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The Bullion &  
Grain Exchange  
Ltd. & Others

v.

The State of  
Punjab

Das Gupta J.

respondent under this Act are also void and unconstitutional, and that a mandamus do issue directing the respondent to allow the petitioners to carry on the business of forward contracts or as commission agents for forward contracts unrestricted by the provisions of the said Punjab Forward Contracts Tax Act No. VII of 1951 and the rules thereunder and not to enforce the provisions of this Act and the rules.

The appellants will get their costs in this Court as also in the court below.

*Appeal allowed.*

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September 14.

NARAIN DAS

v.

THE STATE OF UTTAR PRADESH

(JAFER IMAM, A. K. SARKAR and RAGHUBAR  
DAYAL, JJ.)

*Appeal—Forum—Single Judge of High Court exercising civil jurisdiction refusing to file complaint—Appeal, if lies to Supreme Court—Code of Criminal Procedure, 1898 (V of 1898), ss. 195 and 476-B.*

During the pendency of a civil writ petition in the Allahabad High Court one N moved an application under s. 476, Code of Criminal Procedure, for making a complaint under s. 193, Indian Penal Code, against T. A single Judge who was seized of the case rejected the application. Thereupon N presented an appeal against the order of rejection of his application before the Supreme Court under s. 476-B, Code of Criminal Procedure.

*Held*, that the appeal did not lie to the Supreme Court but that it lay to the Appellate Bench of the High Court. The decrees of a single Judge of the High Court exercising civil jurisdiction were ordinarily appealable to the High Court under cl. 10 of the Letters Patent of the Allahabad High Court read with cl. 13 of the U. P. High Courts (Amalgamation) Order, 1948, and as such the Court constituted by the single Judge was a court subordinate to the Appellate Bench of the High Court within the meaning of s. 195(3) of the Code.

*M. S. Sheriff v. The State of Madras*, [1954] S.C.R. 1144, distinguished.

**CRIMINAL APPELLATE JURISDICTION :** In the matter of maintainability of appeal in the Supreme Court of India.

*Mohan Lal Agarwala*, for the petitioner.

*G. C. Mathur* and *C. P. Lal*, for the respondent No. 1.

1960. September 14. The Judgment of the Court was delivered by

**RAGHUBAR DAYAL J.**—Narain Das filed a civil writ petition under Art. 226 of the Constitution in the High Court of Judicature at Allahabad. He subsequently moved an application under s. 476 of the Code of Criminal Procedure (hereinafter called the Code) for making a complaint under s. 193, Indian Penal Code, against Phanish Tripathi alleging that a certain statement in an affidavit filed by the latter was false. The learned Judge who heard this application, holding that the appellant had not succeeded in showing that any portion of the affidavit of Tripathi filed on May 14, 1959, was false, dismissed the same. It is against this order of the learned Judge of the High Court that Narain Das has filed this memorandum of appeal under s. 476B of the Code. The Registry has submitted the memorandum of appeal with a report for determining the question whether the appeal is competent in this Court.

Section 476 of the Code is to be found in Ch. XXXV which is headed 'Proceedings in case of certain Offences Affecting the Administration of Justice'. Section 476 empowers any Civil, Revenue or Criminal Court, when it is of the opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in s. 195(1) (b) or (c) which appears to have been committed in or in relation to a proceeding before it, to file a complaint, after such inquiry as it thinks necessary, before a Magistrate of I Class having jurisdiction. It is clear therefore that where an offence referred to in s. 195(1) (b) or (c) is committed in or in relation to a proceeding in a Civil Court, an inquiry under s. 476 and the action taken

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on that inquiry by the Civil Court, are in relation to that proceeding itself.

