

**(1939) 09 AHC CK 0014**

**Allahabad High Court**

**Case No:** None

Akbar Husain Khan

APPELLANT

Vs

Emperor

RESPONDENT

**Date of Decision:** Sept. 11, 1939

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 476, 476B

**Citation:** AIR 1940 All 7 : (1939) 9 AWR 783

**Hon'ble Judges:** Mulla, J

**Bench:** Division Bench

**Final Decision:** Allowed

### **Judgement**

Mulla, J.

This is an appeal u/s 476-B, Criminal P.C. It appears that the appellant, Akbar Husain, gave evidence in the Court of the Special Judge, First Grade, Mirzapur, in a case under the Encumbered Estates Act. The learned Special Judge came to the conclusion that the appellant had committed perjury and has accordingly made a complaint against him u/s 476, Criminal P.C. It is obvious to my mind that in taking action u/s 476, Criminal P.C., the learned Special Judge has acted only as a Civil Court irrespective of the fact that the Court is further invested with special powers under the Encumbered Estates Act. The learned Special Judge is primarily Civil Judge of Mirzapur and if he takes any action u/s 476, Criminal P.C. in an ordinary civil case, whatever its valuation, his order would be appealable to the District Judge and not to this Court. Section 476-B clearly provides that a person against whom 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).

2. Section 195, Sub-section (3) provides that

where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate.

3. From these provisions of law it is clear, in my judgment, that any order passed by the Civil Judge of Mirzapur u/s 476, Criminal P.C., making a complaint for an offence against any person would be appealable to the District Judge and not to this Court. The question therefore is whether the fact that the order appealed from in the present case has been made in connexion with a case under the Encumbered Estates Act takes it out of the purview of the above provisions of law. In my view the answer is in the negative. The learned Special Judge in making a complaint u/s 476, Criminal P.C., has not passed an order under the Encumbered Estates Act which would be appealable to this Court u/s 45 of that Act. It is merely an order u/s 476, Criminal P.C., by a Civil Court and the question of the forum of appeal from that order has to be decided in the light of the provisions of Section 476-B read with Section 195, Criminal P.C. In accordance with those provisions the appeal would lie, as stated above, in the Court of the District Judge and not in this Court. I therefore hold that this appeal does not lie in this Court and accordingly order that it should be returned for presentation to the proper Court.