
(1967) 03 PAT CK 0004
In the Patna High Court
Case No : Civil Revision No's. 757 of 1965

Mt. Rampati Kuer and Others

APPELLANT

Vs

Jadunandan Thakur and Others

RESPONDENT

Date of Decision : 23-03-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1898 (CrPC) — Section 195, 195(3), 409, 439, 476
Penal Code, 1860 (IPC) — Section 465, 467, 471

Citation : AIR 1968 Patna 100 : (1968) CriLJ 355

Hon'ble Judges : Narasimham, C.J.; U.N. Sinha, J.; S.P. Singh, J.; R.K. Choudhary, J.; A.B.N. Sinha, J

Bench : Full Bench

Advocate : Shok Haran Singh, for the Appellant; Prem Lall, S.P. Srivastava, Jagdish Pandey and Surendra Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—Civil Revision No. 130 of 1967 and No. 757 of 1965 were heard together and will be disposed of in one Judgment. One Jadunandan Thakur (Opposite Party No. 1 in Civil Revision No. 757 of 1965) filed a money suit (No. 19 of 1960) against Musammat Rampati Kuer and others (the petitioners), alleging that Musammat Rampati Kuer had executed a hand-note for Rs. 661 in his favour on the 4th May, 1958. The hand-note was filed along with the plaint in that money suit. The petitioners, however, alleged that the hand-note was a forgery. The revenue stamp affixed to the hand-note was proved to have been issued by the Government on the 1st October, 1958, several months after the date of the alleged execution of the hand-note, and this was perhaps one of the conclusive pieces of evidence to prove the forgery. The hand-note was alleged to have been scribed by Ramkhela-wan Thakur (Opposite Party No. 2), who signed the handnote also on behalf of the defendant Rampati Kuer.

It was alleged that the plaintiff having come to know that the forgery was

detected got a petition filed by his brother Ramshis Thakur (Opposite Party No. 3) on the 11th August, 1960, before the learned Munsif, stating that the claim under the handnote had been paid off and that the suit may be dismissed. The suit was accordingly dismissed, but a proceeding u/s 476, Cr. P. C. (Miscellaneous Case No. 92 of 1960) was started on the application of the petitioners against the plaintiff, the scribe and the brother of the plaintiff for offences under Sections 465, 467 and 478 of the Indian Penal Code. The learned Munsif by his order dated the 7th July, 1961, directed the drawing up of a complaint against Jadunandan Thakur (Opposite Party No. 1) for an offence u/s 471 of the Indian Penal Code and against the alleged scribe Ram-khelawari Thakur (Opposite Party No. 2) for offences under Ss. 465 and 467 of the Indian Penal Code.

The learned Munsif, however, held that no prima facie case was made against Ramashis Thakur (Opposite Party No. 3). Against his order two appeals were filed before the District and Sessions Judge of Muzaffarpur, one was by Opposite Parties Nos. 1 and 2 which was registered as Criminal Appeal No. 129 of 1961 and the second was by the petitioners themselves against Ramashis Thakur which was registered as Criminal Appeal No. 169 of 1961. In the first criminal appeal the order of the Munsif directing the filing of a complaint against those appellants was challenged, whereas in the latter criminal appeal the order of the Munsif declining to file a complaint against Ramashis Thakur was under challenge. These two appeals were transferred to the Court of the Third Additional District and Sessions Judge of Muzaffarpur, who disposed of both of them in one judgment on the 18th January, 1962.

He allowed the appeal of opposite parties 1 and 2 and set aside the order of the Munsif directing the filing of a complaint against those two persons and upheld the order of the Munsif declining to file a complaint against Ramashis Thakur, though on different grounds. The petitioners filed a revision petition which was first registered as Criminal Revision No. 757 of 1965 against the order of the learned Additional District and Sessions Judge in Criminal Appeal No. 129 of 1961. That revision was first placed before a single Judge who referred it to a Division Bench. It was then placed before a Division Bench of this Court consisting of Unt-walia and Ramratna Singh, JJ., who treated it as a civil revision, and by their order dated the 6th July, 1965, referred the case to a Full Bench, mainly because, as held by a Division Bench of the Patna High Court in *Inderdeo Ojha Vs. Emperor*, , an appeal u/s 476-B, Cr. P. C., could not be validly transferred by a District Judge to an Additional District Judge.

They were not satisfied with the correctness of this decision and wanted the matter to be heard by a larger Bench. That revision was then placed before a Full Bench of three Judges, namely, S. C. Misra, U. N. Sinha and G. N. Prasad, JJ, where a further question arose as to whether a revision against the order of the appellate Court u/s 476-B, Cr. P.C., should be treated as a civil revision or a criminal revision. The learned Judges thought that the earlier Full Bench view taken in *Deonandan Singh v. Ramlakhan Singh*, AIR 1948 Pat 225 (FB) was

counter to the opinion expressed by a later Full Bench in Dhup Narain Singh Vs. The State, , and that a larger Bench was required to resolve this conflict. Hence this revision petition has come up before a larger Full Bench of five Judges.

2. At the early stage of the hearing of this petition we thought that with a view to finally decide the dispute the petitioners should be permitted to challenge the order of the appellate Court in Criminal Appeal No. 169 of 1961 declining to file a complaint for the prosecution of Ramashis Thakur. The petitioners then filed another revision petition, registered as Civil Revision No. 130 of 1967, on the 10th February, 1967, which was admitted after condoning the delay and heard along with Civil Revision No. 757 of 1965.

