

Karimullah Vs. Rameshwar Prasad

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Court : Allahabad

Decided On : Jul-20-1928

Reported in : AIR1929All774

Appellant : Karimullah

Respondent : Rameshwar Prasad

Judgement :

Mukerji, J.

1. The only point urged in this application is whether the Court below had jurisdiction to hear the appeal.

2. It appears that the opposite party Rameshwar Prasad brought a suit on a bond for recovery of certain amount of money against Karimullah and others. Karimullah is the applicant in this Court. It was found that Karimullah had paid up a good deal of the amount claimed and the claim of Rameshwar Prasad was excessive. At the instance of Karimullah, the Munsif directed the prosecution of Rameshwar under Section 476, Criminal P.C. It being held by him that Rameshwar, was prima facie, guilty of the offences under Sections 209 and 210, I.P.C., Rameshwar filed an appeal to the District Judge and the District Judge transferred the appeal to a Subordinate Judge. The Subordinate Judge heard the case and held that the Munsif's order directing the prosecution was not justified. He ordered the revocation of the complaint.

3. Mr. Khwaja has argued that the District Judge had no jurisdiction to transfer the case to the Subordinate Judge and he has cited two Calcutta cases

4. So far as this Court is concerned, it is firmly established now that a Court exercising jurisdiction under Section 476, Criminal P.C., does not cease to be a civil Court. The proceedings taken by the Court are of a civil nature, although not covered by the Civil Procedure Code. It has, therefore, been held that a revision can lie only under Section 115, Civil P.C. and Section 439, Criminal P.C, has no application.

5. An appeal is provided by the Criminal Procedure Code, Section 476-B, against an order passed under Section 476 of the same code. Such an appeal would be an appeal from an order of the Court. In this case, the appeal was against the order' of the Munsif. A District Judge is authorized under Section 22, Bengal N.W.P. and Assam Civil Courts Act, to transfer an appeal from an 'order' of a Munsif to the Court of a Subordinate Judge. It would follow, therefore, that it was competent for the District Judge to transfer the present appeal to the Court of the Subordinate Judge. The principle that the District Judge could transfer such cases to another officer of competent jurisdiction, was established by previous cases in this Court. The latest one is *Narain Das v. Emperor* : AIR1927 All555 . That was, however, a case in which a District Judge had transferred an appeal to an Additional District Judge. But the transfer was justified under Section 8, Bengal N.W.P. and Assam Civil Courts Act. The same principle applies when the transfer is made under Section 22, to the Court of a Subordinate Judge, the appeal being from an order of the Munsif.

6. I hold that the Subordinate Judge had jurisdiction to hear the appeal. This application, therefore, is without merits and fails and is hereby dismissed with costs.