rights of the parties and if it does not, it is not final even though it may decide a vital issue in the case.

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So in every case the Court has to see whether the rights of the parties are finally determined by a decision so that the answer to the first question in both cases is that the mere fact that the Court refuses to issue a writ or direction under Article 226 does not take it out of the definition of the words "judgment, decree or final order" but it will depend upon the facts, circumstances and the nature of decision in each case.

Kapur, J.

I have already answered the second question referred to this Bench and that also cannot be answered by a simple yes or no. Its answer like that to the first question will depend on the facts of each case.

BHANDARI, C.J.—I agree.

Bhandari, C.J.

KHOSLA, J.—I have nothing to add to the order proposed by Kapur, J.

Khosla, J.

FULL BENCH

CRIMINAL REVISIONAL

Before Falshaw, Passey and Mehar Singh, JJ.

HAKIM RAI,—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 236 of 1955.

Jan., 4th 1957

Code of Criminal Procedure (V of 1898)—Sections 476 and 476B—Civil Court ordering the filing of complaint under section 476—Appeal against the order dismissed by the Court to which the Civil Court is subordinate—Whether the revision against the order of appellate Court be a revision under Section 115 Civil Procedure Code or under 439 Criminal Procedure Code.

Held, that an appeal under section 476B of the Criminal Procedure Code is entirely a creature of and governed by the provisions of that Code and has nothing to do with the

provisions of the Civil Procedure Code, although it may be decided by a Civil Court. A Court deciding such an appeal, whether it is a Criminal, Civil or Revenue Court, is acting as a Criminal Court under the provisions of the Criminal Procedure Code and there can be no revision under section 115 of the Civil Procedure Code against the decision in a Criminal appeal, which must logically be governed by the provisions of section 439, Criminal Procedure Code. Any Court, subordinate to the High Court, whether it is Criminal, Civil or Revenue Court, when it is deciding an appeal under section 476B must be deemed to be an inferior Criminal Court within the meaning of the opening words of section 435, Criminal Procedure Code.

Bishan Singh v. *Amritsaria* (1), *Dhanpat Rai* v. *Balak Ram* (2), *Emperor* v. *Bhatu Sadu Mali* (3), relied upon, *Bhup Kumar and another* (4), *Emperor* v. *Har Prashad Dass* (5) *E. P. Kumaravel Nadar* v. *T. P. Shamuga Nadar and others* (6), *Deonandan Singh* v. *Ramlakhan Singh and another* (7), not followed.

Case referred by Hon'ble Mr. Justice Kesho Ram Passey, the then Chief Justice of the erstwhile Pepsu High Court, on 27th September, 1955, to the full Bench and the same was sent to the Single Judge for final decision on merits.

Petition under section 439 of Criminal Procedure Code for revision of the order of Sh. Sant Ram Garg, District Judge, Kapurthala, dated the 9th July, 1955, affirming that of Sh. Joginder Singh, Sub-Judge, II Class, Kapurthala, dated 28th March, 1955, ordering filing of complaint under sections 193/471 Indian Penal Code.

DARA SINGH and ANANT RAM, for Petitioners.

K. L. JAGGA, for Advocate-General and ONKAR DASS, Assistant Advocate-General, for Respondents.

ORDER.

Passey, J. PASSEY, J.—The Sub-Judge, 2nd Class, Kapurthala, has filed a complaint against Hakim Rai petitioner under sections 193 and 471 I.P.C. Against that complaint and incidentally the order whereby it was

(1) 5 P.R. (Cr.) 1908.
(2) A.I.R. 1931 Lah. 761 (F.B.)
(3) A.I.R. 1938 Bom. 225 (F.B.).
(4) I.L.R. 26 All. 249.
(5) I.L.R. 40 Cal. 477.
(6) A.I.R. 1940 Mad. 465.
(7) A.I.R. 1948 Pat. 225.

