or 476-A, Criminal P.C. Under Section 476, Criminal P.C., the complaint is to be made by a Court in regard to any offence 'which appears to have been committed in or in relation to a proceeding in that Court.' The Magistrate did not have the civil suit before him in any way and therefore he could not act under that section. Section 476-A, Cr. P. C., allows a complaint to be made by the Court to which such former Court is subordinate within the meaning of Section 195, Sub-section (3).' The panchayat is not in any way subordinate to the Sub-Divisional Magistrate. The criterion laid down by Section 195(3) is;

For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate.

5. Now the U.P. Village Panchayat Act, lays down in Section 53:

There shall be no appeal from any decree or order passed by a panchayat in any suit under this Act, and except as provided in Sections 49 and 74, no Court or authority shall have power to revise any such decree or order.

6. The provisions in Sections 49 and 74 are provisions for revision and not provisions for appeal. As no appeal lies from the decree or order of a village panchayat therefore the Court to which it is subordinate within the meaning of Section 195(3) is the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate, that is, the Court of the District Judge. A similar case was decided by a learned Judge of this Court in *Sunder Lai v. Emperor* (1909) 10 Cr. L.J. 437. In that case the Subordinate Court was the Village Munsif under the Village Courts Act, and under

that Act no appeal lay from his decree. It was held there that the District Judge was competent to grant sanction under Section 195(1)(b) as the Code then stood. It is clear also that the District Magistrate did not have power to act under Section 476-A, Criminal P.C., because appeals do not lie from the panchayat to the District Magistrate, nor do they lie to the Collector. There is also the defect that the complaint in this case does not purport to be made by the District Magistrate or by the Collector but by the Sub-Divisional Magistrate who had nothing whatever to do with the panchayat. Under these circumstances I consider that there was no proper complaint in this case. Section 195 lays down that no Court, shall take cognizance of certain offences' except on the complaint in writing of the Court or some other Court to which such Court is subordinate. Therefore the present proceedings must be set aside and I accept the reference and quash the commitment. It will of course be open to the panchayat to make a proper complaint if so advised, or to the District Judge to do so if the panchayat does not make a complaint.

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