
(1927) 12 MAD CK 0029

Madras High Court

Case No: None

Moideen Rowthen

APPELLANT

Vs

Miyyassa Pulavar

RESPONDENT

Date of Decision: Dec. 1, 1927

Acts Referred:

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

Citation: (1928) ILR (Mad) 777 : (1928) 28 LW 134 : (1928) 55 MLJ 444

Hon'ble Judges: Reilly, J; Madhavan Nair, J

Bench: Full Bench

Judgement

Madhavan Nair, J.

This Civil Miscellaneous Appeal raises the question whether an appeal lies u/s 476-B of the Code of Criminal

Procedure to the High Court from an appellate order of the District Judge making a complaint which the District Munsif refused to make when an

application was made to him u/s 476.

2. The facts are briefly these. The appellant was the 1st defendant in O.S. No. 57 of 1925 in the District Munsif s Court, Palghat, and the

respondent was the 2nd defendant. The suit was on a promissory-note said to have been executed by both the defendants to the plaintiff. The

appellant contended that the suit note was not executed by him. His contention being upheld the suit was decreed against the respondent. The

respondent then moved the District Munsif u/s 476 of the Code of Criminal Procedure to present a complaint to the Sub-divisional First Class

Magistrate of Palghat charging the appellant with having intentionally given false evidence in a judicial proceeding before him. The District Munsif

holding that there will not be a reasonable chance of conviction refused to make a complaint. On appeal by the respondent u/s 476-B, the District

Judge reversed the order of the Lower Court and made a complaint to the Sub-divisional First Class Magistrate holding that

it is expedient in the interests of justice that an enquiry should be made into the offence of intentionally giving false evidence in a judicial proceeding

committed by the appellant in the course of his evidence before the District Munsif of Palghat in O.S. No. 57 of 1925.

3. Against this order this appeal has been filed by the appellant u/s 476-B of the Code of Criminal Procedure.

4. A preliminary objection is taken that Section 476-B of the Code gives a right of appeal only when a Court has made or refused to make a

complaint u/s 476 or 476-A and that, as neither of these sections relates to a complaint made by a Court on appeal from an order of the

Subordinate Court refusing to make a complaint, no appeal will lie to this Court u/s 476-B of the Code against the order making such a complaint.

5. The question has to be decided by examining the provisions of Sections 476, 476-A and 476-B of the Code of Criminal Procedure. Shortly

stated, Section 476 authorises any Civil, Revenue or Criminal Court, where it is of opinion that it is expedient in the interests of justice that an

enquiry should be made into certain offences, to make a complaint thereof in writing and it lays down the procedure to be followed in making such

a complaint. In any case in which such Court has neither made a complaint u/s 476 in respect of such offence nor rejected an application for the

making of such complaint, Section 476-A authorises a complaint to be made by the Court to which such Court is subordinate within the meaning

of Section 195(3) and provides that where the superior Court makes such complaint the provisions of Section 476 shall apply. Section 476-B

provides for appeals. It runs as follows:

Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint u/s 476 or Section 476-A 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), and the superior Court may, thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the

case may be, itself make the complaint which the Subordinate Court might have made u/s 476, and if it makes such complaint the provisions of that

section shall apply accordingly.

6. The appellant in order to succeed will have to show that he has a right of appeal to this under the provisions of this section. The section first

provides in what cases appeals would lie and then it points out what orders the Appellate Court may pass in dealing with the appeals. Under this

section a person may appeal when a Court has refused to make a complaint u/s 476 or Section 476-A or when it has made against him such a

complaint, i.e., a complaint u/s 476 or 476-A. In other words, it gives the right of appeal only when a Court has made or refused to make a

complaint u/s 476 or 476-A. A complaint made by a Court on appeal from an order of a Subordinate Court refusing to make a complaint does

not fall within either of these sections and, therefore, in the present case, which is one of this description, there can be no right of appeal according

to the wording of the section. This view has found favour with the Judges of the Lahore High Court see Muhammad Idris v. The Crown ILR

(1924) Lah. 56; but it is argued that on a proper interpretation of the section this view is untenable, and reliance is placed on the decision in Ranjit

Narain Singh v. Rambahadur Singh (1925) ILR 5 Pat. 262 which dissents from the decision in Muhammad Idris v. The Crown (1924) ILR 6 Lah.

56. Both the decisions are directly in point.

7. It is conceded that when an Appellate Court dismisses an appeal against the order of its Subordinate Court refusing to make a complaint or

making a complaint u/s 476 or when it sets aside in appeal an order making a complaint u/s 476, there is no further appeal to a superior Court u/s

476-B against any of those orders; but when the Appellate Court sets aside an order of its Subordinate Court refusing to make a complaint and

makes a complaint, it is contended that an appeal would lie, because the Appellate Court makes a complaint u/s 476 and against such an order

making a complaint an appeal would lie to that Court to which the Appellate Court is subordinate. This contention is accepted by the learned

Judges of the Patna High Court in *Ranjit Narain Singh v. Rambahadur Singh* ILR (1925) Pat. 262 the learned Judges observe thus:

...The District Judge may disagree with the Munsif and himself make a complaint and the complaint then is amenable to the provisions of Section

476; that is to say, it is, u/s 476-B subject to appeal to the High Court : for Section 476-B reads "any person against whom a complaint u/s 476

has been made by any Court."

In the case mentioned the District Judge is making the complaint u/s 476 : the District Judge's Court is subordinate to the High Court within the

meaning of Section 195(3) and, therefore, the appeal lies to the High Court.

