

(1925) 12 CAL CK 0049

Calcutta High Court

Case No: None

Tarakeswar Mukhopadhyay

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Dec. 18, 1925**Acts Referred:**

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

**Citation:** AIR 1922 Cal 788 : 94 Ind. Cas. 600**Hon'ble Judges:** Duval, J; C.C. Ghose, J**Bench:** Division Bench

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**Judgement**

1. In this case the petitioner filed a petition of complaint on the 14th June 1924 in the Court of Mr. Suresh Chandra Sen, Deputy Magistrate, First Class, under Sections 395, 380 and 147, Indian Penal Code. Mr. Ben examined the petitioner on oath and thereafter the case was transferred to the file of Mr. L. C. Guha, Deputy Magistrate, First Class, for disposal, Mr. L. G. Guha held a local enquiry and then dismissed the petitioner's complaint u/s 203, Cr. P.C. He observed, however, that there was no occasion for proceedings against the petitioner u/s 211, Indian Penal Code. Mr. Sen before whom the petition of complaint had been filed thereafter made a complaint u/s 476, Cr. P.C., against the petitioner and sent the complaint to Mr. Das, Deputy Magistrate, for necessary action. After a preliminary enquiry the petitioner was committed to the Court of Session to take his trial u/s 211, Indian Penal Code. He was convicted by the Assistant Sessions Judge and sentenced to undergo rigorous imprisonment for a period of one year and a half. An appeal against the said conviction and sentence was summarily dismissed by Mr. Carter, Sessions Judge, on the 3rd August 1925.

2. It is now contended before us that the petitioner's case having been transferred from the file of Mr. Sen to that of Mr. Guha, Deputy Magistrate, who tried the case on the merits, the former had no jurisdiction to make the complaint u/s 476, Cr. P.C. The matter really depends upon the meaning of the words "which appears to have

been committed in or in relation to a proceeding in that Court" occurring in Section 476, Cr. P.C. It will be noticed that the same words occurred in Clause (b) of Sub-section (1) of Section 195, Cr. P.C. Now, it has been held in cases under the old Section 195, Cr. P.C., that it is the Court trying the case which is the proper authority to grant sanction and not the Court before which proceedings are instituted and by which process is issued [see the cases of Jeebun Krista Shaw v. Benoy Krista Shaw 6 C.W.N. 35 and Putiram Ruidas v. Mahomed Kasem 3 C.W.N. 33.] No doubt under the present Code, sanction to prosecute u/s 195 has been done away with and in its place a complaint has to be made in writing u/s 476, Cr. P.C. We think, how-ever, that the ratio of the decisions referred to above applies and that if a complaint had to be made in this case it should have been made by Mr. Guha and not by Mr. Sen. In this view of the matter the contention urged before us succeeds and we make the Rule absolute. The result is that the conviction and sentence are set aside and the petitioner will be discharged from his bail-bonds.