decided to prosecute him, the petitioner, as permitted by section 476 Cr. P.C., took an appeal to the District Judge, Kapurthala, who rejected the same on 9th July, 1955. Hakim Rai has now come up in revision under section 439 Cr. P.C. against which a preliminary objection is raised by the Assistant Advocate-General that against an order made by the District Judge, whose Court is a Civil Court, a revision can, if at all, lie under section 115 C.P.C. and not under section 439 Cr. P.C. His contention is that although the Sub-Judge had in deciding the application of the opponent of Hakim Rai that he (Hakim Rai) be prosecuted for perjury and forgery, to resort to the procedure laid down in section 476 Cr. P.C., he was not for that reason converted into a Criminal Court. According to the learned Assistant Advocate-General the Sub-Judge continued to be a Civil Court against whose act of filling the complaint an appeal lay to the District Judge and not to a Sessions Judge. (*See* section 476-B Cr. P.C.) Shri Onkar Dass has stressed that it is the kind of the Court initiating proceedings under section 476 Cr. P.C. that would determine the revisional jurisdiction of the High Court and not the way or procedure following which he has disposed of certain proceedings. He has cited *Deonanadan Singh* v. *Ram Lakhan Singh* (1), *Emperor* v. *Har Prasad Dass* (2), *Emperor* v. *Karri Venkama Patrudu* (3), *Abdul Haq* v. *Sheo Ram* (4), *Bholanath Achheram Puran Kurmi* (5), and (*Mt.*) *Radharani Dassaya* v. *Purma Chandra Sarkar* (6). On the other hand, Shri Anant Ram has cited certain authorities taking the opposite view that as the Civil Court in such cases moves and holds enquiry under the provisions of an enactment regulating procedure in criminal cases, it should be the Criminal

(1) A.I.R. 1948 Pat. 225 (F.B.).
(2) I.L.R. 40 Cal. 477 (F.B.)
(3) 17 Cr. L.J. 515 (F.B.).
(4) 28 Cr. L.J. 296.
(5) A.I.R. 1937 Nag. 91.
(6) A.I.R. 1930 Cal. 721.

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Law under which action against a person is taken that should decide the revisional jurisdiction of the High Court. In the cases on which he relies, viz., *Hari Ram* v. *Emperor* (1), *Dhanpat Rai* v. *Balak Ram* (2), *Emperor* v. *Bhatu Sadu* (3), *Dr. Valiram Lilaram* v. *Govindram Jethanand Khatri* (4), Abdul Hussain *Alibai* v. *Mohamed Ibrahim Maistry* (5), and *In re. D. S. Raju Gupta* (6). It has has been held that in such cases the High Court when moved in revision is moved under section 439, Cr. P.C. There is no ruling of this Court on the point and the pronouncements of the High Courts in India are in conflict. The question raised is of great importance and is likely to arise in other cases. I would, therefore, refer it to a Full Bench of this Court. The question to be decided would be—

> "Where a Civil Court of original jurisdiction has taken proceedings against a person under section 476, Cr. P.C., and filed a complaint against him and an appeal against that complaint has been dismissed by the Court to which such original Court was subordinate, as contemplated by section 476-B, Cr. P.C., would a revision against the order of the appellate Court be a revision in a Civil case under section 115, C.P.C. or a revision on the Criminal side under section 439, Cr. P.C.?"

JUDGMENT

Falshaw, J.

FALSHAW, J.—The question which has been referred to the Full Bench by my learned brother Kesho Ram Passey, J., at the time when he was Chief Justice in Pepsu High Court, is—

> "Where a Civil Court of original jurisdiction has taken proceedings against a person

(1) A.I.R. 1929 Lah. 676.
(2) A.I.R. 1931 Lah. 761.
(3) A.I.R. 1938 Bom. 225 (F.B.).
(4) A.I.R. 1941 Sind. 217.
(5) A.I.R. 1937 Rangoon 526.
(6) A.I.R. 1939 Mad. 472.

under section 476 Cr.P.C. and filed a complaint against him and an appeal against that complaint has been dismissed by the Court to which such original Court was subordinate, as contemplated by section 476-B Cr. P.C., would a revision against the order of the appellate Court be a revision in a civil case under section 115 C.P.C., or a revision on the criminal side under section 439 Cr.P.C.?"

The case has arisen out of the fact that Hakim Rai petitioner was ordered to be prosecuted under section 193, Indian Penal Code, by a Sub-Judge of Kapurthala, and his appeal against that order has been dismissed by the District Judge at Kapurthala.

The relevant provisions of law relating to these matters are as follows. Sub-section (1) of section 195 of the Criminal Procedure Code, reads—

"No Court shall take cognizance—

(a) * * * * *
* * * * *

(b) of any offence punishable under any of the following sections of the same Code (i.e., Indian Penal Code), namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c) * * * * *

(d) * * * * *

Sub-section (3) reads—

"For the purposes of this section, a Court shall be deemed to be subordinate to the Court

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to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate.

