

(1924) 02 BOM CK 0048**Bombay High Court****Case No:** None

Somabhai Vallavbhai

APPELLANT

Vs

Aditbhai Parshottam and Others

RESPONDENT

Date of Decision: Feb. 27, 1924**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 476, 476B
- Penal Code, 1860 (IPC) - Section 193

Citation: 81 Ind. Cas. 947**Hon'ble Judges:** Norman Macleod, C.J; Shah, J**Bench:** Division Bench**Judgement**

1. The petitioner in this case prayed for an inquiry u/s 476. Criminal Procedure Code, into offences alleged to have been committed by the opponents under Sections 193, 209, 465, 471 and 114, Indian Penal Code. The Subordinate Judge, after holding an inquiry, directed that the opponents should take their trial before (the Court, of the First Class Magistrate of Nadiad for offences under Sections 193, 465, 471 and 209, Indian Penal Code. The Subordinate Judge did not comply with the provisions of Section 476 of the amended Criminal Procedure Code, by which the Court is directed, in case it thinks that proceedings should, be taken, to make a complaint in writing signed by the presiding officer of the Court and forward the same to a Magistrate of the First Class having jurisdiction.

2. Against the order of the Subordinate Judge, dated 29th September, 1923, an appeal was filed to the Sessions Judge of Ahmedabad u/s 476B, Criminal Procedure Code. The Judge allowed the appeal and directed that the sanction against the appellants should be withdrawn. There again the learned Judge has not followed by provisions of Section 476B because he should have directed withdrawal of the complaint.

3. From that order in effect directing withdrawal of the complainant the petitioner has filed an appeal. The first question is whether the appeal lies. We 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.

4. The only question is whether we should entertain an application in revision u/s 439, Criminal Procedure Code. It must be noticed that Section 439 of the amended Code makes no mention of Section 195, Indian Penal Code, which was referred to in Section 439 before the Code was amended. Therefore, unless we take a very wide view of our powers u/s 439, it would not be competent to this Court to revise an order such as the one made in this case. At the same time we are not anxious to lay down any such principle which would prevent us from exercising revisional powers, in extraordinary cases, although, generally speaking, where the lower Appellate Court has thought fit to withdraw a complaint made u/s 476, it would be very difficult for this Court to interfere in revision. I think that the question whether a complaint should be made u/s 476, Criminal Procedure Code, is almost invariably a matter of discretion, and if the Trial Court or a Court to which it is subordinate thinks that no complaint should be made, then it would not be desirable that this Court should interfere. In any event in this case, the Sessions Judge has considered that no complaint should be made, and we are not disposed to interfere with, that order.