

# CALCUTTA HIGH COURT

Chandra Kumar Sen

Vs

Srimati Mathuriya Debya

(Lancelot Sanderson, C.J. Panton, J.)

28.05.1925

## JUDGMENT

### **Lancelot Sanderson, C.J.**

1. This is a Rule obtained on behalf of Chandra Kumar Sen on the 23rd of April 1925, calling upon the District Magistrate and the opposite party to show cause why the order complained of should not be set aside or such other order passed in the matter as to this Court might seem fit and proper.
2. The order complained of was made by the learned District Judge of Chittagong on the 31st of January 1925, whereby the learned Judge directed that criminal proceedings should be instituted against Chandra Kumar Sen and Bijoy Singh Hazari, for offences under Sections 209 and 466 of the Indian Penal Code and for abetment of these offences.
3. This Rule deals with the case of Chandra Kumar Sen only.
4. I think it is necessary to mention certain dates. It appears that an application was made to the learned Subordinate Judge for filing a complaint against the petitioner
5. Chandra Kumar Sen. That application was disposed of on the 1st of October 1923. By that time the amendment of the Cr. P.C. created by the Act of 1923 had come into force and the learned Subordinate Judge declined to make a complaint under Section 476 of the Cr. P.C. as amended.
6. There was an appeal to the District Judge by the complainant. That was filed on the 7th of August 1924. It was not disposed of until the 31st of January 1925 by the learned District Judge, when, as I have already stated, the appeal was allowed, and the learned Judge decided that criminal proceedings should be instituted against Chandra Kumar Sen for the offences which I have already mentioned.
7. The point upon which the learned Advocate, who appeared for the petitioner, relied was that the appeal to the learned Judge was out of time and the learned Judge has no jurisdiction to entertain the appeal and to make the order. This point was taken before the learned Judge

apparently, for he said as follows: "It is urged in his case" (that is, the case of Chandra Kumar Sen) "that the appeal is barred by time as the Subordinate Judge passed orders on the 1st of October 1923 that he would not proceed against respondents Nos. 2 and 3. I do not think that I am bound by any rule of limitation in a case of this kind. When an offence in connection with the administration of civil justice comes to the notice of the District Judge it is open to him to lodge a complaint in the Criminal Courts although a subordinate Civil Court may not have thought it necessary to take action." The learned Judge then proceeded to say that the case was of such gravity that he would be failing in his duty if he did not institute a complaint.

8. With much respect to the learned Judge I am of opinion that the provisions of the material sections do not support the conclusion at which he arrived.

9. Section 476 of the Cr. P.C. deals with the procedure, which is to be adopted in cases referred to in Section 195, Sub-section (1), Clause (6) or Clause (c), by a Court, with regard to offences which appear to have been committed in or in relation to a proceeding in that Court; and Section 476A confers certain powers upon a superior Court, where the subordinate Court has omitted to take action. It is desirable to refer to the terms of the section, which are as follows.

10. 476A. "The power conferred on Civil, Revenue and Criminal Courts 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 under Section 476 in respect of such offence nor rejected an application for the making of such complaint, and, where the superior Court makes such complaint, the provision of Section 476 shall apply accordingly."

11. In my judgment that section does not apply to this case, because there was an application made to the learned Subordinate Judge, and the learned Subordinate Judge rejected the application for the making of the complaint.

12. The next Section 476B gives certain rights of appeal not only to the person against whom a complaint has been directed but also to the person whose application for a complaint has been rejected. The words of the section are as follows:

13. 476B "Any person on whose application any Civil, Revenue or Criminal Court has refused to make, a complaint under Section 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 (3) and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal, of the complaint, or as the case may be, itself make the complaint which the subordinate Court might have made under Section 476, and if it makes such complaint the provisions of that section shall apply accordingly."

14. Therefore, it appears to me that the scheme of the sections is that, if the subordinate Court has neither made a complaint under Section 476 nor rejected an application for the making of a complaint, then the superior Court may take action and make a complaint. But where, as in this case, the subordinate Court has rejected the application for the making of such complaint, then the procedure, which is contemplated by the Code, is by way of an appeal to the superior Court.

15. This matter came before the learned District Judge by way of appeal, and in view of the above-mentioned sections, the learned

16. District Judge, in my judgment, should have considered whether the appeal was filed within the time specified.

17. The Article in the Limitation Act which applies to this matter is Article 154, and the material section of the Act is Section 3 which provides that "subject to the provision contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence."

18. Under Article 154, the period of limitation for an appeal "under the Cr. P.C. 1898, to any Court other than, a High Court," is "30 days" and the time from which the period begins to run is "the date of the sentence or order appealed from."

19. It is, therefore, clear that, as the order appealed from was made on the 1st of October 1923 and the appeal was not filed till the 7th of August 1924, the appeal was out of time.

20. This Rule, therefore, must be made absolute, and the order of the learned District Judge of the 31st January 1925, directing criminal proceedings to be instituted against Chandra Kumar Sen must be set aside.

21. No order need be made as regards the Appeal (No. 210 of 1925) in connection with the same matter.

**Panton, J.**

22. I agree.