8. The wording of the section does not warrant this interpretation. The complaint which the Appellate Court makes is one u/s 476-B, because the

provisions of Section 476 apply to it, it does not become a complaint under that section attaching to itself the incident of appealability existing in the

case of such complaints under the first part of Section 476-B. To include by this process of interpretation within the expression ""such a complaint

a complaint made by an Appellate Court u/s 476-B is to read into the section words which are not in it. I am not prepared to adopt such a

construction. I may observe with great respect that the words

Any person against whom a complaint u/s 476 of the Code of Criminal Procedure has been made by any Court

quoted in *Ranjit Narain Singh v. Rambahadur Singh* ILR (1925) Pat. 262 do not find a place in Section 476-B. When the meaning of the section is

clear, I do not think it is permissible to construe it in the way suggested by the appellant on the ground that the legislature intends that the person to

whose prejudice an order has been made should always have a right of appeal. Section 404 of the Code of Criminal Procedure says that no

appeal shall lie from a judgment or order of the Court except as provided for in this Code or by any other law for the time in force. If it was

intended that appeals should be allowed against such orders, the legislature would clearly have said so. The policy of the legislature seems to be to

allow only one appeal against orders that may be passed u/s 476 and not to allow an appeal and a second appeal against such orders. If we

accept the construction now suggested, it will lead to the anomaly of having two appeals in this class of cases while in the other cases admittedly

only one appeal will lie under the section.

9. The question whether an appeal would lie to the High Court in a case like the present has not been specifically decided by any other High Court;

but there is an observation in *Somabhai Vallabh v. Aditbhai Parshottam* ILR (1924) B. 401 which supports the interpretation of the section laid

down in *Muhammad Idris v. The Crown* ILR (1924) Lah. 56. In that case the Subordinate Judge directed u/s 476 of the Code of Criminal

Procedure that the counter-petitioners before the Court should take their trial before a First Class Magistrate for offences under Sections 193,

465, 471 and 209 of the Indian Penal Code. Against the order of the Subordinate Judge an appeal was filed to the Sessions Judge. u/s 476-B of

the Code of Criminal Procedure. The Session's Judge allowed the appeal and directed that the sanction against the appellants should be

withdrawn. From that order directing withdrawal the petitioner filed an appeal to the High Court. In holding that no appeal will lie against such an

order, the learned Judges (Sir Norman Macleod, C.J. and Shah, J.), said:

That they are clearly of opinion that no appeal lies under the provisions of the Code against an order made by the Court to which the Court making

a complaint is subordinate.

10. This dictum would cover the present case also though it was made with reference to an appeal against the order directing the withdrawal of a complaint u/s 476-B.

11. For the above reasons, we must allow the preliminary objection and hold that no appeal lies to the High Court. The appeal is therefore

dismissed with costs. There are no circumstances in the case calling for our interference in revision.

Reilly, J.

12. I agree that the preliminary objection raised by Mr. Sridharan must be upheld and that no appeal lies in this case. Mr. K.P.M. Menon has

urged that, if an order is made to the prejudice of any person that a complaint should be made against him, whether the order is made against him

originally or on appeal, it is reasonable that one appeal at least should be allowed against that order and we may assume that that was the intention

of the legislature in Section 476-B, Code of Criminal Procedure. But, even if the wording of that section were so obscure that it were necessary

for us instead of trying to apply its literal meaning to speculate as to what would be a reasonable course for the legislature to adopt, it might be

urged with at least equal force that, when it has appeared proper to a Court, original or appellate, that such a complaint should be made, it is

reasonable that the person accused should face an inquiry or trial on the complaint without more ado as he would have to do if a complaint of an

offence were made against him by a private person, unless the complaint was dismissed u/s 203, Code of Criminal Procedure. There is certainly no

reason why an accused person should require more protection against the complaint of a Court, which it may be assumed will act after judicial

consideration than against the complaint of a private person. But in this matter I do not think that we are justified in entering upon any such

speculation. The wording of Section 476-B appears to me to be clear. It gives an appeal to "any person on whose application any Court has

refused to make a complaint u/s 476 or Section 476-A and to any person against whom such a complaint has been made." The words "such a

complaint" appear to me to mean clearly a complaint made u/s 476 or Section 476-A. That is their clear grammatical meaning and we cannot

suppose that they mean anything else unless we assume that the legislature has done its work in this matter in a very slipshod way, an assumption

which we are least of all justified in making when we are interpreting a provision which has been deliberately introduced into the Code by an

amending Act. A different view was taken in *Ranjit Narain Singh v. Rambahadur Singh* ILR (1925) Pat. 262. But though the judgment in that case

is long and elaborate, the reasoning in it is, if I may say so with great respect, very scanty and appears to have been affected by what is a serious

misquotation from Section 476-B. The section does not contain, as the report of this case says that it contains, the words

any person against whom a complaint u/s 476 has been made by any Court.

13. To my mind the correct interpretation of Section 476-B in this matter is that adopted in *Muhammad Idris v. The Crown* ILR (1924) Lah. 56

There is one other consideration which I may perhaps mention. The first principle of the Code of Criminal Procedure in regard to appeals is that

expressed in Section 404, viz., that no appeal shall lie unless provided for by the Code or some other law. Bearing that principle in mind we must

recognise that none but a most careless legislature could have intended to provide a right of appeal in the Code but have failed to give it in clear,

precise and explicit language. The last resort of interpretation is to assume that the legislature has done its work in a careless way, has failed to say

what it means or has said what it does not mean. There is nothing whatever in the present instance to justify us in making such an extreme and

exceptional assumption or in supposing that when framing Section 476-B the legislature had forgotten a cardinal principle of the Code which it was

amending. In my opinion there is no ambiguity about the section in this respect and nothing to justify us in interpreting it otherwise than in its plain,

grammatical meaning. I agree, therefore, that this appeal must be dismissed as incompetent.

14. I agree that this is not a case in which we should interfere in revision, as Mr. Menon requests us to do now that his appeal has been held to be inadmissible.