3. Three important questions of law arise for consideration here:--

(1) Where a Civil Court sitting as an appellate Court passes an order u/s 476-B, Cr.P.C., is that order revisable by the High Court u/s 439, Cr.P.C., or else, u/s 115, C.P.C.? This will require an examination of the correctness of the view taken in Deonandan Singh's case, AIR 1948 Pat 225 (FB).

(2) Has an Additional District Judge jurisdiction to hear an appeal u/s 476-B, Cr.P.C. transferred to his file by the District Judge? This will require examination of the correctness of the view taken in Inderdeo Ojha Vs. Emperor, .

(3) Where the original Court (here the Munsif) passes an order u/s 476 (1). Cr.P.C., directing the filing of a complaint, will an appeal lie against his order u/s 476-B, Cr.P.C., prior to the actual filing of the complaint, or else, will the appeal lie only after the complaint is actually filed by the Court concerned? This third question arises because Criminal Appeal No. 129 of 1961 was filed by opposite parties Nos. 1 and 2 against the order dated the 7th July, 1961, and an order was obtained from the appellate Court staying further proceedings until the disposal of the appeal (vide order No. 1 dated the 11th July, 1961).

4. In the memorandum of appeal in Cri-Appeal No. 129 of 1961, the appellate Court was described as "the Court of the District and Sessions Judge of Muzaffarpur", but the learned Judge while admitting the appeal on the 14th July, 1961, described himself as "Sessions Judge", and while transferring it on the 29th August, 1981, described the transferee Judge as Additional Sessions Judge". In the memorandum of appeal in Criminal Appeal No. 169 of 1961, the appellate Court was described as "the Court of the District Judge of Muzaffarpur", but that Court admitted the appeal on the 19th August, 1961. describing himself as "Sessions Judge". Similarly, on the 7th October, 1961, he transferred that appeal for disposal to the "Additional Sessions Judge". That Court also in its judgment in both the appeals described itself as "Third Additional Sessions Judge".

When this revision was placed before the Division Bench of Untwalia and Ramratna Singh, JJ., that Bench described the appellate Courts as "District Judge" and "Additional District Judge", respectively, presumably following the

view taken in Deonandan Singh's case, AIR 1948 Pat 225 (FB). Nothing, however, turns on this description of the appellate Courts because, as is well known, in this State, the District Judge is always the Sessions Judge of his Division, and the Additional District Judge is also an Additional Sessions Judge.

5. Section 476-B, Cr.P.C., while conferring a right of appeal on the superior Civil Court against the order passed by the inferior Civil Court u/s 476, Cr.P.C., does not lay down the procedure to be followed by that appellate Court. Is that procedure to be controlled by the provisions of Chapter XXXI of the Criminal Procedure Code, or else, is it regulated by the provisions of Part VII of the CPC and Order 41, C.P.C., so far as they may be applicable? It is true that the powers of an appellate Court under the CPC and those of an appellate Court under the Criminal Procedure Code are very similar. But there are some noticeable differences. Thus, the powers of an appellate Court u/s 428, Cr.P.C., to take additional evidence is wider than the powers of a civil appellate Court to take additional evidence under Order 41, Rule 27, C.P.C.

The Legislature took special care in subsection (2) of Section 486, Cr.P.C., to say that the appeals under that section against the sentence passed by the inferior Civil Court u/s 480, Cr.P.C., will be regulated by the provisions of Chapter XXXI, Cr.P.C., but strangely enough, did not insert such a provision in Section 476-B, Cr.P.C. When the powers of the High Court in revision are examined, the differences become much more marked. The powers of the High Court in exercise of criminal revisional jurisdiction u/s 439, Cr.P.C., are very wide. It may not only examine the propriety of the order of the lower Courts but even go into facts if it considers necessary. On the other hand, in exercise of its civil revisional jurisdiction u/s 115, C.P.C., it is restricted to jurisdictional matters only.

6. So far as the exercise of appellate power u/s 476, Cr.P.C., is concerned, a Full Bench of the Patna High Court, consisting of three Judges, held in Dhup Narain Singh Vs. The State, , that the provisions of the Criminal Procedure Code, so far as they are applicable to appeals, would apply. They were aware of the fact that an earlier Full Bench in Deonandan Singh's case, AIR 1948 Pat 225, had held that in exercise of its revisional jurisdiction against an order passed by the Civil Court u/s 476 or 476-B, Cr.P.C., the High Court's power is derived from Section 115, C.P.C., and not from Section 439 Cr.P.C. The learned Judges, however, thought that there was no inconsistency between the two decisions, though the illogicality of such a view has been pointed out in the Full Bench decision of the Punjab High Court in Hakim Rai Vs. The State, . As the correctness of the decision in Dhup Narain Singh Vs. The State, , has not been challenged, I will proceed on the assumption that the exercise of jurisdiction by the appellate Civil Court u/s 476-B will be regulated by the provisions of the Criminal Procedure Code, that is, Chapter XXXI, and not by the provisions of the Civil Procedure Code.

