

In Re: S. Seshagirirao

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Court : Andhra Pradesh

Decided On : Apr-16-1965

Reported in : AIR1966AP137; 1966CriLJ512

Judge : Anantanarayana Ayyar, J.

Acts : Criminal Rules of Practice - Rule 184, 184(1), 184(2) and 252; [Andhra Pradesh Court Fees and Suits Valuation Act, 1956](#) - Sections 4 and 4(1) - Schedule - Article 6; [Constitution of India](#) - Articles 225 and 227; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 554, 554(2) and 561-A; [Andhra State Act, 1953](#) - Sections 32; Character Act, 1861 - Sections 9; [Government of India Act, 1915](#); [Government of India Act, 1935](#)

Appeal No. : S.R. No. 48886 of 1964

Appellant : In Re: S. Seshagirirao

Advocate for Def. : Nagaramayya, Govt. Pleader

Advocate for Pet/Ap. : T.V. Sarma, Adv.

Judgement :

ORDER

Anantanarayana Ayyar, J.

1. The petitioner gave a complaint to the Police. After investigation, the Police filed a charge-sheet. The Assistant Sessions Judge, Guntur tried the accused. Ultimately, he convicted the accused and sentenced him. At the trial, the petitioner complainant deposed as P.W. 1. The accused filed an appeal before the Sessions Judge, Guntur and were completely acquitted by him. Thereupon, the petitioner filed Criminal Revision Petition in this court praying for revision of the lower appellate Court's judgment of acquittal. Along with the revision petition, he filed a certified copy of the judgment of the lower appellate court but he did not file a certified copy of the judgment of the trial court. When the office required him to file a certified copy duly stamped, he came forward with a contention that he was not bound to furnish a certified copy. Therefore, the office put up the matter before me for hearing.

2. The petitioner produced a copy of the trial court's judgment along with the revision petition. It is not stamped. Shri T. V. Sarma for the petitioner contends that he filed the certified copy only for convenience of reference by this court and that he is not bound to produce a stamped certified copy.

3. The short question is whether the petitioner is bound to file a certified copy of the trial court's judgment duly stamped.

4. Rule 184 of the Criminal Rules of Practice runs as follows:

'184 (1). Every petition of appeal or revision petition shall be accompanied by a certified copy of the Judgment or order of the court appealed against or sought to be revised, a memorandum of appearance duly signed, and the necessary vouchers for the verification of any matter or entry in the petition or enclosure.

(2)(a) When a revision petition is presented against a judgment or order passed in appeal, (B) it must be accompanied also by a certified copy of the judgment or order of the court of first instance, (c) obtained either by a fresh application for copy or by a return of enclosures under rule 252'.

For convenience in discussion and reference, I have marked portions of Sub-rule (2) as (a), (b) and (c).

5. Under Sub-rule (1) of Rule 184, the petitioner has filed certified copy of the lower appellate court's judgment which he has sought to revise. If Sub-rule (2) also applied, he will have to file a certified copy of the judgment of the trial court that is, court of the first instance.

6. Shri Sarma, the learned Advocate for the petitioner, contends that Sub-rule (1) of Rule 184 alone applies and that Sub-rule (2) does not apply. In support of this contention he relies on the concluding words in that Sub-rule (portion C) as follows:

' . . . (Judgment or order of the court of first instance), obtained either by a fresh application for copy or by a return of enclosures under rule 252'

He urges that Sub-rule (2) of Rule 184 can apply only when a judgment of the court of first instance must be capable of being obtained by return of enclosures under rule 252 in addition to its capable of being obtained by a fresh application. He further contends that the copy can be obtained by return of enclosures under Rule 252 only if the revision petitioner had himself filed the appeal in the lower appellate court. It is true that copy of judgment of the trial court can be got back by the revision petitioner as return of enclosure under Rule 252 only if he had been appellant in the lower appellate court. But, Sub-rule (2) mentions that certified copy of the judgment of the court of first instance can be obtained by a fresh application for copy or by a return of enclosures under Rule 252. This wording has to be read along with the wording in the beginning of Sub-rule (2). The entire Sub-rule (2) has to be read as a whole.