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate, and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

Section 476(1) reads—

"When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same

to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

* * * * * ".

* * * *

* * *

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

* * * * *

* * *

* *

We are not concerned with section 476 A, but section 476 B reads—

"Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476, or section 476-A, 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."

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The relevant provisions regarding the revisional powers of the High Court under the Criminal Procedure Code are section 435(1) and section 439(1). The first of these reads—

> "The High Court or any Sessions Judge or District Magistrate, or any Sub-Divisional Magistrate empowered by the Provincial Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence or order be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

The latter sub-section reads—

> "In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429."

The revision powers of the High Court on the Civil side are contained in section 115 of the Civil Procedure Code as follows —

> "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—
>
> (a) to have exercised a jurisdiction not vested in it by law, or
>
> (b) to have failed to exercise a jurisdiction so vested, or
>
> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,
>
> the High Court may make such order in the case as it thinks fit."

It will be seen that the revisional powers of the High Court under the Civil Code are very much more restricted than its revisional powers under the Criminal Code, under which it can review the correctness, legality or propriety of any order, whereas under the Civil Code it is almost precluded from going into the merits of the case, and in many cases is even precluded from correcting legal errors. It seems in the present case that it is the State, which was the respondent in Hakim Rai's appeal in the Court of the District Judge against the order for his prosecution under section 193, and which is again the respondent in this Court, which has raised the objection that the Court must treat the revision petition as one under section 115 C.P.C. and is, therefore, to all intents and purposes, precluded from going into the merits of the challenged order.

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There is no doubt that there has been a sharp cleavage of opinion among the High Courts on this matter. The old Punjab Chief Court and later the Lahore High Court have taken the view that even when the criminal orders have been passed by Civil Courts the revision petition in the High Court is governed by the Criminal Procedure Code. The point came before a Full Bench consisting of Sir William Clark, C.J., and Chatterji and Rattigan, JJ., in *Bishen Singh* v. *Amritsaria* (1), in which it was held unanimously that the Chief Court as a Court of revision is competent under section 439 of the Code of Criminal Procedure to revise an order passed under the provisions of section 195 by a Divisional Judge revoking the sanction for prosecution granted by a District Judge. It seems that after there was some amendment made in the Criminal Procedure Code, a similar matter was again referred to a Full Bench in *Dhanpat Rai* v. *Balak Ram* (2), and it was held by Tek Chand, Dalip Singh and Abdul Qadir JJ., that where a Court refuses to make a complaint and the appellate Court accepts the appeal, revision lies to the High Court under section 439, Criminal Procedure Code, in all cases whether the Court be civil, criminal or revenue. It is, however, to be noted in this case that Dalip Singh, J., who delivered one of the judgments, seems to have been influenced by the principle of *stare decisis* and the long practice of the Court rather than because he was convinced by the argument, and he has indicated that if the matter had been *res integra* he would have been inclined to accept the view expressed by other High Courts.

The other High Court which has taken the same view is the High Court of Bombay in the case *Emperor* v. *Bhatu Sadu Mali*, (3). In this case

(1) 5 P.R. (Cr.) 1908.
(2) A.I.R. 1931 Lah. 761.
(3) A.I.R. 1938 Bom. 225, (F.B.).

Beaumont C.J., Broomfield and Wassoodew, JJ., have expressed the following view—

> "Applications in revision from an order under section 476-B, Criminal Procedure Code, by a Civil Court to High Court, should be heard and decided by the High Court in accordance with the provisions of section 439, Criminal P.C. An order made by a Civil Judge under section 476-B, is an order made by a Court exercising criminal powers and as such, power to revise such order arises under section 439, Criminal P.C., and not under section 115, Civil P.C. Not only does the procedure relating to criminal appeals apply to a proceeding under section 476-B, but any order made under that section can be revised by the High Court under section 439 and the provisions of section 115, Civil P.C., do not apply to such a case. Once the matter has been brought to the attention of the High Court, the High Court can act in revision under section 439, Criminal P.C., whatever the method adopted in bringing the matter to its attention."

