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Mehdi Hasan Vs. Emperor

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Court : Allahabad

Decided On : Nov-01-1934

Reported in : AIR1935All212; 157Ind.Cas.990

Appellant : Mehdi Hasan

Respondent : Emperor

Judgement :
ORDER

Bajpai, J.

1. The learned Munsif of Deoband after holding a preliminary enquiry under Section 476, Criminal P.C., directed that:

a complaint shall belonged before the District Magistrate of Saharanpur under Section 195(1)(b) and (c) read with Section 476, Criminal P.C., against Mehdi Hasan to stand his trial under Section 193 read with Section 198 and Section 471, I.P.C.

2. An appeal against this was filed by Mehdi Hasan under Section 476B, Criminal P.C., in the Court of the District Judge, Saharanpur. The Court of the Munsif is subordinate to the Court of the District Judge because appeals ordinarily lie from the appealable decrees of the Munsif to the Court of a District Judge; and so far everything was regular. The learned District Judge transferred the appeal to the

Court of the Subordinate Judge who with some modifications has confirmed the direction of the learned Munsif.

3. Mehdi Hasan has applied in revision to this Court under Section 115, Civil P.C. His first contention is that the learned Subordinate Judge was not competent to dispose of the appeal. It is said that under Section 476B the withdrawal of the complaint made by the learned Munsif could be directed only by a Court to whom the learned Munsif was subordinate. Within the meaning of Section 195, Sub-section 3 the Court of the Munsif is subordinate only to that Court to which appeals from the Munsif's decisions ordinarily lie, and that such a Court is the Court of the District Judge, as provided by Section 21, Sub-section 2, Bengal, Agra, and Assam Civil Courts Act. It is however contended by the learned Government advocate that, the appeal was filed in the Court of the District Judge of Saharanpur, and the said officer had jurisdiction under Section 24, Civil P.C., to transfer the appeal to a Court subordinate to itself. Section 24, Civil P.C., says that a District Court may, at any stage, transfer an appeal pending before it for disposal to any Court subordinate to it and competent to try or dispose of the same. The words 'competent to try or dispose of the same' are important; and the question is whether the Subordinate Judge was competent to try or dispose of the appeal; and it must be conceded that if the provisions of the Criminal Procedure Code alone are looked at, the learned Subordinate Judge was not competent to try or dispose of the appeal. Reliance was then placed upon Section 22, Bengal, Agra and Assam Civil Courts Act, which says that a District Judge may transfer to any Subordinate Judge under his administrative control any appeals, pending before him from the decrees or orders of the Munsifs. It is clear that the direction of the Munsif for the filing of the complaint was not a decree; and it is open to some doubt whether it could be called even an order of the Munsif in the sense in which that word is used in Section 22 of the aforesaid Act. In a case like this we should look, for the power of transfer, not in any civil enactment but in the Criminal Procedure Code itself, and that Code does not provide for any transfer in a matter like this, I am supported in this view by the cases of Ram Charan Chanda v. Taripulla (1912) 39 Cal. 774 and Emperor v. Badri Prasad 1918 All. 326.

4. Several other points were discussed before me, and it was specially argued that Mehdi Hasan was not a party to a proceeding pending in the Court of the learned Munsif, and therefore a complaint under Section 471, Penal Code, could not be filed against him. It was also said that he could not be said to be guilty of an offence under Section 193, Penal Code. Section 193, Penal Code, was not discussed before me because the learned Subordinate Judge who heard the appeal of Mehdi Hassan revoked the complaint so far as Section 198, Penal Code, was concerned; but in view of the action which I propose to take in this revision it would be necessary for the learned District Judge of Saharanpur to consider the propriety of the direction made by the learned Munsif of Deoband which was to the effect that a complaint shall be lodged against Mehdi Hasan under Section 193 read with Section 198 and Section 471, Penal Code. In connection with the last offence I may invite the attention of the learned District Judge to the Full Bench decision of this Court in Emperor v. Kushal Pal Singh 1931 All. 443.

5. For the reason that the learned Subordinate Judge was not empowered to hear the appeal, I allow the application, set aside the order of the learned Subordinate Judge and send back the case to the District Judge of Saharanpur with directions that he would readmit the appeal of Mehdi Hasan on his own file and dispose of it himself. Parties to bear their own costs.

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