7. As regards the exercise or revisional jurisdiction there is a very sharp conflict in the views of almost all the High Courts in India. In Emperor v. Har Prasad Das,

ILR 40 Cal 477, E.P. Kumaravel Nadar Vs. T.P. Shanmuga Nadar and Others, and Salig Ram v. Ramji Lal, ILR (1906) All 554. Full Benches of those High Courts have held that Section 115, C.P.C., alone would apply and the provisions of the Criminal Procedure Code have no application. On the other hand, a Full Bench of the Bombay High Court in Emperor Vs. Bhatu Sadu Mali, and a Full Bench of the Punjab High Court in AIR 1957 Punj 134, after fully discussing the contrary view, held that the provisions of Section 439, Cr.P.C., would apply and not the provisions of Section 115, C.P.C. Such diametrically opposite views expressed by some of the most distinguished Judges of High Courts only show how difficult it is to solve this problem. The only solution seems to be for the Legislature to intervene or for the Supreme Court to give its authoritative pronouncement when the occasion arises. In Kuldip Singh Vs. The State of Punjab and Another, , their Lord-Ships, in paragraph 40 at page 399, did not decide this question and left it open.

8. It will be futile to discuss once again the relative merits of the two opposing views which have all been fully discussed in those judgments. I may, however, deal with one aspect of the matter. The Criminal Procedure Code, as its long title indicates, is an Act "to consolidate and amend the law relating to Criminal Procedure". Sub-section (1) of Section 5 of that Code says that "all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained", Sub-section (2), however, says that offences under any other law may be tried under the provisions of the Criminal Procedure Code, but Subject to any statutory provision regulating their investigation, inquiry and trial.

The scheme of the section, therefore, is that any offence under the Penal Code must be (1) investigated, (2) inquired into, (3) tried, and (4) otherwise dealt with, only under the provisions of the Criminal Procedure Code and not under any other statutory provision. Investigation and inquiry are both defined in Clauses (1) and (k) of Section 4. Investigation is the proceeding for collecting evidence conducted either by the police or by any person other than a Magistrate. Inquiry, however, includes every inquiry other than a trial conducted under this Code by a Magistrate or Court. It will be noticed that in this definition clause the relevant word used is "Court" and not "Criminal" Court". Hence an inquiry conducted by a Civil Court will also be an inquiry under Clause (k) of Section 4, even though such a Civil Court will not be one of the classes of Criminal Courts enumerated in Section 6,

The concept of inquiry as distinct from trial involves the idea that it is in the nature of a preliminary proceeding conducted by a Court for deciding whether a person should be placed on trial for an offence. The inquiry u/s 476, Cr.P.C., relates to offences under the Penal Code, even though such an inquiry may be made either by the Civil Court or Revenue Court, as the case may be. Hence, an inquiry u/s 476 by the Civil Court will also be an inquiry as defined in Clause (k) of Section 4 Cr. P.C. It will be a criminal proceeding, though the inquiry is

conducted by the Civil Court, in view of the express provisions of Section 476, read with Section 5 (1) of the Criminal Procedure Code. As pointed out by the House of Lords in *Amand v. Home Secretary and Minister of Defence of Royal Netherlands Government* 1943 AC 147, per Viscount Simon, L.C., at p. 156, "if the matter is one the direct outcome of which may be trial of the applicant and his possible punishment for an alleged offence by a Court claiming jurisdiction to do so, the matter is criminal". Here the preliminary inquiry u/s 476. Cr.P.C., may lead to the placing on trial of the alleged offender and his subsequent punishment, and it must, therefore, be held to be a criminal proceeding irrespective of whether the inquiry is conducted by the Criminal Court or Civil Court or Revenue Court, as authorised by the section. This decision of the House of Lords was cited with approval in AIR 1945 21 (Federal Court) .

9. The words "and otherwise dealt with" occurring in Sub-section (1) of Section 5, Cr.P.C., require careful consideration. What is the true import and content of those words? In *Delhi Administration Vs. Ram Singh*, , their Lordships, while construing these words, observed as follows at p. 67:--

"The word "otherwise" points to the fact that the expression "dealt with" is all comprehensive, and that investigation, inquiry and trial were some aspects of "dealing with" the offences."

Though their Lordships did not exhaustively enumerate what the remaining aspects were, nevertheless by declaring that these words were "all comprehensive" they have clearly indicated that even appeals, revisions and other ancillary matters will also come within the scope of that comprehensive expression. Hence, if Sub-section (1) of Section 5, Cr.P.C., is construed in the light of the aforesaid decision of the Supreme Court, the reasonable inference is that appeals and revisions against inquiries made in respect of offences under the Penal Code should be regulated only by the provisions of the Criminal Procedure Code and not by the provisions of any other statute. This is because the proceeding is essentially criminal in nature, though the Civil Court gets jurisdiction by virtue of the express provisions in the Criminal Procedure Code.

With great respect to the learned Judges who have taken the contrary view, I am inclined to prefer the view taken in *Emperor Vs. Bhatu Sadu Mali*, . In the aforesaid Punjab decision, *Falshaw*, C. J., has given an additional reason for preferring this view which may be mentioned. He rightly points out that if the contrary view is taken, Article 14 of the Constitution will be infringed. A person accused of having committed forgery before a Criminal Court will have a right to move the High Court u/s 439, Cr.P.C., and to challenge the propriety of the order of the lower Court and also ask for investigation into facts if the High Court considers it advisable. But another person accused of having committed the same offence before a Civil Court will be very much handicapped in seeking the revisional jurisdiction of the High Court u/s 115, C.P.C. When there is so much ambiguity on the subject, it seems preferable to follow the view which will be more in conformity with the fundamental rights guaranteed by the Constitution.