On the other hand a contrary view has been taken by the High Court of Allahabad in the petition of *Bhup Kunwar and another* (1), with Sir John Stanley, C.J., and Blair, J., on one side and Banerji, J., dissenting. A similar view is expressed in *Emperor* v. *Har Prasad Dass* (2), by Harington, C.J., Stephen, Mookerjee and Holmwood, JJ., in *E.P. Kumaravel Nadar* v. *T.P. Shanmuga Nadar and others* (3), by Leach, C.J., and Krishnaswami Ayyangar and King, JJ., and, finally in *Deonandan Singh* v. *Ramlakhan*

(1) I.L.R. 26 All. 249.
(2) I.L.R. 40 Cal. 477.
(3) A.I.R. 1940 Mad. 465.

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Singh and another (1), by Agarwala, C.J., and Manohar Lall and Ramaswami, JJ.

Although a number of arguments have been used in support of this view, the basic argument underlying all these decisions, and one which is elaborated upon in all the above-mentioned judgments, is that the words used in the opening of section 439 of the Criminal Code. "In the case of any proceeding the record of which has been called for" must be strictly construed with reference to the opening words of section 435 "The High Court.....may call for and examine the record of any proceeding before any inferior Criminal Court....." In other words, the only records which can be scrutinised for action under section 439 are those which have been sent for in exercise of the Court's powers under section 435, and these are the only records of inferior Criminal Courts, and neither Civil nor Revenue Courts subordinate to the High Court are inferior Criminal Courts. It cannot be denied that there is a great deal to be said for this view.

At the same time it seems to me that there is also a great deal to be said for the views of the Lahore and Bombay Courts. In the first place it seems to me that the offence of perjury, or forging documents or using forged documents, is of the same nature, and equally serious, whether it is committed in the course of or in relation to a criminal case or a case tried by a civil or revenue Court, and indeed the only distinction which seems to be drawn regarding any of these offences in the I.P.C., itself under which such offences are punishable is in section 194, Indian Penal Code, which permits the imposing of a heavier sentence for the offence of giving or fabricating false evidence with intent to cause any person to be convicted of a capital charge. The position of a person whose prosecution

(1) A.I.R. 1948 Pat. 225.

has been ordered by a Court under one of the offences mentioned in section 195(b) or (c) of the Criminal Procedure Code appears to me to be the same whether the Court which has ordered his prosecution is a criminal, civil or revenue Court. It would thus appear *prima facie* to be unfair and unjust that the cases of such persons should be treated differently when they come to the High Court in revision, and indeed it would seem that one class out of these persons would have no remedy at all in the High Court if the views of Allahabad, Madras, Calcutta and Patna High Courts are correct, since according to this view a person whose prosecution has been ordered by a Criminal Court can come to the High Court and have his case dealt with under section 439 of the Criminal Procedure Code, while a person whose prosecution has been ordered by a Civil Court can at least come to the High Court under section 115, Civil Procedure Code, whereas a person whose prosecution has been ordered by a Revenue Court has no remedy at all in the High Court, but can only go to the Commissioner or Financial Commissioner who, in my opinion, would not entertain any such applications if they arose on the ground that they were criminal matters. Indeed I venture to think that if any case of this kind had never arisen in a Revenue Court and been brought in some way or other to the notice of the High Court, the view of these High Courts would have been found to require reconsideration.

Such a situation indeed would seem to me to be a contravention of the provisions of Article 14 of the Constitution, which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. As I have said once a person has been ordered to be prosecuted for one of the offences in question, his position would be the same whatever the kind of Court which has ordered his prosecution, and it would

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seem to me to be a denial of equal rights under the law if a person whose prosecution has been ordered by a criminal Court is entitled to ask the High Court to review the correctness, legality and propriety of the order, while a man whose prosecution has been ordered by a Civil Court can only have the order reviewed within the narrow limits of section 115, Civil Procedure Code, and finally a man whose prosecution has been ordered by a revenue Court has apparently no remedy at all in the High Court. Such a discrimination could not in my opinion be regarded as reasonable, but at the same time it must be pointed out that it is not possible to lay one's finger on any particular provision of any of the statutes involved and say that that particular provision offends against Article 14. It is in fact clear that the whole matter depends on the interpretation placed on the relevant statutes by the High Courts, between which there is a division of opinion. In such a matter I am very strongly of the opinion that the statutes ought to be interpreted by the High Courts in such a case as not to offend against the equality of treatment guaranteed by Article 14 of the Constitution.

