

Ram Prasad Singh Vs. State

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Court : Allahabad

Decided On : Aug-27-1958

Reported in : AIR1959All529; 1959CriLJ1032

Judge : V.D. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 476B

Appeal No. : Criminal Appeal No. 626 of 1956

Appellant : Ram Prasad Singh

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Bansilal Jaiswal and ;Kr. Ranjit Singh, Adv.

Disposition : Appeal allowed

Judgement :

V.D. Bhargava, J.

1. This is an appeal against an order passed under Section 476, Cr. P. C., for a complaint to be filed against the appellant under Section 193, I. P. C.

2. A preliminary objection has been taken on behalf of the State that no appeal lies because at the present moment the order is only that a complaint be filed under Section 193, I. P. C. and actually no complaint has been filed, the appeal being provided under Section 476-B as against the filing of the complaint and not against an order directing a complaint to be filed. I am unable to agree with this contention. After the order of the court for lodging a complaint under Section 193, it is only a ministerial action which has to be performed by the office and no further order is necessary from the court. An appeal always lies from an order of the court and not from its actual execution by the office.

If after the order no further order was necessary by the court then in that case how can it be said that an appeal would lie from that action. Learned Counsel has placed reliance on the case of Jagan Prasad v. State, 1957 All LJ 17 decided by a learned single Judge of this Court. But with great respect I do not agree with that decision.

3. There is no provision in the Code of Criminal Procedure after the passing of the order directing a complaint to be filed, for the Magistrate to take any further action, and, therefore the order that has been passed has been passed under Section 476, Cr. P. C.

4. In the present case the applicant is alleged to have stated in the court of the committing Magistrate that :

'Jagannath Singh assaulted Raghunath with a spear, Raghunath fell on the ground on receiving the spear blow.' Further he stated there :

"Charitar assaulted Jagannath Ahir with a spear.' But it appears that during his cross-examination in the court of session he said :

'I did not see Jagannath accused giving spear blow to Raghunath, nor did I see the spear hitting him.' He further deposed that Jagannath Ahir was saying that it was a spear and Charitar assaulted Jagannath Ahir with that spear. Similarly, on being asked as to whether or not he saw Charitar accused assaulting Jagannath Ahir with that spear, he replied 'No'.

5. The difference between the two statements only goes to show that probably he was not speaking from his direct knowledge but it was only a hearsay evidence that he had been giving. In the circumstances I do not think this would be a fit case in which a complaint should be lodged under Section 193. Moreover, it appears that there is an appeal against the main judgment, and in any event, if I was not inclined to accept the appeal. I would have stayed proceedings till the disposal of the appeal.

6. In the circumstances, I allow the appeal and set aside the order of the court below directing a complaint to be filed.

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