10. One of the main reasons which appears to have weighed with Calcutta, Patna, Madras and Allahabad High Courts in holding that Section 439, Cr.P.C., can never apply is that the said section must be construed along with the four sections preceding the same, namely, Sections 435, 436, 437 and 438, and when so construed, it will be restricted in its application to revisional jurisdiction over Criminal Courts as described in Section 6, Cr.P.C. This view, however, overlooks the provisions of Sub-section (1) of Section 5, Cr.P.C., read with the definition of the expression "inquiry" as given in Clause (k) of Section 4, Cr.P.C. If Section 439, Cr.P.C., is read with Section 5 (1), Cr.P.C., it will be reasonable to hold that inquiries even by Civil Courts into an offence under the Penal Code will come within the revisional jurisdiction of the High Court u/s 439, Cr.P.C.

11. It is also useful to refer to Section 561-A, Cr. P.C. That section saves the inherent power of the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. If in a particular case the High Court feels that the prosecution of a person for forgery will amount to abuse of process of any Court and will not otherwise secure the ends of justice, there is no special reason why the High Court should not quash any order for such prosecution made either by the original Civil Court u/s 476, Cr.P.C., or by the appellate Civil Court u/s 476-B, Cr.P.C. In my opinion a combined construction of Section 5 (1) with Sections 439 and 561-A, Cr.P.C., is sufficient to show that the High Court can, under the provisions of the Criminal Procedure Code interfere with an order passed by the appellate Court u/s 476-B, Cr.P.C. The provisions of the CPC cannot apply, because Section 5 (1), Cr.P.C., is an exhaustive provision so far as inquiries into offences under the Penal Code are concerned. I would, therefore, with great respect, overrule the decision given in Deonandan Singh's case, AIR 1948 Pat 225.

12. The second question requires the examination of the correctness of the decision of a Division Bench of this Court in *Inderdeo Ojha Vs. Emperor*, u/s 8(1) of the Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the Civil Courts Act), an Additional Judge (meaning the Additional District Judge) is appointed to help the District Judge in speedy disposal of pending business, and Sub-section (2) of that section says that the Additional Judge so appointed shall discharge any of the functions of the District Judge which the latter may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge. It is by virtue of this provision that the District judges in the State have been transferring suits and appeals to the Additional District judges.

But Section 476-B, Cr.P.C., expressly says that the appeal against the order of the original Civil Court u/s 476 shall lie to the Court to which that Court is subordinate, as described in Section 195, Sub-section (3). There is no doubt that the Court of the District Judge alone is the superior Court over the Courts of Musifs and Subordinate Judges within his jurisdiction. Section 478-B authorises that superior Court, after hearing the appeal, either to direct the withdrawal of

the complaint or make the complaint, as the case may be. There is no provision in this section for transfer by that Court to another Court in accordance with the law relating to such transfers.

The analogy of transfer of a criminal appeal by a Sessions Judge to an Additional Sessions Judge u/s 409, Cr.P.C., "may not apply, because both the Sessions Judge and Additional Sessions Judge constitute the Court of Sessions as provided in Section 6, read with Section 9, Cr.P.C. But inasmuch as Section 476-B, Cr.P.C., expressly says that the right of appeal is conferred only on that superior Court to which the original Civil Court is subordinate, it may be argued with some justification that that Court has no jurisdiction to transfer an appeal to an Additional District Judge. Such view was taken in the said Division Bench case, *Inderdeo Ojha Vs. Emperor*, . It may also be argued with some justification that Section 476-B, Cr.P.C., should be construed along with Section 8(2) of the Civil Courts Act; and if the transfer is otherwise valid, there is no reason why the Additional District Judge should not hear such appeals.

But one difficulty in accepting this argument is found in the language used in Section 21 of the Civil Courts Act. That section says that an appeal from a decree or order of a Subordinate Judge (below a certain valuation) and an appeal from a decree or order of a Munsif shall lie only to the District Judge. But Sub-section (3) specially empowers the appropriate authority to assign the function of receiving appeals to the Additional Judge also and on such assignment the appeals may be directly preferred to the Additional Judge. The language used in Sub-section (3) of Section 21 of the Civil Courts Act is slightly different from the language used in Sub-section (2) of Section 8 of that Act. Hence it may be urged with some justification that so long as the function of receiving appeals from orders of Subordinate Judges and Munsifs has not been assigned to the Additional District Judge, he cannot be said to be the superior Court to which appeals "ordinarily lie" from the decrees and orders of the lower Civil Courts. Hence he may not be the appellate Court for the purpose of Section 476-B, Cr.P.C.

13. It is, however, unnecessary to further discuss the relevant merits of the two views on the subject, because their Lordships of the Supreme Court in *Kuldip Singh Vs. The State of Punjab and Another*, seem to have endorsed the view taken in the said Division Bench case of the Patna High Court. It is true that in that case they had discussed the provisions of the Punjab Courts Act, which in some respects differ from the provisions of the Civil Courts Act. But Section 21 of the Punjab Courts Act. which has been discussed in paragraph 37, is almost identical with Section 8 of the Civil Courts Act. Their Lordships, however, held that on the language of that section an Additional District Judge cannot be held to be the superior Court for the purpose of Section 476-B, Cr. P.C.

To quote their Lordships' language--" Thus, if his functions are confined to the hearing of appeals he cannot exercise original Jurisdiction and vice versa. But if he is invested with the functions of an appellate tribunal at the District Court level, then he can exercise all the powers of the District Judge in dealing with

appeals which the District Judge is competent to entertain."