It is in my opinion possible to do this without placing any undue strain on the language of the relevant provisions of law. The way to this conclusion is pointed by the judgment of the Bombay High Court referred to above and also by a decision of the Patna High Court subsequent to the Full Bench decision cited above. The foundation is the view that an appeal under section 476 B of the Criminal Code is a criminal appeal whatever the nature of the Court which decides it. The matter is discussed by Beaumont, C.J., in the following passage—

> "The expression 'the Court to which appeals ordinarily lie' must I think mean the Court to which an appeal would lie in an ordinary case from the Civil, Revenue or Criminal

Court in question. Clearly it cannot mean the Court to which an appeal ordinarily lies under section 476 because no appeal does lie under that section except under section 476-B. The view which has prevailed in the High Courts of Calcutta, Madras and Allahabad is that the character of the Court which hears the appeal under section 476-B is governed by the character of the Court which lodges the complaint, that is to say, if the complaint is lodged as here by a Civil Court, the Court hearing the appeal must be regarded as a Civil Court. That is not expressly provided by section 476-B. The reference to section 195(3) only determines the forum to which the appeal lies, and does not in terms determine the character of such Court. The High Court of Calcutta in 59 Cal. 68 and the High Court of Madras in 57 Mad. 177 appears to hold that although the Court which hears the appeal under section 476-B is a Civil Court, nevertheless its procedure in dealing with the appeal is governed by the Criminal Procedure Code, and both those Courts have held that the powers conferred on a Criminal Court of appeal by section 423, Criminal P.C., can be exercised in an appeal under section 476-B. With all respect to those Courts, that seems to me to be somewhat illogical. If the Court hearing the appeal is a Civil Court it seems to me that its procedure must be governed by the Civil Procedure Code, and if the Court hold that the procedure is governed by the Criminal Procedure Code, that must be on the basis that the Court is acting as a Criminal Court, and if it is acting as a Criminal Court, I do not see why the

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powers of revision should not be those conferred by section 439, Criminal P.C. and not those conferred by section 115, Civil Procedure Code. There is no provision in section 476-B, such as we find in section 486, Criminal P.C., enacting that the provisions of Chapter 31 are to be acted upon. Chapter 31 deals with the appellate powers. If one had got such a provision as that, it would be possible to hold that the powers conferred upon an appellate Court by Chapter 31, Criminal P.C., apply, but the powers in revision conferred by Chapter 32 do not apply. But in the absence of any such provision, I fail to see why the provisions of one Chapter more than the other should apply to a case arising under section 476-B, if the Court hearing the appeal is a Civil Court".

In *Dhup Narain Singh* v. *The State* (1), a complaint had been filed by the District Judge under section 476, Criminal Procedure Code, against Dhup Narain Singh under section 197, 199 and 471, Indian Penal Code, for offences alleged to have been committed in connection with a Probate Case. The Court of appeal under section 476-B was thus the High Court itself, and the question arose in the High Court as to whether the appeal was a civil appeal or a criminal appeal. A Full Bench consisting of Imam, Rai and Choudhary JJ., held that an appeal under section 476-B from an order passed under section 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, apply to such an appeal. In a paragraph occurring towards the end of this judgment

(1) A.I.R. 1954 Pat. 76

it is stated that this opinion is not in any way inconsistent with the decision of the Full Bench in *Deonanadan Singh* v. *Ram Lakhan Singh* (1), but with the utmost respect I am of the opinion that the decision that an appeal under section 476-B is a criminal appeal and not a civil appeal virtually removes the basis of the earlier decision.

As was rightly pointed out, an appeal under section 476-B of the Criminal Code is entirely a creature of, and governed by, the provisions of that Code, and has nothing to do with any provisions of the Civil Procedure Code, and if the decision is correct that such an appeal is a criminal appeal and not a civil appeal, although decided by a Civil Court, and I am of the opinion that this is the correct view, it does not seem to me that it makes any difference whether the appeal comes to the High Court from an order of the District Judge or whether it goes to the District Judge from the order of a subordinate civil Court. I am, therefore, of the opinion that a Court deciding such an appeal, whether it is a criminal, civil or revenue Court, is acting as a criminal Court under the provisions of the Criminal Procedure Code and it does not seem to me possible that there can be any revision under section 115 of the Civil Procedure Code against the decision in a criminal appeal, which must logically be governed by the provisions of section 439 of the Criminal Procedure Code. I, therefore, consider that any Court subordinate to the High Court whether it is criminal, civil or revenue Court, when it is deciding an appeal under section 476-B, must be deemed to be an inferior criminal Court within the meaning of the opening words of section 435.

