PETITIONER:
M. S. SHERIFF

Vs.

RESPONDENT:
THE STATE OF MADRAS AND OTHERS.

DATE OF JUDGMENT:
18/03/1954

BENCH:
BOSE, VIVIAN
BENCH:
BOSE, VIVIAN
MAHAJAN, MEHAR CHAND (CJ)
MUKHERJEA, B.K.
DAS, SUDHI RANJAN
HASAN, GHULAM

CITATION:
1954 AIR 397 1954 SCR 1229
CITATOR INFO :
RF 1956 SC 391 (22)
D 1961 SC 181 (5)

ACT:
Criminal Procedure Code (Act V of 1898), s. 476B-Whether appeal competent to the Supreme Court from an order of Division Bench of High Court directing the filing of a complaint for perjury.

HEADNOTE:
Held that an appeal is competent to the Supreme Court under s. 476B of the Code of Criminal Procedure from an order of a Division Bench of a High Court directing the filing of a complaint for perjury.
Also held that the simultaneous prosecution of civil and criminal proceedings regarding the same matter is likely to embarrass the accused and so ordinarily, and in the absence of special circumstances, the criminal proceedings should be given precedence and the civil proceedings should be stayed pending the termination of the criminal.

JUDGMENT:
CRMINAL APPELLATE JURISDICTION: Case No. 281 of 1951.
Appeal under article 132 of the Constitution of India from the Judgment and Order dated the 1st August, 1951, of the High Court of Judicature at Madras in Criminal Miscellaneous Petitions Nos.1261 and 1263 of 1951.
K. Rajah Iyer (R. Ganapathy Iyer and M. S. K. Aiyangar, with him) for the appellant/petitioners,
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H.J. Umrigar and S., Subramaniam for respondent No. 2.
1954. March 18. The Judgment of the Court was delivered by
BOSE J.-The question in this case is whether an appeal lies to this court under section 476B of the Criminal Procedure Code from an order of a Division Bench of a High Court directing the filing of a complaint for perjury.

Two persons, Govindan and Damodaran, filed petitions under section 491 of the Criminal Procedure Code for release claiming that they had been illegally detained by two Sub-Inspectors of Police who are the appellants before us. Govindan said he was being detained by one Sub-Inspector and Damodaran said he was being detained by the other. Both the Sub Inspectors said that the petitioners were not in their custody. The first Sub-Inspector, who was concerned with Govindan, said that Govindan had never been arrested by him and had not been in his custody at. any time. The other denied that Damodaran was in his custody. He admitted that he had arrested him at one time but said that he had been released long before the petition. Each swore an affidavit in support of his return. In view of this conflict between the two_ sets of statements the High Court directed the District Judge to make an enquiry.

Considerable evidence was recorded and documents were filed and the District Judge reported that in his opinion the statements made by the two Sub-Inspectors were correct. The High Court disagreed and, after an elaborate examination of the evidence, reached the conclusion that the petitioners were telling the truth and not the Sub-Inspectors. The petitioners were however regularly arrested after their petitions and before the High Court's order; one was released on bail and the other was remanded to jail custody by an order of a Magistrate. Accordingly their petitions became infructuous and were dismissed.

After this, the petitioners applied to the High Court under section 476 of the Criminal Procedure Code and

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asked that the Sub-InsPectors be prosecuted for perjury under section 193, Indian Penal Code. The applications were granted and the Deputy Registrar of the High Court was directed to make the necessary complaints.

The Sub-Inspeetors thereupon asked for leave to appeal to this court. Leave was refused on the ground that no appeal lies, but leave was granted under article 132 as an interpretation of articles 134 (1) and 372 of the Constitution was involved. The Sub Inspectors have appealed here against that order as also against the order under section 476. In addition, as an added precaution, they have filed a petition for special leave to appeal under article 136 (1).

The first question we have to decide is whether there is a right. of appeal. That turns on the true meaning of-section 476B of the Criminal Procedure Code read with section 195 (3). The relevant portion of the former reads thus :-

"Any person against whom a complaint has been made" [under section 476] "may appeal to the court to which such former court is subordinate within the meaning of section 195 (3)....."