It is clear from portion (a) of Sub-rule (2) that Sub-rule (2) applies to each and every case of revision petition presented against a judgment passed in appeal. It applies to cases where the revision petitioner is an appellant who is aggrieved with the judgment passed in appeal. It also applies to case where the revision petitioner is a person who was respondent in the appeal and who is aggrieved with the judgment passed in appeal. Portion (b) of Sub-rule (2) also can and does apply, beyond doubt or dispute, to each case which comes under portion (a). Portion (c) of Sub-rule (2) only indicates as to how i.e., by what ways and means, a revision petitioner can obtain the certified copy which is referred to in portion (b). If that

petitioner be an appellant in the lower appellate court, he would be in a position to get return of the trial court's judgment as an 'enclosure' under rule 252. Ordinarily, he would do so. He will also be able to obtain a certified copy of the trial court's judgment if he chooses to do so. But it would be unnecessary waste of time and money. He would not ordinarily adopt such a course.

In the case of a revision petition filed by one who was not appellant in the appellate judgment, which is sought to be revised, he can obtain certified copy of the judgment of the trial court ordinarily only by a fresh application. Portion (c) does not affect the fact that portions (a) and (b) apply to each and every revision petition filed against an appellate judgment. I find that the contention of Shri Sarma is not tenable and that, under Sub-rule (2) of Rule 184, the petitioner has to file a certified copy of the judgment of the trial court.

7. If the petitioner has to file a certified copy, ordinarily it will have to be duly stamped unless the Court chooses to apply the proviso to Section 4(1) of the Andhra Pradesh Court Fees Act which runs as follows:

'No document which is chargeable with fee under this Act shall (i) be filed, exhibited or recorded in, or be acted on or furnished by, any court including the High Court,...

except on payment of the fee chargeable in respect of such document under this Act.

Provided that a document in respect of which the proper fee has not been paid may be filed or exhibited in a criminal court if the court deems it necessary in the interests of justice to do so'.

In Schedule II Article 6, the court fee prescribed for copy of judgment is Re. 1. It is not the case of Shri T.V. Sarma that this court should at this stage apply the proviso to Section 4(1) of the Court Fees Act.

8. Shri T.V. Sarma contends, however, that Rule 184(2) is not valid in law. He points out the notification which extended the criminal rules of practice which are prevailing in Andhra area to the Telangana area. The relevant portion of the

notification ROC. No. 4168/57-B-1 runs thus: 'In exercise of the powers conferred by Article 227 of the [Constitution of India](#) and all other powers hereto enabling and with the previous approval of the Governor of Andhra Pradesh, the High Court hereby makes the following Rule:--

RULE:

With effect on and from the 1st April, 1958, the rules set out in Annexure 'A' hereto shall extend to the territories specified in Sub-section (1) of Section 3 of the States Reorganisation Act, 1956 (Central Act 37 of 1956). With effect from the said date, the rules set out in Annexure 'B' shall, in their application to the said territories, stand repealed.

ANNEXURE 'A'.

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(3) The Criminal Rules of Practice and Orders, 1931 issued by the High Court of Judicature at Madras for the guidance of subordinate Criminal Courts and the amendments to the said

Rules and the circular orders issued thereunder from time to time by the said High Court prior to 5-7-1954 and those issued by the High Court of Andhra (now High Court of Andhra Pradesh) thereafter.

ANNEXURE 'B'

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(3). The Rules for Regulating the Practice and Proceedings of Criminal Courts, 1953 issued by the erstwhile High Court of Hyderabad and the orders and circulars issued by the said High Court under Article 227 of the [Constitution of India](#).'

9. Shri Sarma contends that Article 227 of the Constitution gives power to the High Court to frame rules to regulate procedure in Subordinate Courts and not procedure in the High Court itself. It is true that the notification R.O. C. No. 4168/57-B-I mentions only Article 227 of the Constitution. The object and purpose of the notification was to extend the Criminal Rules of Practice, which were then in force in Andhra area alone, to all the Subordinate Courts in Telangana area also in such a way, that they would replace in Telangana area the Criminal Rules of Practice which already existed and were in force for the Subordinate Courts in Telangana area. For that purpose, the notification made provision. Such notification was necessary only to bring into force in Telangana area those Criminal Rules of Practice which applied to the Subordinate Courts. So far as the Criminal Rules of Practice, which related to the High Court of Andhra were concerned, they were originally in force when the Andhra High Court had jurisdiction over the Andhra area upto 1-11-56 and continued to be in force when the Andhra High Court came to have jurisdiction throughout Andhra Pradesh State and began functioning at Hyderabad under the name of High Court of Andhra Pradesh. Therefore, the wording of the notification does not in any way affect the validity of the Criminal Rules of Practice which applied to the procedure and practice in the High Court of Andhra Pradesh. All the same, Sri Sarma is right in contending that the High Court did not derive power under Article 227 of the Constitution for framing rules for procedure and practice in the High Court For, Article 227 says 'every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.' It cannot be said that the High Court has powers of superintendence over itself. If the High Court had power to frame rules independent of Article 227 of the Constitution, and if Rule 184(2) can be traced to such power, the rule would be valid all the same, independent of Article 227.