These observations would support the view that unless the functions of receiving appeals are assigned to the Additional Judge under subsection (3) of Section 21 of the Civil Courts Act, appeals will not directly lie to him and he will not be the appellate Court for the purpose of Section 476-B, Cr.P.C. The view taken by the Division Bench in *Inderdeo Ojha Vs. Emperor*, must, therefore, be held to be correct.

14. The result of the aforesaid view is that the transfer by the District Judge of Criminal Appeals Nos. 129 of 1961 and 169 of 1961 to the file of the Third Additional District Judge, Muzaffarpur, must be held to be invalid, and the appellate orders passed by the Additional District Judge must also be held to be without jurisdiction. The orders of transfer dated the 29th August, 1961, and 7th October, 1961, in Criminal Appeal No. 129 of 1961 and Criminal Appeal No. 169 of 1961, respectively, and all subsequent proceedings before the Additional District Judge must be quashed as being without jurisdiction.

15. The third question now arises for consideration. As already pointed out, when the Munsif by his order dated the 7th July, 1961, directed the filing of a complaint against opposite parties Nos. 1 and 2, those persons immediately preferred an appeal on the 11th July, 1961, and obtained stay of further proceedings till the disposal of the appeal. It is now admitted that in consequence of the stay order the Munsif did not file a complaint. But Section 476-B, Cr.P.C., confers the right of appeal only when a complaint "has been made" and further says that after hearing the appeal the appellate authority may direct the withdrawal of the complaint. Thus, a distinction must be made between the order of the Court directing the filing of the complaint and the subsequent action of the Court in filing the complaint, and it is only after the filing of the complaint that the right of appeal can be exercised u/s 476-B, Cr.P.C., by the aggrieved party.

It is true that once an order is passed, the actual drawing up of the complaint by the Court concerned will be a routine affair; but on strict construction of Section 476-B, Cr.P.C., it may be urged that an appeal under that section will be premature until the complaint has actually been made. In *Ram Prasad Singh Vs. State*, a Single Judge construed Section 476-B, Cr.P.C., somewhat liberally and held that, in substance, the appeal lay against the actual order of the Court and not from the subsequent ministerial act of drawing up the complaint. But his view was overruled in a subsequent Division Bench judgment of the same High Court in *Ramchandra Soti Vs. State of Uttar Pradesh*. The facts as narrated in *M.S. Sheriff Vs. The State of Madras and Others*, however, would lend support to the earlier Allahabad view taken by the Single Judge. The question formulated by the Supreme Court in paragraph 1 of their judgment was as follows:--

"The question in this case is whether an appeal lies to this Court u/s 476-B of the Criminal Procedure Code from an order of a Division Bench of a High Court

directing the filing of a complaint for perjury."

Paragraphs 4 and 5 also show that the appeal was filed before the Supreme Court against the order of the High Court directing the filing of a complaint and not against the complaint after it had been actually filed. I can only presume that their Lordships thought the distinction between the two steps as immaterial and that as soon as the order directing the filing of a complaint is made by the appropriate Court the right of appeal u/s 476-B, Cr.P.C., accrues to the aggrieved party. In any view of the case, however, this may be held to be a mere irregularity which is curable unless prejudice has been shown. In view of the order which we propose to pass in these two revisions, there will be an opportunity for curing this irregularity.

16. For these reasons I hold as follows:--

(1) AIR 1948 Pat 225 was not decided cor-rectly and revisions filed against orders of appellate Courts u/s 476-B, Cr.P.C., should be dealt with by the High Court under the provisions of Section 439, Cr.P.C., read with Sections 5 (1) and 561-A, Cr.P.C., and not u/s 115, C.P.C.

(2) An appeal from an order of an inferior Civil Court filed before the District Judge u/s 476-B, Cr.P.C., cannot be validly transferred to the Additional District Judge for disposal, but the Additional District Judge can directly entertain the appeal if the function of receiving appeals has been assigned to him under Sub-section (3) of Section 21 of the Civil Courts Act, 1887. The decision given in *Inderdeo Ojha Vs. Emperor*, is held to be correct.

(3) Though an appeal u/s 476-B, Cr.P.C., arises only after a complaint has been made by the inferior Civil Court, nevertheless, if the appeal is filed when the order for making such a complaint is made, the admission of such an appeal will be a mere curable irregularity.

17. For these reasons the two revisions (which should correctly have been registered as Criminal Revisions) are allowed, the orders pass ed by the Third Additional District Judge on the 18th January, 1962, in Criminal Appeals Nos. 129 of 1961 and 169 of 1961 are quashed and the District Judge, Muzaffarpur, is directed to rehear the appeals and dispose of the same according to law. Before hearing Criminal Appeal No. 129 of 1961, however, he may give an opportunity to the trial Court to cure the irregularity mentioned above by actually drawing up a complaint. We do not wish to say anything about the merits of the case as they will have to be considered in full by the District Judge in hearing the two appeals. There will be no order for costs.

R.K. Choudhary, J.

18. I agree.

U.N. Sinha, J.

19. I agree.

S.P. Singh, J.

20. I agree.

A.B.N. Sinha, J.

21. The undisputed material facts of these cases and the questions for determination by this Full Bench have been set out in the judgment of My Lord the Chief Justice, and, I have had the advantage of going through the same.

