18 Ind. Cas. 176

Calcutta High Court

Case No: None

Lachman Ojha — APPELLANT

Vs

Anup Rai — RESPONDENT

Date of Decision: June 14, 1912

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) â€" Section 476

Citation: 18 Ind. Cas. 176

Hon'ble Judges: Beachcroft, J; Ashutosh Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to set aside an order u/s 476 of the Criminal Procedure Code. It appears that the petitioners, as plaintiffs, sued on a

registered bond and produced it in support of their claim. Upon an examination of the bond, it appeared that the figures 35 had been altered to 25,

in the clause which fixed the value of the paddy deliverable in lieu of interest. The Court dismissed the suit on the 16th August 1911, holding that

the plaintiffs were guilty of the alteration, and took proceedings u/s 476 of the Criminal Procedure Code; but as an appeal against the decree in the

bond suit was preferred, the proceedings were held in abeyance. The judgment of the Court was ultimately confirmed on appeal on the 15th

March 1912. Thereupon notice was issued by the first Court upon the present petitioners to show cause why an order should not be made u/s 476

of the Criminal Procedure Code. Cause was shown and an order was made on the 6th May 1912 in these terms: ""from these things, the opposite

party appear to be guilty of the offences mentioned in Sections 463 and 471, Indian Penal Code, and I accordingly send the case to the Deputy

Commissioner of Manbhoom for investigation and for trial or commitment to the Sessions as may be considered necessary."" It has been argued

before us that this order was made without jurisdiction inasmuch as the final decree in the civil suit was made by the Appellate Court, and

consequently that Court alone was competent to take action, if necessary, u/s 476 of the Criminal Procedure Code. In support of this proposition,

reliance has been placed upon the cases of Jadu Lal Sahu v. Lowis J.R. 34 C. 848; 11 C.W.N. 712; 5 Cri L.J. 480; 6 C.L.L. 531 and Kannullah

v. Emperor 12 C.W.N. 1; 6 C.L.J. 703; 6 Cri. L.J. 354. Neither of these cases is of any assistance to the petitioner. The first case holds that it is

undesirable to grant sanction for criminal prosecution pending the hearing of an appeal in a civil suit. The second case holds that where the sanction

has been granted by a Court of first instance on the strength of its decision in a civil suit, that order must be taken to have lapsed when the

judgment in the Civil suit has been reversed on appeal, because the foundation for the order for prosecution has disappeared. In the case before

us, the decree in the civil suit was confirmed on appeal. It was, therefore, competent to the Court of first instance, as also to the Court of Appeal,

to take action u/s 476 of the Criminal Procedure Code. We may point out, however, that the order is not accurately worded, and in accordance

with Section 476, the Court ought to have sent the case for inquiry or trial to the nearest Magistrate of the first class. This, no doubt, is what the

Court intended. The verbal in accuracy, doubtless, has not in any way prejudiced the petitioner; at the same time, it is desirable that judicial officers

in Civil Courts, who may not be familiar with the provisions of the Criminal Code and who may have to pass orders u/s 195 or 476 of the Criminal

Procedure Code, should adhere strictly to the language used by the legislature and not endeavour to paraphrase the same.

2. The Rule is discharged.