10. Shri Sarma contends that the only provisions giving power to the High Court are contained in Section 554 Criminal Procedure Code and in clause 38 of the Letters Patent and that neither of these provisions authorised the High Court to frame Rules to regular its own procedure and that there is no other provision of law which gives power to the High Court to frame such rules.

11. Section 554 Criminal Procedure Code runs as follows:

'(1) With the previous sanction of the State Government, any High Court not being a Court of the Judicial Commissioner may, from time to time, make rules for the inspection of the records of the subordinate courts.

(2) Every High Court, not being a High Court to which Sub-section (1) applies may from time to time, and with the previous sanction of the State Government,--

(a) make rules for keeping all books, entries and accounts to be kept in all criminal Courts subordinate to it, and for the preparation and transmission of any returns for statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks a form should be provided;

(c) make rules For regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines;

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the Official Gazette'. Clause 38 of the Amended Letters Patent runs as follows: 'Regulation of proceedings--And we do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Madras, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India: and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by

an Act passed by the Governor General in Council and being Act No. XXV of 1861 or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid'.

12. Sri Nagaramayya, the learned counsel appearing for the Government Pleader, contends that the Andhra High Court has power to frame rules under Sub-section (2) (c) to Section 554 Criminal. Procedure Code. Shri Sarma rightly points out that Sub-section (2) (c) will apply only for Courts of Judicial Commissioner coming under Sub-section (2) and not for other High Courts coming under Sub-section (1) to which I shall refer hereafter for convenience as 'State High Courts'. Andhra Pradesh High Court is a State High Court. It will be seen that Section 554 (2) (c) specifically authorises and empowers Courts of Judicial Commissioners i.e., Courts other than High Courts to which Sub-section (1) applies, to make rules for regulating practice and procedure of themselves and also of Courts subordinate to them. There is no such provision in the Criminal Procedure Code specifically giving such power to State High Courts.

Does this absence of special provision mean that the Legislature intruded that the State High Courts should not have power to make rules for regulating practice and procedure in themselves and their Subordinate Courts and thereby should be put at a disadvantage as compared to the Courts of Judicial Commissioners or does it mean that the Legislature considered that the State High Courts already had powers to frame rules for regulating practice and procedure of themselves and their Subordinate Courts independent of the Criminal Procedure Code, and, therefore, considered it unnecessary, to make specific provision in the Criminal Procedure Code to confer such powers? The contention of Sarma is that the State High Courts did not have any power apart from Section 554 Criminal Procedure Code and Clause 38 of the amended Letters Patent as applied to Andhra Pradesh High Court (and corresponding clauses in Charters relating to other High Courts) and that, therefore, the State High Courts have no power and competence to frame rules for regulating their own procedure and that rules like R. 184 framed for such purpose are illegal and invalid.

On the other hand, the learned Public Prosecutor contends that the State High Court had power, independent of the Criminal Procedure Code and Clause 38 of the Letters Patent, to frame rules to regulate their own practice and procedure and that such rules are valid and lawful and that such powers were given and preserved by Article 225 of the Constitution. I shall confine my attention in this order to the power of the Andhra Pradesh High Court to frame rules to regulate its own practice and procedure.

13. Rule 184(2) of the Criminal Rules of Practice, beyond doubt or dispute, existed from 1912. In that year, it was introduced by P. Dis. No. 168 of 191-2 as Sub-rule (2) after re-numbering the original Rule 184 as Sub-rule (1) of Rule 184. Rule 184 had been in existence from much earlier. The Criminal Rules of Practice are contained in Chapters 1 to XV-A. Of these, Chapter VII containing Rules 179 to 234 relate to practice and Procedure in the High Court. Various other chapters relate to practice and procedure in subordinate courts. These rules relating to the High Court and the Subordinate Courts had been in existence from a long time back. Section 554 Criminal Procedure Code makes a distinction between Courts of Judicial Commissioner and State High Courts. Article 214 of the Constitution runs thus:

'There shall be a High Court for each State'.

