

(1946) 01 PAT CK 0028
In the Patna High Court

Chando Gangota and Others

APPELLANT

Vs

Madan Mandal and Others

RESPONDENT

Date of Decision : 15-01-1946

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 476B
Penal Code, 1860 (IPC) — Section 211

Citation : AIR 1946 Patna 435

Hon'ble Judges : Imam, J

Bench : Division Bench

Judgement

Imam, J.—This is an application against the order of the Additional Sessions Judge of Bhagalpur withdrawing the complaint filed by the Assistant Sessions Judge of Madhipura against the opposite party for their prosecution u/s 211, Penal Code. It would appear that the opposite party had brought a case of dacoity and the Assistant Sessions Judge was of the opinion that he had brought a false case and accordingly he should be prosecuted. The Additional Sessions Judge did not read the judgment of the Assistant Sessions Judge to mean anything of the kind and he quoted passages from it to indicate that it was more a case of giving the accused in the dacoity the benefit of the doubt.

2. In revision it is not for me to go into the merits of the decisions of the Additional Sessions Judge on the facts. Mr. Sarjoo Prasad appearing for the petitioners urged that in law the Additional Sessions Judge ought not to have heard the appeal u/s 476B, Criminal P.C., as no appeal lay to him and his order withdrawing the complaint was without jurisdiction. He contended that the Additional Sessions Judge was not the Court to whom appeals ordinarily lie from a sentence passed by an Assistant Sessions Judge. He pointed out that the Assistant Sessions Judge was a member of the Court of Session as much as the Sessions Judge himself or the Additional Sessions Judge and accordingly the Court to which an appeal ordinarily lay was the High Court to whom the Court of Session was subordinate. Section 476B, which provides for an appeal against an order passed u/s 476, distinctly states the Court to which an appeal lies from an

order passed u/s 476. It states that:

Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint u/s 476 or Section 476A, 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 (8) and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or....

3. According to this Section then one has to refer to Section 195, Sub-section (3) to find out which is the Court to which an appeal lies from the Assistant Sessions Judge. Section 195(3) states:

For the purposes of this Section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court....

There is also a proviso (a) to this Sub-section which runs as follows:

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.

4. Section 408 provides for an appeal by a person on a trial held by "an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class...to the Court of Session". There is also a proviso to this section which states that when an Assistant Sessions Judge or a Magistrate specially empowered u/s 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal shall lie to the High Court. There can be no doubt, having regard to the provisions of the Code that an Assistant Sessions Judge is a member of the Court of Session, but under the statutory law of the land it has been enacted that an appeal from an Assistant Sessions Judge, although a member of the Court of Session, shall lie to the Court of Session; but if the sentence passed by him is more than four years, it shall lie to the High Court. Mr. Sarjoo Prasad urges that it is patent that in such circumstances the appeal ordinarily lies to the High Court and it is the exception when the appeal lies to the Court of Session. I am not myself prepared to read Section 408 in this manner. The words are clear and simple and there can be no doubt as to their meaning. The section states specifically that an appeal lies to a Sessions Judge from the sentence of an Assistant Sessions Judge.

5. It is only by the proviso that an appeal is provided to the High Court in cases where the sentences passed by the Assistant Sessions Judge are more than four years. At the best it may be said that there are two forums of appeal from a sentence passed by an Assistant Sessions Judge; one, the Court of Sessions and the other, the High Court, depending upon the sentence passed. In this connection the provisions of Section 195(8) and its proviso (a) have to be borne in mind. In my opinion according to these provisions read along with Section 408

of the code, an Assistant Sessions Judge who passes a sentence of four years or less shall be deemed to be subordinate to the Court of Sessions and where he passes a sentence exceeding four years, he shall be deemed to be subordinate to the High Court. The proviso (a) of Section 195(3) is very important and must be given effect to. As the Code contemplated two forums of appeal from sentences passed by an Assistant Sessions Judge, it is clear that appeals from his sentence lie to more than one court and as the Court of Session is a court of inferior jurisdiction to the High Court, it is the Court of Session which will be deemed to be the court to which the Assistant Sessions Judge was subordinate for the purposes of Section 476B. Section 409 also provides that where an appeal is made to the Court of Sessions, it shall be heard by the Sessions Judge or by the Additional Sessions Judge.

6. There are numerous examples both in this country and in England where appeals are provided for from the judgment of a single Judge to the Divisional Bench of the same Court, and there could be no doubt that the single Judge in the particular circumstance, would be subordinate to the Divisional Bench.

7. I expressed this view during the arguments to Mr. Sarjoo Prasad appearing for the petitioner and I am happy to find that decisions from Madras, Bombay and Calcutta happen to take a similar view. Indeed in *Nagendarnath v. Emperor* AIR 1933 Cal. it was decided that appeals ordinarily lay u/s 476B from an order of an Assistant Sessions Judge to the Court of Session. Having regard to the provisions of Section 409, such an appeal could be heard by an Additional Sessions Judge who was a member of the Court of Session.

8. The point raised by Mr. Sarjoo Prasad, therefore, fails and the application is dismissed.