

(1952) 08 KL CK 0013
In the High Court Of Kerala

Govindan Kunjuraman Assari

APPELLANT

Vs

Krishnan Nair and Chellappan Nair

RESPONDENT

Date of Decision : 01-08-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195, 476
Penal Code, 1860 (IPC) — Section 188

Citation : (1953) CriLJ 1421

Hon'ble Judges : Vithayathil, J

Bench : Single Bench

Judgement

Vithayathil, J.—The first defendant is the revision petitioner. The revision petition is from an order according sanction to the plaintiff to prosecute the defendants for an offence u/s 188, Penal Code, i.e., for disobeying an order of injunction issued by the Court restraining the defendants from putting up any new building on the suit property. A preliminary objection was raised on behalf of the respondent to the effect that the order passed by the Court below is an appealable order and that, therefore, the revision petition is not maintainable. I do not think that there is any substance in the preliminary objection. The order purports to be one relating to an offence coming u/s 195(1)(a), Criminal P.C. Such an order is not appealable. Section 476B provides for appeals from orders u/s 476 and Section 476A. What is provided in Section 476B is 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 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)

Section 476(1) reads thus:

When any civil Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, Sub-section (1) Clause (b) or Clause (c), which appears to have been committed in or

in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate, or, if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

Section 476A is to the following effect:

The power conferred on Civil, Revenue and Criminal Court by Section 476, Sub-section (1), may be exercised in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court by the Court to which such former Court is subordinate within the meaning of Section 195, Sub-section (3), in any case in which such former Court has neither made a complaint u/s 476 in respect of such offence nor rejected an application for the making of such complaint, the provision of Section 476 shall apply accordingly.

It will thus be seen that Sections 476(1) and 476A relate only to offences referred to in Clauses (b) and (c) of Sub-section (1) of Section 195 and that they do not relate to Clause (a) of that Sub-section. According to the Court below the offence in this case is one that comes under Clause (a). Therefore, Sections 476(1) and 476A cannot apply to this case. Since Section 476B applies only to cases coming under Sections 476 and 476A, Section 476B also cannot apply to this case, and, therefore, the order is not appealable. Reference may be made to *Maruda Pillai v. Narayana swami Pillai* AIR 1939 Mad 336 (A);- *Bajrang Marwari and Others Vs. Durga Prasad Sao, and-P.J. Money v. Emperor* AIR 1928 Ran 296 (C). I, therefore, overrule the preliminary objection raised on behalf of the respondent.

2. Coming to the merits of the revision petition it is clear that the order of the Court below is wrong. In the first place, I do not think that refusal to comply with an order of injunction issued by a civil Court is an offence that comes u/s 188, Penal Code. That section reads thus: (His Lordship after quoting the section proceeded).

Obviously the section applies to orders promulgated by public servants in respect of matters relating to safety, health or convenience of the public, or in other words, to orders promulgated by public functionaries for public purposes. It does not apply to an order passed by a civil Court in respect of matters affecting the parties to a suit. The proper remedy for the disobedience of such an order is committal for contempt. Order 39, Rule 2, Sub-rule 3, provides for cases of disobedience of an order of injunction issued by a civil Court. It is to the following effect. (His Lordship quoted the provision and proceeded).

For the position that an order passed in a civil suit between party and party does

not come within the scope of Section 188, Penal Code, reference may be made to the following decisions, namely,-Quinn v. Keshab Chandra AIR 1949 Cal 349 (D);- Bishan Dutt and Another Vs. Emperor, ; -Mammali v. Kuttiammu AIR 1916 Mad 640 (1)(F) and-In the Matter of the Petition of Chandrakanta De 6 Cal 445 (G).

3. Even if the case comes u/s 188, Penal Code, the proper procedure to be followed u/s 195(1)(a), Criminal P.C. is for the public servant himself or for some other public servant to whom he is subordinate to make the complaint and not to direct a third person to make the complaint. Section 195(1)(a) reads thus : (His Lordship after quoting the same proceeded).

The learned Munsiff has, therefore, gone wrong in according sanction to the plaintiff to prosecute the defendants for the offence alleged to have been committed by them. The order of the Court below is unsustainable. It is, therefore, set aside.

4. The revision petition is allowed.