22. In circumstances, to which it is unnecessary to refer, the petitioners in both these cases are seeking revision of the orders dated the 18th January, 1962, passed u/s 476-B of the Criminal Procedure Code by the Third Additional Sessions Judge, Muzaffarpur, in Criminal Appeals Nos. 129 and 169 of 1961 respectively u/s 115 of the Code of Civil Procedure, but I am in complete agreement with the view taken by My Lord the Chief Justice that the impugned orders are revisable by this Court u/s 439, Criminal Procedure Code, and not u/s 115 of the Civil Procedure, Code, and that the case of AIR 1948 Pat 225 (FB) was not decided correctly. These applications will, therefore, be treated as applications in revision u/s 439 of the Code of Criminal Procedure and disposed of accordingly.

23. While I agree with the view that a revision filed against an order of an appellate Court u/s 476, Criminal Procedure Code, irrespective of the fact whether that appellate order has been passed by a District Judge or a Sessions Judge, should be dealt with by the High Court under the provisions of Section 439 of the Code of Criminal Procedure, I regret I am unable to share the view that for exercising its revisional jurisdiction u/s 439 of the Criminal Procedure Code, it is permissible to invoke its inherent jurisdiction as recognised and preserved u/s 561-A of the Criminal Procedure Code. The reason for enacting this section by the Amendment Act of 1923 was that no legislative enactment dealing with procedure could provide for all cases that may arise.

It does not confer any new powers upon the High Court but merely recognises the inherent powers of the High Court previously possessed by it and embraces three clauses of order which may be necessary, namely, (1) to give effect to the provisions of the Code, (2) to prevent abuse of the process of a Court and (3) to secure the ends of justice. As observed by their Lordships of the Privy Council in AIR 1945 18 (Privy Council) it is not correct to say that "Section 561-A has given increased powers to the Court which it did not possess before that section was enacted. The section gives no new powers, it only provides that those which the court already inherently possesses shall be preserved and is inserted lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act".

Reference may also be made to the case of *Kumar Singh v. Emperor* AIR 1948 PC 189. In this case, the High Court of Calcutta of its own motion had called for the

record of a case which had been tried by a Special Magistrate constituted under the Special Criminal Courts Ordinance, 1942, and had convicted certain persons u/s 403 of the Indian Penal Code and sentenced them to pay a fine of Rs. 50 each, and a Special Bench of the said High Court had set aside the convictions and sentences and had ordered a retrial. In regard to the question of the jurisdiction of the High Court to make the order, the learned Chief Justice delivering the judgment of the Special Bench had observed as follows:--

"We have our ordinary powers of revision and inherent jurisdiction of the Court confirmed to us in Section 561-A of the Criminal Procedure Code, we have powers to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. If there were any doubt as to our jurisdiction to use those powers. here it is set at rest by Sections 3 (2) and 4 of the Ordinance No. XIX of 1943."

The judgment of the Special Bench was dated the 24th August, 1943; and, on account of the Federal Court having held on the 4th June, 1943, that the provisions of the Ordinance of 1942 were ultra vires and that the Special Courts including the Court of the Special Magistrate purporting to act under that Ordinance had no jurisdiction, the Governor-General had promulgated Ordinance No. XIX of 1943 on the 5th June, 1943, and, accordingly, on the date on which the judgment of the Special Bench of the Calcutta High Court was pronounced, the Ordinance of 1942 was no longer in existence and had been replaced by the Ordinance of 1943. This latter Ordinance u/s 3 had conferred powers of revision on the High Court which had been expressly taken away u/s 26 of the Ordinance of 1942.

In those circumstances and in view of the provisions of Section 3 of the Ordinance of 1942, the Judicial Committee, while holding that the High Court had revisional powers to review the sentences imposed but had no power to set aside the conviction or order a retrial, referred to the Ordinance of 1942, and observed that Section 26 of the said Ordinance having taken away all powers of revision by the High Court, the High Court could not revise the order under its inherent power and the jurisdiction for exercising revisional powers was contained in Section 3 (2) of Ordinance No. IX of 1943 and not in Section 561-A of the Criminal Procedure Code. In my opinion, it is well settled that Section 561-A does not authorise the Court to assume any new jurisdiction. Jurisdiction has to be given by a statute and cannot be assumed, as was observed by Subramania Ayyar, J., in *Rajah Parthasaradhi Appa Row v. Raiah Rengiah Appa Row*, ILR (1903) Mad 168, at p. 175:--

"It has to be borne in mind that there is an essential distinction between a Court's inherent power and its jurisdiction. I am not aware of any authority which supports the view that the inherent power of a Court could be invoked except for the limited power of preserving and enforcing order, securing efficiency and preventing abuse of process in the exercisa of a jurisdiction which

the Court otherwise possesses."

A clear instance of a valid exercise of inherent power is afforded by the recent decision of the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Naim*, where it has been held that the High Court can, in exercise of its inherent jurisdiction, expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the Court or otherwise to secure the ends of justice, although the matter has not been brought before it in a regular appeal or revision. In view of the aforesaid discussion, it follows that the jurisdiction to revise appellate orders passed u/s 476-B of the Criminal Procedure Code must be found in Section 439 of the Code and not in Section 561A thereof.

24. The present Sections 476, 476A and 476B, Cr. P. C. were substituted for the old Section 476 by the Code of Criminal Procedure (Amendment) Act (18 of 1923). An appeal now lies u/s 476B from an order u/s 476, and, in view of the provisions of Sub-section (5) of Section 439, a party aggrieved by an order u/s 476 cannot come up directly in revision without having availed himself of the remedy by way of appeal. The decision of the Full Bench in the case of *Dhup Narain Singh Vs. The State*, has laid down that an appeal u/s 476B from an order passed u/s 476 by a Civil Court must be deemed to be a criminal appeal, and the provisions of the Code of Criminal Procedure, so far as they are applicable relating to appeals under the said Code, will apply to such an appeal.

