

Emperor Vs. Murray Gow Purdy

Emperor Vs. Murray Gow Purdy

SooperKanoon Citation : sooperkanoon.com/331378

Court : Mumbai

Decided On : Apr-03-1946

Reported in : AIR1947Bom184; (1946)48BOMLR752

Judge : Macklin and ;Sen, JJ.

Appeal No. : Miscellaneous Application (Crown Side) No. 2 of 1946

Appellant : Emperor

Respondent : Murray Gow Purdy

Disposition : Application dismissed

Judgement :

Macklin, J.

1. This matter comes before us by way of appeal from a person who was tried before Mr. Justice Coyajee and, on. the Judge directing that a new trial be held, committed contempt of Court in calling the Judge 'a scoundrel in conspiracy with the Commissioner of Police'. Mr. Justice Coyajee gave him two days for reflection; and on his refusal to withdraw he sentenced him to undergo six months' simple imprisonment and to pay a fine of Rs. 2,000. He has stated in a letter to this Court his desire to withdraw his application on the ground that he is not being allowed to appear in person. But we do not wish that the application should be withdrawn,

since we regard it as a matter of some importance; and Mr. Talyarkhan has kindly consented to act as an amicus curiae on behalf of the applicant.

2. One thing that is obvious in this case is that this is a case of criminal contumpt; and whatever may be the powers of the High Court to interfere with contempts committed in respect of the civil jurisdiction of itself or of any other Court, those powers will not apply in a case like this. It being a criminal matter, an appeal can lie only under some statutory or other specific provision. At present the amended Section 411A of the Criminal Procedure Code provides for appeals by persons convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction. But trials held by the High Court are by jury; and this contempt has been dealt with by a Judge acting alone in summary proceedings. Clearly therefore Section 411A will not give this Court power to interfere. Before the amendment of the Criminal Procedure Code, it may be that Clause 41 of the Letters Patent would have given the applicant a remedy by way of appeal. But Section 7 of Act XXVI of 1943 (the Act which has enacted the new Section 411A) repeals Clause 41 of the Letters Patent. There is nothing left except the inherent jurisdiction of the High Court and the question is whether the inherent jurisdiction governs a case of this kind.

3. Every subject of His Majesty has an inherent right of appeal to His Majesty (see for example *Ambard v. Attorney General of Trinidad* (1986) 38 Bom. L.R. 681 ; and, as their Lordships said, there is no limit to the extent of the prerogative of the Crown in such matters. But it does not follow that the subject has an inherent right of appeal to a High Court; and we are satisfied that in this case the High Court has no inherent jurisdiction to entertain any such appeal,

4. We have been referred to the article on Contempt of Court in Halsbury's. Laws of England, 2nd Edn., Vol. VII, and in particular to a remark in paragraph 77, that an appeal always lies in England upon the question whether there was jurisdiction to make the order. Undoubtedly in questions of jurisdiction this Court has a clear right of interference with the orders of inferior Courts. But we are not aware of any inherent jurisdiction to interfere with the orders of itself; and on reference to the cases cited in Halsbury in support of the remark as to the jurisdiction of the Court

to interfere on questions of jurisdiction we find, with one exception, that they are cases of interference the orders of inferior Courts, and that in the one case to the contrary (In re-Gravston: In re Wall (1888) 4 T.L.R. 772 the Court of Appeal refused to interfere on the ground that it had no jurisdiction, the order being a criminal order passed by itself. As this case was decided before the establishment of the Court of Criminal Appeal, the Court could have acted only in its inherent jurisdiction; and the effect of the decision is that it had no such inherent jurisdiction as was then involved,

5. It was argued that here the proceedings had concluded and that the eon-tempt was committed when the Court was no longer sitting as a Court, We do not think that that is correct. But even if it were correct, it would in bur view make no difference. We should not have jurisdiction to interfere. The only remedy to the applicant is by way of an application to His Majesty.

6. We have no jurisdiction to entertain this matter, and we direct that it be dismissed.