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Court : Kolkata

Decided On : Jul-29-1929

Reported in : AIR1930Cal361

Appellant : Lal Mahammad and ors.

Respondent : Deputy Inspector General of Police of C.i.D.

Judgement :

Suhrawardy, J.

1. This rule was issued on ground No. 9 which is to this effect: For that the learned Additional Sessions Judge had no jurisdiction to hear the appeal or to lodge the complaint. The facts are that the petitioner sued the defendants upon a hatchita in the Court of the Munsiff at Raigunje in the District of Dinajpore, and on behalf of the defendants the suit was contested by the opposite party D. I. G., O. I. D., Bengal. The suit was transferred by the order of the District Judge from Raigunje to the Munsiff at Dinajpore. The petitioner applied to the Munsiff for leave to withdraw from the suit with liberty to bring a fresh suit on the same cause of action. It was refused and the suit was dismissed for non-prosecution. Thereafter the opposite party applied to the Munsiff for sanction to prosecute the petitioner under Section 476, Criminal P.C. on charges under Sections 120-B, 109, 209, 471, I.P.C., etc. The application was refused by the Munsiff and the opposite party preferred an appeal from the order of the Munsiff to the District Judge of Dinajpore

under Section 476-B, Criminal P.C. The District Judge allowed the appeal and made a complaint under Section 476-B. Against that order there was an application for revision in this Court. This Court set aside the order of the District Judge and sent the matter back to the Munsiff with certain directions. The Munsiff again rejected the petition of the opposite party for sanction. The opposite party preferred an appeal to the District Judge against the order of the Munsiff, who transferred the case to the Additional District Judge to deal with it. The latter officer allowed the appeal by his judgment dated 17th January 1929. The petitioner objects to this order on the ground that the Additional District Judge had no authority to make the complaint under Section 176-B, Criminal P.C. The matter is not free from doubt and I have given my best. consideration to it. Under Section 476-B any person whose application under Section 476 has been refused or against whom such a complaint has been made may appeal to the Court to which such former Court is subordinate within the meaning of Section 195, Sub-section (3). Under Section 195 Sub-section (3) the Court to which the primary Court is subordinate shall be deemed to be the Court to which appeal ordinarily lies from the appealable decree or sentence from the former Court. Section 476-B then lays down that on such appeal being made the superior Court may thereupon pass necessary order.

2. Now, 'there can be no doubt that an appeal under Section 476-B lies to the Court to which the trial Court is subordinate and in this instance the District Judge's Court is the Court to which appeal lies. So that so far as the filing of the appeal is concerned, there is no irregularity. The next question is whether the District Judge having received the appeal has authority to transfer it to the Additional District Judge. This question does not seem to have been finally settled under the Code as amended in 1923. But we may refer to a case under the old code, namely, the case of Ram Charan Chandra v. Taripulla [1912] 39 Cal. 774. There the learned Judges in interpreting the relevant clauses of the old Section 195 held that no one except the District Judge has power to hear an appeal under Sections 195(6) and 195(7) of the old code. The ratio of that decision as given by N.R. Chatterjea, J. is that a District Judge is competent to dispose of any appeal or proceeding himself or to transfer it to a Subordinate Judge. But under Section 195(6) Criminal P.C. 1898, the power of revoking or granting any sanction given or

refused is given to the authority to which the authority giving or refusing it is subordinate. The judgment of D. Chatterjee, J. also deals with the powers of a District Judge to transfer appeals pending in his file to an Additional District Judge. Now, these clauses of Section 195 have been repealed and the new Sections 476-A and 476-B have been substituted. Section 476-B lays down that an appeal must be preferred to the Court to which the primary Court is subordinate in the sense that appeals ordinarily lie to the former Court from the decisions of the latter Court, but the final orders may be passed by the superior Court. The Court of the Additional Judge may be said to be a superior Court in relation to a Munsiff's Court. Reference may also be made to Section 8, Civil Courts' Act 1887 which empowers an Additional District Judge to discharge all the functions of a District Judge which may have been assigned to him. Section 24(a), Civil P.C., gives unfettered jurisdiction to the District Judge to transfer an appeal or any proceeding pending before him to any competent Court subordinate to him. Now, it has been held that an appeal under Section 476-B is an appeal under the Criminal Procedure Code and has to be governed by the provisions of that Act: *Rajani Kanta Kayal v. Bistoo Moni Dassi* : AIR1927 Cal718 , *Chunder Kumar Sen v. Mathura Debya* : AIR1925 Cal1228 and *Hamid Ali v. Madhusudan Das* : AIR1927 Cal284 . If it is an appeal under the Criminal Procedure Code it is governed by Section 409 Criminal P.C. which says that an appeal to the Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge. But an appeal under Section 476 in a civil matter is not preferred to the Sessions Judge but to the District Judge, the same officer who combines in him both the functions and power is given to District Judge under the Civil Procedure Code and the Civil Court's Act to regulate the procedure of an appeal. I have been pressed for the view I have taken in this matter by considerations of reasonableness in the procedure laid down by the Code. Under Section 476-A the power under Section 476 may be exercised by a Court to which the trial Court is subordinate within the meaning of Section 195(3). To give a strict interpretation that only the Court to which the primary Court is subordinate can make a complaint under Section 476 is to deprive Subordinate Judges and Judges other than District Judges, who ordinarily hear most of the appeals from the Munsiffs of the power of making any complaint under Section 476. It often happens and such cases frequently come

before us, that when an appellate Court forms an opinion in connexion with any proceeding in a civil Court it does act under Section 476 and make a complaint before the proper Court. It is never intended to deprive Judge other than the District Judges, who hear ninety per cent of the appeals, of the power of making a complaint where they find that an offence has been committed.

3. Reference in this connexion has also been made on behalf of the petitioner to the decision in the case of Mohim Chandra Nath v. Emperor : AIR1929 Cal172 . That Case does not discuss the question raised before us. There the appeal was not preferred to the District Magistrate to whom the trial Court was subordinate but to an officer specially empowered to hear appeals from Second Class Magistrates. In the view I have taken of this matter this rule should be discharged.

Jack, J.

4. I agree; but I would simply base my decision on the fact that the District Judge is empowered under Section 24(a), Civil P.C. to transfer any proceedings to the Additional District Judge.

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