14. Article 215 which deals with State High Court runs thus:

'Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself'.

15. The Courts of Judicial Commissioners are Courts which function in Union Territories which come under Part VIII of the Constitution. Article 241 in that Part runs as follows:

'241(1). Parliament may by law constitute a High Court for a Union territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V (Articles 214 to 231) of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in Article 214 subject to such modifications or exceptions as Parliament may by law provide.' In 1950, Parliament passed Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950. Section 3 of that Act declares the Judicial Commissioners' Courts as High Courts for purposes of Articles 132, 133 and 134 of the Constitution. Section 6 runs as follows:

'The provisions of Chapter V of Part VI of the Constitution shall in their application to a Judicial Commissioner's Court have effect subject to the following exceptions and modifications, namely:

(a) the provisions of Articles 216, 217, 218, 220, 221, 222, 223, 224, 230, 231 and 232 shall not apply.....'

Articles 225 and 227 apply to Courts of Judicial Commissioner.

16. Article 225 runs as follows:

'Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction'.

17. Distinction between courts of Judicial Commissioner and of the other High Courts exists in the Civil Procedure Code also. Part IX of the Civil Procedure Code

consisting of Sections 116 - 120 contains special provisions relating to High Courts not being a Court of Judicial Commissioner. Section 120 says that Sections 16, 17 and 20 shall not apply to High Courts other than Courts of Judicial Commissioner in exercise of original jurisdiction though those sections are applicable to Courts of Judicial Commissioner. Section 129 Civil Procedure Code runs as follows:

'Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or Order, or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code'.

The Judicial Commissioner's Courts are declared as High Courts by Act of Parliament passed under authority of Article 241 of the Constitution and are given specified powers. On the other hand, the State High Courts have a background going long back into history and have got powers which are traceable to their predecessors and earlier institutions.

18. The High Court of Madras was formed by Letters Patent dated 22-6-1862 and was continued with the Letters Patent of 28-12-1865. Part IX of the [Government of India Act, 1915](#) bore title 'The Indian High Courts'. Section 101(1) in it ran as follows:

'The High Courts referred to in this Act are the High Courts of Judicature for the time being established in British India by Letters Patent'.

19. Section 106(1) provided as follows: 'The several High Courts are courts of record and have such jurisdiction, original and appellate.....and all such powers and authority over or in relation to the administration of justice, including.....power to make rules for regulating the practice of the Court, as are vested in them by Letters Patent, and, subject to the provisions of any such Letters Patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act'.

20. In the [Government of India Act, 1935](#), Chapter II related to the High Courts in India. Section 219 in it provided as follows:

'The following courts shall in relation to India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras,.....and any other comparable court in India which an Act of the appropriate Legislature may declare to be a High Court for the purposes of this Act....'

21. Article 214(2) of the original Constitution of 1950 continued the Madras High Court as a High Court. Under Section 28 of the Andhra States Act, 1953, the Andhra High Court was formed with effect from 5-7-1954. Under Section 32 of that Act, it was provided as follows:

'..... the law in force immediately before the prescribed day with respect to practice and procedure in the High Court at Madras shall, with the necessary modifications, apply in relation to the High Court of Andhra, and accordingly that High Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the prescribed day exercisable by the High Court at Madras'.

Under the States Reorganisation Act, 1956, the Andhra High Court was renamed as Andhra Pradesh High Court and its jurisdiction became enlarged to cover the entire Andhra Pradesh State. It began to function at Hyderabad instead of continuing to function at

22. Before the Charter Act of 1861, there was a Supreme Court functioning in Madras. Section 8 of that Charter Act provided as follows:

'Upon the establishment of such High Court in the Presidency of Madras, the Supreme Court and the Court of the Sudder Adawlut and Foujdarry Adawlut in the same presidency shall be abolished.' Section 9 ran as follows:

'Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal..... original and appellate and all such powers and authority for, and in relation to, the administration of justice in the presidency.....and subject and without prejudice to the legislative powers in relation to the matters aforesaid

of the Governor-General of India in Council, the High Court to be established in each presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the courts in the same presidency abolished under this Act at the time of the abolition of such last-mentioned courts'. Thus, the High Court of Madras had all the powers which the Supreme Court had subject to the following conditions:

(a) Save as by Letters Patent may be otherwise directed.

(b) Provision by Legislation.