Imam, J., who delivered the judgment of the Full Bench, however, expressed the opinion that the aforesaid view was in no way inconsistent with the decision in the case of AIR 1948 Pat 225 (FB). With great respect to the learned Judge, it appears to me that the inconsistency between the view taken in the case of *Dhup Narain Singh Vs. The State*, and the one which had commended itself to the learned Judges in *Deonandan Singh's* case, AIR 1948 Pat 225 (FB), is unmistakable and, if it was held in *Dhup Narain Singh Vs. The State*, that an appeal from an order passed u/s 476 by a Civil Court must be deemed to be a criminal appeal, the natural corollary is that the order passed on appeal u/s 476-B, Cr.P.C., will be revisable u/s 439, Cr.P.C., and not u/s 115, C.P.C. A contrary view was, however, taken in the Full Bench case of *Deonandan Singh*, AIR 1948 Pat 225 (FB), and it is the soundness of that decision which falls for consideration in the present case.

25. Briefly stated, the reason for the view taken in *Deonandan Singh's* case, AIR 1948 Pat 225 (FB), was that a Civil Court acting u/s 476-B, Cr.P.C., was not inferior criminal Court within the meaning of Section 435 of the Code; and, reference was made to certain decisions of the Calcutta, Allahabad and Madras High Courts, vide ILR (1913) Cal 477 (FB) In the matter of *RBhup Kunwar*, ILR 26 All 249 and (*E.P. Kumaravel Nadar Vs. T.P. Shanmuga Nadar and Others*,). Their Lordships disagreed with the view taken in the Full Bench decision of the Bombay High Court in *Emperor Vs. Bhatu Sadu Mali*, and distinguished the Full Bench decision of the Lahore High Court in *Dhanpat Rai v. Balak Ram*, ILR 18 Lah 342 = AIR 1931 Lab. 761 (FB), on the ground that the said decision was greatly

influenced by the previous practice of that Court and further that one of the learned Judges, namely, Dalip Singh, J., had weakened the strength of the decision by conceding that if the matter were *res integra*, he would have come to the conclusion that the view taken by the Allahabad High Court in the matter of Bhup Kunwar, ILR (1904) All 249, was the correct view.

With utmost respect to the learned Judges who have taken the view, as expressed in the above-mentioned decisions, that an order u/s 476-B of the Cr.P.C. could be interfered with by the High Court u/s 115. C.P.C., and not u/s 435 Cr.P.C., it appears to me upon a careful consideration that a sounder and better view was taken in the Full Bench decision of the Bombay High Court in *Emperor Vs. Bhatu Sadu Mali*, and the crux of the matter was expressed in that case by Beaumont, C. J., in the following words:--

" though the order was not technically made by an inferior criminal Court he was of opinion that it was an order made by an inferior Court exercising jurisdiction in a criminal matter."

The observation of Manohar Lall, J., who delivered a separate but a concurring judgment in *Deonandan Singh's* case, AIR 1948 Pat 225 (FB), to the effect that the proceedings u/s 476, Cr.P.C., could hardly be called "criminal" when the very object of starting them was to decide whether a criminal complaint should or should not be lodged, runs counter to the decision of the House of Lords in 1943 AC 147, which was cited with approval in AIR 1945 21 (Federal Court) and to which reference has already been made by My Lord the Chief justice. The aforesaid observation of Manohar Lall, J., therefore, loses much of its weight. It follows that a proceeding u/s 176, Cr.P.C., and the appellate proceedings u/s 476-B, Cr.P.C., irrespective of the Court where the proceedings might be, is a criminal proceeding as it relates to a criminal matter.

Apart from the authority, referred to above, on principle as well, the nature of the matter and not the nature of the Court should be the determining factor. If a "criminal" matter is being investigated into a Civil Court, whether u/s 476, Cr.P.C., as an original Court or u/s 476-B, Cr.P.C., as an appellate Court, the nature of the Court will not alter the nature of the matter under investigation, and, therefore, an order passed u/s 476-B, Cr.P.C., by a Civil Court will be an order in the exercise of its statutory jurisdiction in a criminal matter, or to put the same thing in a different way, it will be an order passed by a Civil Court in the exercise of its criminal jurisdiction. To take a contrary view would, in my opinion, lead to certain anomalous consequences.

Sections 476 to 487 are comprised in Chapter XXXV which deals with proceedings in case of certain offences affecting the administration of justice. Section 480 confers special powers on all Courts, Civil, Criminal or Revenue, to deal summarily with certain kinds of contempt committed by any person in the view of the Court, namely, non-production of documents (Section 175, I.P.C.), refusing oath or affirmation (Section 178, I. P. C.), refusing to answer questions

(Section 179, I.P.C.), refusing to sign statements (Section 180, I.P.C.) and intentional insult or interruption in judicial proceedings (Section 228, I.P.C.). It may be true that when Section 480, Cr.P.C., says that a Civil or a Revenue Court can take cognizance of the offence and sentence the offender to fine not exceeding Rs. 200, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid, the Civil or the Revenue Court does not lose its identity as a Civil or a Revenue Court; yet it is quite clear that they are exercising jurisdiction in a criminal matter and both in substance as well as in form are acting in the exercise of their criminal jurisdiction statutorily conferred on them.

