

Hari Mandal and ors. Vs. Keshab Chandra Manna

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Court : Kolkata

Decided On : Apr-12-1912

Reported in : 14Ind.Cas.760

Judge : Mookerjee and ;Carnduff, JJ.

Appellant : Hari Mandal and ors.

Respondent : Keshab Chandra Manna

Judgement :

1. This Rule raises the question, whether when an application has been made to a District Judge under Section 195 Sub-section (6), Criminal Procedure Code, the application can be transferred by him to a Subordinate Judge for disposal. Sub-section (6) provides that any sanction given or refused under the section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate. Sub-Section (7) then provides that for the purposes of this section, every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. Now, Section 21, Sub-section (2) of the Bengal Civil Courts Act, 1887, provides that an appeal from an order of the Munsif lies to the District Judge. Consequently, the District Judge is the authority competent under Sub-section (8) of Section 195, Criminal Procedure Code, to revoke or grant a sanction which has been given or refused by a Munsif. The District Judge, in our opinion, is not competent under Section 22, Sub-section (1) of the Bengal Civil Courts Act, 1887, to transfer the application presented to him for disposal by the Subordinate Judge. That section provides that a District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decree or order of a Munsif. An application under Sub-section (6) of Section 195, Criminal Procedure Code, is, in our view, not an appeal within the meaning of Sub-section (1) of Section 22 of the Bengal Civil Courts Act, 1887. It has not been suggested to us in this case that any order has been made by the High Court under Sub-section (4) of Section 21 of the Bengal Civil Courts Act, 1887, so as to constitute the Subordinate Judge the appellate authority over the Munsif. Consequently, the order made by the Subordinate Judge was passed without jurisdiction. The Rule is, therefore made absolute and the order assailed is discharged. The District Judge will now take up the matter and deal with it as early as practicable.

2. Since this order was passed, we have found that the view taken by us is in harmony with that adopted by D. Chatterjee, J., and N. Chatterjee, J., in Ram Charan v. Tirupulla 13 Ind. Cas. 1007 : 10 C.W.N. 645 : 13 Cr. L.J. 191.