23. The client of the powers of the Supreme Court of Madras from the early days of its existence came up for exhaustive consideration by the Privy Council in *Ryots of Garabandho v. Zamindar of Parlakimedi*, AIR 1943 PC 164 with special reference to the power of that Supreme Court to issue writs and also the powers of the Madras High Court under the [Government of India Act, 1935](#). The appeal was against the decision of a Division Bench of the Madras High Court. The latter had held that, if Section 30(1)(b) of the Madras Estates Land Act applied to the case concerned in that decision (so that no increase in rent beyond 12 1/2 per cent could be lawfully made), the appellants would be entitled to Writ of Certiorari addressed to the Board of Revenue to correct that illegality but that the Board of Revenue had power to enhance the rent by 37 1/2 per cent and the (High Court) had accordingly dismissed the application for Writ. The ryots took up the matter in appeal to the Privy Council. In their judgment, their Lordships observed as follows: (at page 168)

'It is clearly necessary therefore to consider the history of the matter both in Calcutta and in Madras and, in outline at least, the circumstances in which the charter was intended to take effect in the Province of Madras.....'

(At page 169)

'.....The terms of the Madras Charter of 1800, with which their Lordships are now immediately concerned, are intended plainly enough to incorporate the amendments of 1781 and thus to produce the same general result in Madras as in

Calcutta. The Mayor's Court had continued in Madras to exercise its jurisdiction under a charter of 1753 until it gave place in 1798 to the Recorder's Court authorised by the statute of 1797 (37, Geo. III, Cap. 142); the Recorder, Sir Thomas Strange, became in 1800 the first Chief Justice of the new Supreme Court of Madras.

The effect of the Act of 1781 is therefore germane to the construction of the Charter of 1800.....'

At page 170.

'Justices of the Peace had functioned under the Mayor's Court Charters of 1726 and 1753 in Calcutta and Madras.'

Their Lordships also observed as follows; (at page 168):

'The question depends in the first place upon the true construction to be put on the charter dated 26th December, 1800 establishing the Supreme Court at Madras. If the power was given by that Charter it is now vested in the High Court by virtue of the Indian High Courts Act, 1861(24 and 25 Vic. C. 104, Section 9), and the statutes repeating this provision..... The Supreme Court at Madras inherited the powers formerly possessed by the Mayor's Court and Recorder's Court.....'

Their Lordships extracted Clause 8 of the Charter of Supreme Court of Madras of 1800 and proceeded to discuss about its meaning and implication. Clause 8 runs as follows: at page 172.

'And it is our further will and pleasure, that the said Chief Justice, and the said Puisne Justices, shall, severally and respectively, be, and they are all and every of them hereby appointed to be, Justices and Conservators of the peace, and Coroners, within and throughout the Settlement of Fort. St. George, and the town of Madras, and the limits thereof, and the factories subordinate thereto, and all the territories which now are, or hereafter may be, subject to, or dependent upon, the Government of Madras aforesaid; and to have such jurisdiction and authority as our Justices of our Court of King's Bench have, and may lawfully exercise, within that part of Great Britain called England, as far as circumstances will admit.' Their

Lordships observed as follows: (at page 173)

'Thus in Nataraja's case, (1912) ILR 36 Madras 72, already cited, Sadasiva Ayyar J., held that the powers given by Clause 8 (of Charter of Supreme Court) were given to the Judges not merely in their individual capacity but as constituting the Supreme Court On the first point their Lordships agree.

XXXXXXXXXXThe first thing effected by the clause is to makethe Judges Justices of the Peace. It makes them such Justices throughout the Province--alike within and without the town of Madras. It does not say that they are to be Justices within the town.....'

24. It is thus clear that the Supreme Court at Madras had same jurisdiction and authority as the Court of the King's Bench. Their Lordships stated thus; (at page 174):

'The Judges were to be King's Bench Judges, 'as they were to be justices of the peace, throughout the whole extent to which they might have occasion to act at all--this being the status and authority with which they were armed without as well as within the town. The concluding part of Clause 8 makes no reference to prerogative writs, but is a broad and summary reference to the whole of a King's Bench Judge's Jurisdiction and authority. It cannot be construed as restricted to such powers only as were peculiar to the King's Bench, and were not shared by the other Superior Courts of Common law'. There is no material available to me as to whether the Supreme Court at Madras actually framed any rules to regulate its own practice and procedure. But, the Supreme Court or Madras must have been following some concrete procedure and practice in all cases which were within its jurisdiction whether within the town of Madras or outside the town of Madras. The Supreme Court had the full power and authority, irrespective of whether it exercised such power and authority and the extent of the exercise, as Judges of the King's Bench and other superior Courts of common law. Consequently, they had a power, right, jurisdiction and authority which was available to Courts in England in English law in the matter of regulating its practice and procedure subject to the two restrictions mentioned in section 9 of Charter Act of 1861.