Section 486 gives a right of appeal from a summary conviction u/s 480 or Section 485 or Section 485-A. An appeal lies to the Court to which decrees or orders of the Court convicting are ordinarily appealable; but under Sub-section (2) of Section 486, Cr.P.C., read with Section 413 of the Code there will be no appeal when a First-class Magistrate in a contempt case imposes a sentence of fine not exceeding Rs. 50. In such a case, according to the view taken in Deonandan Singh's case. AIR 1948 Pat 225 (FB), the person convicted cannot move this Court u/s 439, Cr.P.C., and, indeed, the order of conviction and sentence of fine not exceeding Rs. 50 having been passed by a Civil Court in exercise of its power u/s 480, Cr.P.C. which, according to Deonandan Singh's case, AIR 1948 Pat 225 (FB), was not an inferior Criminal Court, even the record of the proceeding cannot be called for by the High Court u/s 435, Cr.P.C.

To require such a person to seek relief u/s 115, C.P.C., is hardly any remedy at all, because of the terms of Section 115, C.P.C., and the limitations on the powers of the High Court acting under that section. The Legislature having by virtue of Sub-section (2) of Section 486 read with Section 413, Cr.P.C., prohibited an appeal in such cases, it could not have intended to leave such a person without any remedy, and, in my opinion, the remedy is by invoking the High Court's revisional powers u/s 439, Cr.P.C., though the order of conviction and sentence, as pointed Out above, has been or may be passed by a Civil Court or a Revenue Court. Tested from the aforesaid point of view, there can be no doubt that the case of Deonandan Singh, AIR 1948 Pat 225 (FB), was wrongly decided.

26. Though Sections 435 to 439, Cr. P. C., can be said to deal with revisional powers under the Criminal Procedure Code and are exhaustive of those powers, apart from the power of overall jurisdiction and superintendence over all Courts conferred under Article 227 of the Constitution and should ordinarily be read together, I am definitely of the view that the ambit and scope of the powers u/s 439, Cr.P.C. are very much more comprehensive than the scope of Sections 435 to 438, Cr.P.C. On a careful scrutiny and analysis of the provisions of Sections 435 to 439, Cr.P.C., it will appear that while under Sections 435 and 436, the revisional jurisdiction of the High Court or of the other Courts mentioned therein extends over all inferior Criminal Courts for the limited purpose of ordering further enquiry into the complaint which has been dismissed u/s 203 or Sub-

section (3) of Section 204, or into the case of any person accused of an offence who has been discharged, the powers of revision of the High Court u/s 439, Cr.P.C., extend over all Courts subordinate to it which either ordinarily or otherwise exercise jurisdiction in regard to criminal matters.

To read the whole of the provisions of Section 435, Cr.P.C., including the expression "inferior Criminal Court situate within the local limits of its jurisdiction" into Section 139 merely because the opening words of Section 439 (1) speak of the "case of any proceeding the record of which has been called for by itself is, in my opinion, unduly restrictive of the large powers conferred on the High Court u/s 439, Cr.P.C. It is significant to notice that while under Sections 435 and 436, Cr.P.C., the Sessions Judge and the District Magistrate have also been given powers along with that of the High Court to call for the records of any proceedings before any inferior Criminal Court for the purpose mentioned in Section 436, Cr.P.C., it is only the High Court and no other Court which has been empowered to take action u/s 439, Cr.P.C

Further, though the Legislature has expressly mentioned Section 435 in Ss. 436, 437, 438 and 441, it is, in my opinion, not without any significance that it has omitted to mention Section 435 anywhere in Section 439, Cr.P.C., and, the expression in Section 439 (1) to the effect that "in the case of any proceeding the record of which has been called for by itself" is only indicative of one of the methods by which the records of a proceeding might have come before the High Court which might be called upon to exercise its revisional powers under the different sub-sections of Section 439, Cr. P. C. Its insertion by no means, in my opinion, operates to restrict the amplitude of the revisional powers of the High Court u/s 439. Cr.P.C., which powers are, however, restricted only by the restrictive provisions dealt with in the section itself.

It follows, therefore, that in any case if an order has been passed under any of the provisions of the Criminal Procedure Code and is not appealable under any of the provisions of the said Code, the High Court can revise such an order provided the Court which has passed such an order is a Court inferior to the High Court irrespective of the fact whether it is a Criminal, Civil or Revenue Court. The essential requirements, in my opinion, are, firstly, the order must relate to a criminal matter; secondly, it must have been passed by a Court interior to the High Court; and, thirdly, it is not otherwise appealable under the provisions of the Code. If these conditions are satisfied, the High Court can exercise its power of revision u/s 439, Cr.P.C.

27. For the reasons stated above, as also for the reasons stated in the judgment of My Lord the Chief Justice, I agree that the case of AIR 1948 Pat 225 (FB) was not decided correctly and that the revisions filed against appellate Court's orders u/s 476-B, Cr.P.C., should be dealt with by the High Court u/s 439, Cr.P.C., and not u/s 115, C.P.C.

28. I am in complete agreement with the answers given to question Nos. (2) and

(3), as framed in paragraph 3 of the judgment of My Lord the Chief Justice, and I have nothing useful to add. I also agree that the orders passed by the Third Additional Sessions Judge, Muzaffarpur, on the 18th January 1962, in Criminal Appeals Nos. 129 and 169 of 1961 be quashed and the Sessions Judge, Muzaffarpur, be directed to rehear the appeals and dispose of the same in accordance with law. In the circumstances of this case, there will be no order as to costs.