

Hikmatullah Khan Vs. Mt. Sakina Begum and ors.

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Court : Allahabad

Decided On : Nov-20-1930

Reported in : AIR1931All305

Appellant : Hikmatullah Khan

Respondent : Mt. Sakina Begum and ors.

Judgement :

Bennet, J.

1. This purports to be a first appeal from order made by one Hikmatnllah Khan against an order of the learned District Judge of Meerut, dated 3rd February 1930, directing, under Section 476 (B), Criminal P. C, that a formal complaint under Section 210, I. P.C., be made against the appellant Hikmatullah Khan. A preliminary objection was taken that no appeal lies to this Court.

2. The facts are that the opposite party, Mt. Sakina Begum and others, applied to the Munsif for a complaint under Section 476, Criminal P. C, and the Munsif refused to make a complaint. Mt. Sakina Begum and others then appealed, under Section 476-(B), Criminal P. C, to the District Judge and he has made a complaint. The question is whether any appeal lies to this Court from that order of the District Judge making a complaint on an appeal to him under Section 476 (B).

3. The learned Counsel for the appellant relied on a ruling of the Patna High Court reported in Ranjit Narain Singh v. Ram Bahadur Singh [1918] 40 All. 425, but there are rulings of no less than five High Courts to the effect that if an appellate Court decides to make a complaint on appeal, no second appeal lies to the High Court: see Ahamadar Rahman v. Dwip Chand Chowdhry : AIR1928Cal281 , Mohim Chandra Nath v. Emperor, : AIR1929Cal172 ; Kanai Lal Saha v. Makhan Lal Saha, : AIR1928Cal237 , Muhammad Idris v. Emperor A.I.R. 1925 Lah. 322, Ma On Khin v. N. K.M. Firm A.I.R. 1927 Rang. 313, Somabai Vallavbhai v. Aditbhai Parsottam A.I.R. 1924 Bom. 347 and Moideen Rowthen v. Miyassa Pulavar A.I.R. 1928 Mad. 506. We are also of opinion that the natural construction to place on the words of the section in question, viz. 476 (B), is that only one appeal should lie, and that, when an appellate Court has made a complaint under this section or has refused to make a complaint, no further appeal should lie to [the High Court. But it has been urged by the learned Counsel for the applicant that we should treat this matter as a revision. At first ho contended that the appellate Court had no jurisdiction to pass the order in question, because ho argued that the appellate Court acted as a Court of Session. The actual application to the lower appellate Court was headed: 'In the Court of the District Judge of Meerut,' and in the body of the application it was stated ' the appellant above-named appeals to the Court of the District and Sessions Judge, Meerut, ' Apparently the office of the

District Judge made the mistake of heading the proceedings as ' In the Court of the Sessions Judge of Meerut ' and gave a number as ' Criminal Appeal No. 403 of 1929, ' but the learned District Judge himself subscribed his signature with the words ' District Judge.' below it, and it is clear therefore that he acted as District Judge on appeal from an order of the Munsif and he had jurisdiction under Section 476 (B).

4. It was next argued that, on the facts found by the District Judge, no criminal complaint would lie under Section 210, Criminal P.C., and reference was made to Shama Charan Das v. Kasi Naik [1896] 23 Cal. 971. This argument was addressed to us under Section 115, Civil P.C. as a Court of revision, and we proceed accordingly to consider this matter as a Court of revision. The ruling in Shama Charan Das v. Kasi Naik lays down that, where there was an application to execute a decree, and an objection was made to the application to the effect that the decree had been satisfied by payment out of Court and the application was therefore dismissed, then no complaint under Section 210, I. P. C, would lie for making an application which was fraudulent. But in the present case the facts are different, because on the application made by Hikmatullah there was an order of attachment passed against the property of Mt. Sakina Begum and her children. It was then that they made an objection and the order of attachment was set aside. Now, in execution there are two proceedings, first attachment and then sale. We consider that the case would come under Section 210, because Hikmatullah did obtain an order of attachment against the property of Mt. Sakina Begum for a sum which was not due from her. The wording of Section 210 ' whoever fraudulently obtains an order against any person for a sum not due ' would accordingly apply. But, as the matter has been brought before us in revision, we think that a second section, Section 209, I. P. C, ought to be added and we direct that Section 209, I.P.C., be also added to the complaint made by the District Judge to the Magistrate. Otherwise we dismiss this appeal with costs.

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