Any person aggrieved by an order of a Court under s. 476 of the Code may appeal in view of s. 476B to the Court to which the former Court is subordinate within the meaning of s. 195(3), which provides that for the purposes of the 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, 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. The decrees of a single Judge of the High Court exercising civil jurisdiction are ordinarily appealable to the High Court under cl. 10 of the Letters Patent of the Allahabad High Court read with cl. 13 of the United Provinces High Courts (Amalgamation) Order, 1948. It is true that the decision of a single Judge of the High Court is as much a decision of the High Court as the decision of the appellate Bench hearing appeals against his decrees. But the Court constituted by the single Judge is a Court subordinate to the appellate Bench of the High Court in view of the artificial judicial subordination created by the provisions of s. 195(3) to the effect 'a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees...'. In the case of a Civil Court which passes appealable decrees, that Court is deemed to be subordinate to the Court to which appeals ordinarily lie from its decrees. In the case of a Civil Court from whose decrees no appeal ordinarily lies, that Court is deemed subordinate to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction the former Court is situate, even though normally such a Court will not be subordinate to the principal Court having ordinary original civil jurisdiction within whose local limits it is situate.

It was urged by the learned Advocate for Narain Das that the order of the learned single Judge under

s. 476 did not amount to a decree and that therefore the provisions of s. 195(3) were not applicable. It is not necessary for us to express an opinion on the question whether the order of the learned single Judge under s. 476 is appealable under cl. 10 of the Letters Patent or not. A right of appeal against that order is given by the provisions of s. 476 B. The forum of appeal is also determined by the provisions of s. 476B read with s. 195(3), and the only relevant consideration to determine the proper forum for an appeal against such an order of the single Judge is as to which Court the appeals against appealable decrees of the single Judge ordinarily lie. Such appeals lie to the High Court under cl. 10 of the Letters Patent of the Allahabad High Court, and therefore this appeal lies to the High Court.

Learned counsel for the appellant relied on the decision of this Court in *M. S. Sheriff v. The State of Madras* <sup>(1)</sup> in support of his contention that an appeal under s. 476B lay to this Court from the decision of a single Judge of a High Court refusing to file a complaint under s. 476 of the Code. That case is distinguishable as the question considered in that case was whether an appeal lay to this Court under s. 476B of the Code from an order of a Division Bench of a High Court. It did not deal with the question whether an appeal lay to this Court under s. 476B of the Code from an order of a single Judge of the High Court. No appeal lies to the High Court against the decision of a Division Bench of the High Court and therefore an appeal under s. 476B from an order of the Division Bench of the High Court must lie to this Court.

The fact that an appeal lies to this Court from the order of a single Judge of the High Court where the High Court certifies, under Art. 132 of the Constitution, that the case involves a substantial question of law as to the interpretation of the Constitution, is of no assistance to the appellant's contention that this appeal is competent in this Court. It cannot be said that an appeal ordinarily lies to this Court from the

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judgment of a single Judge of a High Court because such an appeal lies with a certificate granted under Art. 132.

We therefore hold that the present appeal does not lie to this Court and that it lies to the High Court of Judicature at Allahabad. We therefore direct that the memorandum of appeal be returned for presentation to the proper Court.

*Appeal incompetent.*

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September 15.

[SHEW BUX MOHATA AND OTHERS

v.

BENGAL BREWERIES LTD. AND OTHERS

(JAFER IMAM, A. K. SARKAR and RAGHUBAR  
DAYAL, JJ.)

*Execution proceedings—Delivery of possession acknowledged—Execution case dismissed—If further execution proceeding permissible—Purchaser of respondent's interest—Whether could be added as party—Code of Civil Procedure, 1908 (5 of 1908), O. 21, r. 35, s. 146.*

The appellant decree-holders in an execution proceeding accepted delivery of possession and granted a receipt to the Nazir of the Court acknowledging full delivery of possession to them but allowed the respondents, Bengal Breweries, to remain in possession with their permission. The appellant also permitted the execution case to be dismissed on the basis that full possession had been delivered to them by the respondents. Sometime thereafter the appellant made a fresh application for execution against the respondent, for eviction which was resisted under s. 47 of the Civil Procedure Code alleging that so far as they were concerned, the decree had been fully executed as a result of the earlier execution proceeding which had terminated, and that further execution was not permissible in law.

*Held*, that it is open to the decree-holder to accept delivery of possession under O. 21, r. 35, of the Code of Civil Procedure without actual removal of the person in possession. If he does that then he is bound to the position that the decree has been fully executed, and it cannot be executed any more.

*Held*, further, that on the principle in *Saila Bala Dassi v.*