The latter section reads-

"For the purpose of this section, a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from the appealable decrees or sentences of such former court....."

The rest of the section does not concern us.

Two things are evident. First, that a right of appeal has been expressly conferred by section 476B provided there is a higher forum to which an appeal can be made; and second that the appellate forum has been designated in an artificial way. The appeal lies to the court to which the former court is subordinate within the meaning of section 195 (3). But "sub. ordinate" does not bear its ordinary meaning. It is used as a term of art and has been given a

special meaning by reason of the definition in section 195 (3): a fiction has been imposed by the use of the word "deemed"., We have accordingly next to examine the content of the fiction.

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The section says that the court making the order under section 476 shall be deemed to be subordinate to the court

(a) to which appeals ordinarily lie

(b) from the appelable decrees or sentences of such former court.

Now the former court in this case is a Division Bench of the High Court. The only court to which an appeal ordinarily lies from the appealable decrees and sentences of a Division Bench of a High Court is this court. Therefore, a Division Bench of a High court is a court "subordinate" to this court within the meaning of section 195 (3); accordingly an appeal lies to this court from an order of a Division Bench under section 476..

It was contended that there is no ordinary right of appeal to this court and that such rights as there are those expressly conferred by the Constitution in a very limited and circumscribed set of circumstances, therefore, such appeals as lie to this court cannot be said to lie "ordinarily".

We do not agree. Such an argument concentrates attention on the word "ordinarily" and ignored the words "appealable decrees or sentences". Before we can apply the definition we have first to see whether there is a class of decrees or sentences in the court under consideration which are;at all open to appeal. If there are not, the matter- ends and there is no right of appeal under section 476.B. If there are, then we have to see to which court those appeals will "ordinarily" lie. It is evident that the only court to which the appealable decrees and sentences of a Division Bench of a High Court can lie is the Supreme Court. There is no other court to which an appeal can be made. It follows that is the ordinary course in the case of all appealable decrees and sentences and that consequently this is the court to which such appeals will ordinarily lie.

As there is a right of appeal we have next to consider the matter on its merits and there the only relevant consideration is whether "it is expedient in the interests of justice" that an enquiry should be

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made and a, complaint filed. That involves a careful balancing of many factors.

The High Court has scrutinised the. evidence minutely and has disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is matter here which requires investigation in a criminal court and that it is expedient in the interests of justice to have it enquired into. We have not examined the evidence for ourselves and we express no opinion on the merits of the respective cases but after a careful reading of the judgment, of the High Court and the report of the District Judge we can find no reason for interfering with the High Court's discretion on that score. We do not intend to say more than this about the merits as we are anxious not to prejudge or prejudice the case of either side. The learned Judges of the High Court have also very -rightly observed in their order under section 476 that they were not expressing any opinion on the guilt or innocence of the appellants.

We were informed at the hearing that two further sets of proceedings arising out of the same facts are now, pending against the appellants. One is two civil suits for damages

for wrongful confinement. The other,is two criminal prosecutions under section 344, Indian Penal Code, for wrongful confinement, one against each Sub-Inspector. It was said that the simultaneous prosecution of these, matters will embarrass the accused. But after the hearing of the appeal we received information that the two criminal prosecutions have been closed with liberty to file fresh complaints when the papers are ready, as the High Court records were not available on the application of the accused As these prosecutions are not pending at the moment, the objection regarding them does not arise but we can see that the simultaneous prosecution of the present criminal proceedings out of which this appeal arises and the civil suits will embarrass the accused. We have therefore to determine which should be stayed.

As between the civil and the criminal proceedings we are of the opinion that the criminal matters should

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be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule ban. be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things glide till memories have grown too dim to trust. This,however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so hear its end as to make it inexpedient to stay it in order to give precedence to a prosecution order of under section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

The result is that the appeal fails and is dismissed but with no order about costs. Civil Suits Nos. 311 of 1951 to 314 of 1951, in the Court of the Subordinate Judge, Coimbatore, will be stayed till the conclusion of the prosecution under section 193, Indian Penal Code. As the plaintiffs there are parties here, there is no difficulty about making such an order.

The petition for special leave is dismissed.

Appeal dismissed.

Petition for special leave dismissed,

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