For these reasons I am of the opinion that the answer to the question referred to the Full Bench should be that where a Civil Court of original jurisdiction has taken proceedings against a person under section 476, Criminal Procedure Code, and filed a

(1) A.I.R. 1948 Pat 225.

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complaint against him and an appeal against that complaint has been dismissed by the Court to which such original Court was subordinate, as contemplated by section 476-B, Criminal Procedure Code, a revision against the order of the appellate Court is a revision on the criminal side under section 439, Criminal Procedure Code and not a revision in a civil case under section 115, Civil Procedure Code.

Passey, J.

PASSEY, *J.*—I concur.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

JUDGMENT

Passey, J.

PASSY, J.—This is a revision by Hakim Rai under section 439, Cr. P.C. He had brought a suit for the recovery of Rs. 500 against the firm Harnam Das-Lagga Mal of Kapurthala on 10th August, 1948, in the Court of the Sub-Judge 1st Class, Hoshiarpur, and along with the plaint he had produced a letter, Exhibit DK, alleged to have been written to him at Hoshiarpur by the defendant. The defendant resisted the suit and contended *inter alia* that the Court had no jurisdiction to try it. That objection found favour with the trial Sub-Judge and on 28th December, 1950 the plaint was returned to the plaintiff to be filed in a Court of competent jurisdiction. On 23rd January, 1951, Hakim Rai filed that plaint in the Court of the Subordinate Judge 2nd Class, Kapurthala. On the request of the defendant Exhibit DK was sent for from the Sub-Judge's Court at Hoshiarpur. The plaintiff appeared as his own witness and stated that Biru Ram was not a partner of his firm and with regard to a letter, Exhibit DA, he said that it had not been written by him to the defendant. His suit was dismissed on 29th December, 1952, and his appeal was dismissed in default by the District Judge on 6th June, 1953. His application to have the appeal revived failed on 29th October, 1953.

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On 2nd December, 1953, the defendant submitted an application under section 476 Criminal Procedure Code to the Subordinate Judge 2nd Class, Kapurthala, alleging that the plaintiff had deliberately given false evidence with regard to Exhibit DA and had used in Court the forged letter Exhibit DK knowing it to be forged and prayed that he should be prosecuted for offences under sections 193 and 471, I.P.C. The learned Subordinate Judge (Sardar Raghbir Singh) formed the opinion that it was expedient in the interest of justice to enquire into those allegations and started an enquiry and on its conclusion recorded the finding on 30th June, 1954, that the two offences appeared to have been committed and consequently made an order that a complaint under those sections be laid against Hakim Rai. After that order had been made S. Raghbir Singh was transferred and was succeeded by S. Joginder Singh. At this stage it is necessary to mention that in addition to being a Subordinate Judge of the 2nd Class S. Raghbir Singh was a Magistrate of the 1st Class for the Kapurthala District. His successor S. Joginder Singh also exercised those civil and criminal powers. On 10th August, 1954, S. Joginder Singh filed the complaint as contemplated by S. Raghbir Singh's order of 30th June, 1954, in the Court of the Additional District Magistrate, Kapurthala, describing himself as Magistrate 1st Class Kapurthala. It was argued on behalf of the defence that the Magistrate 1st Class had no *locus standi* to file the complaint which could only be done by the Sub-Judge 2nd Class, as the proceedings under section 476, Criminal Procedure Code, had been taken for offences committed in relation to a civil suit decided by the Sub-Judge. The objection succeeded and on that technical ground alone the complaint was dismissed by the Additional District Magistrate on 28th March, 1955. Before the complaint had been dismissed, Hakim Rai had preferred an appeal in the Court of the District Judge, Kapurthala, against that

