

Manphool Vs. Budhu

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Court : Allahabad

Decided On : Dec-12-1934

Reported in : AIR1935All440; 157Ind.Cas.901

Appellant : Manphool

Respondent : Budhu

Judgement :

Bennet, J.

1. This is an application in civil revision by the plaintiff Manphool against an order in appeal under section 476-B, Criminal P.C., passed by the learned Subordinate Judge. There was an order passed by the Munsif under Section 476, Criminal P.C., refusing to take proceedings under Sections 209, 471, 463, 191 and 193, Penal Code, against Manphool on the complaint of Budhu defendant. This application was made by Budhu in connexion with the civil suit before the Munsif. Under Section 476-B, Criminal P.C., an appeal lay and Budhu brought an appeal in the Court of the District Judge. This was the correct Court, in which such an appeal, should be brought. The District Judge-however purported to transfer this appeal under Section 24(1)(a). Civil P.C., to the Subordinate Judge who has purported to dispose of this appeal. The question raised in revision is whether the Subordinate Judge had any jurisdiction to hear an appeal of this nature and whether the District Judge had any jurisdiction to order the transfer of this appeal

instead of bearing it himself. It is laid down in Section 476-B that, an appeal may be made:

to the court to which such former court is Subordinate within the meaning of Section 195(3).

2. Section 195 (3) provides:

For the purpose 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.

3. This is the portion of the section which applies in the present case. It is clear therefore that the section contemplates that the appeal should be to the Court of the District Judge from the order of the Munisif under Section 476, Criminal P.C. The further question arises as to whether the power of transfer under Section 24, Criminal P.C., exists. The section provides in Sub-section 1(a) that the District Court may transfer:

any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.

4. This sub-section involves the point that the matter transferred should be a suit appeal or other proceeding. Learned counsel argues that appeal means only a civil appeal. It may be further observed that the transfer must be to a Court which is competent to try and dispose of the same. It is not shown that the Court of the Subordinate Judge has any jurisdiction to try and dispose of the appeal in question. No such jurisdiction is given by the Criminal Procedure Code, to the Subordinate Judge and the Civil Courts Act. does not give the Subordinate Judge any such jurisdiction. The case is very similar to that of a revenue appeal. As a Subordinate Judge has no jurisdiction to try a revenue appeal therefore it is not open to the District Judge to transfer a revenue appeal to a Subordinate Judge under Section 24, Civil P.C. There is authority for the applicant in revision. This authority is shown in *Ram Charan v. Tarupulla* (1912) 39 Cal. 774, a Bench ruling where it was held that appeals under Section 195(6) of the former Criminal P.C.,

could not be transferred, to a Subordinate Judge by the District Judge. This ruling was followed by a learned Single Judge in *Dulari Koeri v. Fauzdar Khan* 1930 Crc 510. A similar ruling has been laid down in *Bismillah Khan v. Shakir Ali* 1928 Oudh 494. For the opposite party reference was made to *Narain Das v. Emperor* 1927 Oudh 555, but in that ruling the Court to which the transfer was made was the Court of an Additional Judge and not the Court of a Subordinate Judge and it was held that under Section 8, Civil Courts Act the transfer could be made. I hold therefore that it is not open to a District Judge in whose Court an appeal under Section 476-B, Criminal P.C. is pending to transfer that appeal to the Court of a Subordinate Judge as the Subordinate Judge has not got jurisdiction to hear such an appeal. Accordingly I allow this application in revision with costs and I set aside the order of the Subordinate Judge and direct that the appeal should be taken again on the file of the District Judge and should be disposed of by him according to law. The costs in the Court of the Subordinate Judge between Manphool and Budhu will abide the event. The court-fee will be returned to the applicant in revision.