25. The powers of the Courts in England, including the King's Bench, in this matter are stated in Halsbury's Laws of England, Simonds Edition (Volume IX) at page 344 as follows:

'811. PROCEDURE.

A Court exercising juridical function has an inherent power to regulate its own procedure, save in so far as its procedure has been laid down by the enacted law, and if cannot adopt a practice or procedure contrary to or inconsistent with rules laid down by statute or adopted by ancient usage.'

26. In Broom's Legal Maxims (1924 Edition) at page 94, it is stated under the maxim '*cursus curiae est lex curiae*' (the practice of the Court is the law of the Court) as follows:

'Every Court is the guardian of its own records and master of its own practice; and where a practice has existed it is convenient, except in cases of extreme urgency and necessity, to adhere to it, because it is the practice, even though no reason can be assigned for it; for an inveterate practice in the law generally stands upon principles that are founded in justice and convenience'.

Therefore, the Supreme Court at Madras had power to inline rules for its own practice and procedure to the extent indicated above. Under section 9 of the Charter Act, 1861 the High Court shall exercise this power of the Supreme Court to frame rules for its own practice and procedure except as may be otherwise directed by the Letters Patent and without prejudice to the Legislative power of the concerned Legislature.

27. The question is whether (a) Letters Patent has 'otherwise directed' i.e., directed that the High Court shall not have powers to frame rules to regulate its own practice and procedure; and (b) whether there is legislation which takes away the right of the High Court to frame such rules.

28. The contention of Sri Sarma is that section 554 Cr. P. C, takes away that right to frame rules for its own practice and procedure. He does not contend that there is any other legislation which takes away that right. Section 554 specifically gives

power to the Courts of Judicial Commissioner in Sub-section (2). Section 554 does not say that the State High Courts do not have that power or should not exercise that power. The words of the section do not give scope for construing that any power which the Madras High Court (which is a State High Court) otherwise had, independent of the Code of Criminal Procedure, would cease to exist. Section 561-A Cr. P. C. specifically recognises the existence of certain inherent power in the High Court, apart from what is given by statute. For, section 561-A Cr. P. C. runs as follows:--

'Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of Justice.' In Chapter II of the Criminal Procedure Code, which relates to the constitution of criminal Courts and offices, Portion E relates to Justices of the Peace. Section 25 provides as follows:--

'In virtue of their respective offices..... the Judges of the High Courts are Justices of the Peace within and for the whole of India.....' By this provision, the jurisdiction, authority and powers which the Judges of the Supreme Court at Madras possessed originally by virtue of their being the Justices of the Peace were recognised and declared in the Criminal Procedure Code. They had these powers not merely in their individual capacity but as constituting the Madras High Court. The result was that the Madras High Court continued to possess the powers which the Supreme Court had which powers were similar to the powers of the Judges of the King's Bench.

29. It cannot be said that Clause 38 of the Letters Patent directs that the High Court shall not have power to frame rules to regulate its own procedure and practice regarding cases coming in the latter part of Clause 38 as 'proceedings in all other criminal cases'. The purpose of Clause 38 is obviously to show that the procedure in cases in the ordinary original criminal jurisdiction and in all other cases over which the High Court had jurisdiction immediately before the publication of the Letters Patent should be regulated purely by the procedure which was already in use in the High Court and was not to be regulated by the

Code of Criminal Procedure (Act 25 of 1861) and other laws which are mentioned in the latter part of Clause 38. As mentioned by me above in section 561-A Cr. P. C., inherent powers of the Court are recognised by the Criminal Procedure Code. The power to frame rules to regulate its own practice and procedure was inherent in the Chartered High Courts by virtue of their nature, origin, function, history and tradition, having been recognised and granted to the Supreme Court at Madras by Charter of 1800 and having been recognised, preserved, maintained and referred to in various subsequent enactments and Charters namely, Charter Act of 1861, Letters Patent, [Government of India Act, 1915](#), [Government of India Act, 1935](#) and Article 225 of the Constitution.