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portion of the order of S. Raghbibr Singh made on 30th June, 1954, which said that offences under sections 471 and 193, I.P.C., appeared to have been committed. The District Judge held the appeal to be statute barred and dismissed it on 5th February, 1955. It would look that Hakim Rai did not come to the High Court further because the complaint itself filed on 10th August, 1954, had been dismissed on 28th March, 1955. The second phase of Hakim Rai's prosecution started on 11th May, 1955, when S. Joginder Singh now describing himself as Subordinate Judge 2nd Class Kapurthala brought a fresh complaint against him under sections 471 and 193, I.P.C. Hakim Rai, as permitted by section 476-B, filed an appeal against that complaint in the Court of the District Judge but the same was dismissed in limine on two grounds first that it was time-barred and the second that the appellant had not appended to the memorandum of appeal a copy of the order of S. Raghbir Singh, dated 30th June, 1954. The appeal was held to be time-barred because it has not been presented within the precribed time to be computed from the first complaint filed by S. Joginder Singh on 10th August, 1954.

On the point of limitation the learned District Judge fell into an obvious error. He failed to consider that the complaint, dated 10th August, 1954, had been dismissed by the Additional District Magistrate on 28th March, 1955. It was evidently the filing of the second complaint on 11th May, 1955, that was attacked in appeal by Hakim Rai and, therefore, by no stretch of imagination or reasoning could it be said that the time for appealing had begun to run from the filing of the first complaint that had stood dismissed on 28th March, 1955. As said above the second complaint had been filed on 11th May, 1955, and the accused informed of it on 14th June, 1955. Hakim Rai applied for a copy of that complaint on

22nd June, 1955, and the same was ready and delivered to him on 23rd June, 1955. He filed the appeal in the District Judge's Court on 23rd June, 1955, within about a week of his knowledge that the complaint had been filed he preferred his appeal and there was no rule or law that he was to be presumed to have known that the complaint had been filed in the trial Court on the date it was filed. It was an appeal before the District Judge arising out of a criminal proceeding for filing which the Criminal Procedure Code or the Indian Limitation Act do not clearly or specifically prescribe any period. In consonance with the principles of natural justice, therefore, time in a case like the present would be taken to start from the day of the appellant's knowledge of the filing of the complaint. In any case he would be entitled to extension of time on the score of sufficient cause for his inability to file the appeal in time if any specific period is to be supposed to govern the appeal. I would consequently hold that the appeal of Hakim Rai had been wrongly thrown out as barred by limitation. The second ground of dismissal is equally unsustainable. Section 419, Criminal Procedure Code, no doubt requires that every appeal shall unless the Court to which it is presented otherwise directs be accompanied by a copy of the judgment or order appealed against. Hakim Rai had stated in the memorandum of appeal that he had not yet received the copy of the order of S. Raghbir Singh, dated 30th June, 1954, and that he would file it when received. That showed that the necessary copy had been applied for. With a note of the office with regard to the ground for not filing the copy, the memorandum was put up for orders of the District Judge on 9th September, 1955. The learned District Judge dismissed the appeal on that date without giving the appellant time to produce the required copy that had been applied for and for producing which time had not yet run out. It was represented to the learned District Judge that an

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application for the copy had been submitted to the Sub-Judge 2nd Class Kapurthala, and that was not disbelieved but taking that application to have been made to a wrong authority the request for time was discarded. The learned District Judge appeared to think that the application for the copy must have been made to the officer incharge of the Record Room and not to the Sub-Judge. He should have allowed the appellant to produce the copy irrespective of the quarter he had approached for it as the statutory time for producing it had not run out. I consequently accept the revision, quash the order of the learned District Judge, dated 9th July, 1955 and direct that the copy of the order of S. Raghbir Singh, dated 30th June, 1954, will be allowed to be produced by Hakim Rai and his appeal decided on merits.

APPELLATE CIVIL

Before Falshaw, J.

SETH RADHE LAL,—*Appellant*

versus

LADLI PARSHAD,—*Respondent*

Erecution First Appeal No. 24-D of 1956.

1957

Jan., 7th

Transfer of Property Act (IV of 1882)—Section 100—Decree creating a charge—Such decree whether comes within the scope of section 100—Charged property, whether can be sold in execution of the decree or recourse must be had to a separate suit to enforce the charge.

Res judicata—*General principles of—Whether apply to execution proceedings.*

Held, that a charge created by a decree does not come within the scope of Section 100 of Transfer of Property Act as it is neither a charge created by the act of the parties nor by operation of law, so when property has been made subject to a charge in a decree, the charged property