30. In *Surendra Singh v. State of Uttar Pradesh*, : 1954 CriLJ475 their Lordships had to consider the law as to when the consequences of judgments in Criminal Cases take effect. Their Lordships observed as follows:-- (at page 195)

'For that reason rules have been drawn up to determine the manner in which and the time from when the decision is to take effect Now these rules are not all the same though they are designed to achieve the same result. The Criminal Procedure Code takes care of Courts subordinate to the High Court. Sections 366 and 424 deal with them. The High Courts have power to make their own rules. The power is now conferred, or rather continued, under Article 225 of the Constitution'.

31. In *R. M. Seshadri v. Province of Madras*, : AIR1954 Mad543 a contention was raised by the plaintiff. Shri R. M. Seshadri as follows:--

'Before the Constitution, the High Court had no power to prescribe Court-fees, and after the Constitution also they are not in a better position as the Legislature specifically conferred exclusive jurisdiction to impose Court fees on the Legislature of the State.'

After discussing various provisions of law and decisions, the learned Judges observed as follows:-- (at page 546)

'..... we are not prepared at this stage to differ from the opinion expressed by three Judges who subsequently became the Chief Justices of the Court when they held that the source of that power could be traced to the general power of the High Court to issue rules for regulating the practice and procedure of Courts. We are particularly more reluctant to do so as such a power was exercised for so long a time and acquiesced in by all parties concerned including the Government and Legislature. We therefore hold that Article 225 of the Constitution saved that power subject to the restrictions contained therein.' In that case, there was no dispute or room for doubt about the power of the High Court under Clause 37 of the Letters Patent to frame rules for regulating practice and procedure in Civil Cases before the High Court. The only question was whether, by virtue of that power, the High Court had power to impose court-fees. The learned Judges agreed with the opinion expressed by each of Couts-Trotter, J., Beasley J. and Leach, J. that such power existed. The learned Judges also expressed reluctance to differ from the view of those three Judges (that the High Court had such power) because the power had been exercised for a long time and acquiesced in by all parties concerned. In the present case, there is no specific provision such as Clause 37 of the Letters Patent which gave powers to the High Court for regulating practice and procedure in criminal cases, apart from Clause 38 of the amended Letters Patent.

32. Under Rule 218 of the Criminal Rules of Practice by itself (apart from Rule 4 of the Appellate Side Rules), cases mentioned in it would have to be heard by a Bench of two Judges. Rule 234 runs as follows:--

'These rules and orders shall govern the practice of the High Court on the Appellate Side to the extent to which they are applicable.'

33. In *In re, Ranganayakulu*, 1956-2 Andh WR 456: ((S) AIR 1956 Andh 161), the question arose whether the first appellant in an appeal which came under Rule 218 was entitled to file another appeal notwithstanding the fact that his jail appeal had been dismissed summarily by a Vacation Judge sitting singly under Rule 4 of the Appellate Side Rules. Shri T. V. Sarma, who appeared for the first accused, contended in that case that Rule 218 of the Criminal Rules of Practice had the effect of over-riding Rule 4 of the Appellate Side Rules. Subbarao, C. J. (as he

then was) observed regarding the contention made before them, as follows:-- (at p. 463 of Andh WR): (at p. 166 of AIR):

'The argument (by Sri T. V. Sarma for the appellant) is that under Rule 218 of the Criminal Rules of Practice, which is a 'Law' within the meaning of Rule 4 of the Appellate Side Rules, an appeal from the judgment of a Criminal Court, in which a sentence of transportation for life has been passed, will have to be heard by a Bench of two Judges. Such a case is not governed by Rule 4 as it expressly saves from its operation any appeal to be heard by more than one Judge under any law. The learned Public Prosecutor (Shri D. Munikanniah) argues that any law or regulation in Rule 4 must be a law or regulation made by the Central Government and the Criminal Rules of Practice are not 'law' made by the Central Government but are rules made by the High Court in exercise of the powers conferred on it under section 554 of the Criminal Procedure Code, whereas the learned counsel for the appellant (Shri T. V. Sarma) contends that the words 'any law' in Rule 4 mean any law made by any competent authority and the words 'made by the Central Government' only qualify the word 'regulation'

In the majority judgment, the learned Judges held that the S. R. was liable to be dismissed so far as the first accused was concerned. In a separate judgment, the learned Judge observed, after referring to the contentions of Sri T. V. Sarma and the Public Prosecutor referred to by me above, as follows:-- (at p. 473 of Andh WR): (at p. 172 of AIR)

'It is needless to pursue this controversy. Assuming the expression 'law' is used in a restrictive sense as suggested by the Public Prosecutor, the instant case does not present any difficulty since Rule 218 could be easily brought within the scope of the law made by the Central Government. The Criminal Rules of Practice are framed under the powers conferred by section 354 of the Criminal Procedure Code, a Central enactment. It cannot be controverted that rules enacted under the powers conferred by statute form part of the statute.'

The majority judgment also held as follows:--(at p 464 of Andh WR): (at p 167 of AIR)

'I have no doubt that the words 'made by the Central Government' are practically copied from the Charter Act and the Letters Patent and, therefore, the words 'made by the Central Government' govern not only the word 'regulation' but also the words 'any law'. Even so, it does not, in any way, affect the argument of the learned counsel for the appellant, for the Criminal Rules of Practice being the statutory rules framed under the Criminal Procedure Code must also be deemed to be the rules made by the Governor-General in Council. Therefore, the Criminal Rules of Practice are certainly 'law' within the meaning of Rule 4 of the Appellate Side Rules.'

All the three Judges in that case made observation that Rule 218 of the Criminal Rules of Practice (which like Rule 184 (2) comes in Chapter VII and relates to practice and procedure in the High Courts) was framed under powers vested under (section 554) Cr. P. C. and was therefore, 'law' made by the Central Government. In that case, the question as to whether Rule 218 was framed under powers conferred by section 554 Cr. P. C. and the question of its validity were not raised specifically for decision or decided as disputed questions. The above observations do not preclude Shri Sarma from raising his contention in the present case that Rule 184 (2) was not framed under powers conferred by section 554 Cr P. C. and that Rule 184 (2) is not valid.

34. Shri T. V. Sarma relies on the decision in Tiruptayya, In re, 1956-2 Andh WR 998: (AIR 1957 Andh Pra 880), regarding the following observation: (at p. 1000 of Andh WR): (at p. 882 of AIR)

"The last question that was argued in the petition was, whether the appellant was bound to furnish a copy of the grounds of appeal to the Public Prosecutor. Section 422, Criminal Procedure Code, is quite clear that it is the Court that should furnish the Public Prosecutor with a copy of the grounds of appeal. So, even when an application is made under section 426, it is not the duty of the appellant to furnish the Public Prosecutor with a copy of the grounds of appeal.'

The passage continues as follows:--

'I am informed that the practice prevailing in this Court is that the copy of the grounds or appeal is supplied to the Public Prosecutor by the office and not by the appellant. I do not see why a different practice should prevail in the Sessions Courts or in the Subordinate Appellate Courts.'

In the above passage, Umamaheshwaram, J., agreed with the contention of Sri T.V. Sarma, who appeared for the petitioner, that he was not bound to furnish copies of grounds of appeal to the Public Prosecutor, on two grounds: (1) Clear provision in Section 422 Cr. P.C. and (2) Practice followed in the High Court which appeared to be preferable to the practice followed in the Sessions Court. In the present case, if there were provisions in the Cr. P.C. either by express statement or by necessary implication, that the petitioner need not file certified copy of the trial court's judgment, a mere practice to the contrary will not prevail over such provision in the Code. But, there is no such provision in the Code. The practice of the High Court is as indicated in express terms by Rule 184(2) of the Criminal Rules of Practice. The relevant facts of that case were as follows:

'The petitioners herein applied for suspension of the sentence of fine or Rs. 100/- passed against each under Section 4(1)(b) of the Madras Prohibition Act before the Sessions Judge, Guntur, pending a Criminal Appeal filed before him. The Sessions Judge directed notice to be given to the Public Prosecutor.

Instead of serving notice, the petitioner's Advocate filed an elaborate memo to the effect that no notice was necessary. The Sessions Judge held that, as the notice directed by him was not given to the Public Prosecutor, he had no alternative but to reject the application for suspension of the sentence of fine. The petitioners have thereupon preferred this revision petition to this Court.

The first question raised by Sri T.V. Sarma, on behalf of the petitioners, was that the practice and convention referred to by the Sessions Judge in paragraph 5 of the order as prevailing in Guntur district, i.e., to give advance notice of the application for suspension to the Public Prosecutor, is not warranted by the provisions of the Code of Criminal Procedure and that he was consequently under no obligation to give previous notice.'

The learned Judge agreed with Shri T.V. Sarma that there was no provision in the Criminal Procedure Code or the Criminal Rules of Practice for the appellant's advocate giving such notice and the learned Public Prosecutor conceded that there was no such practice prevailing in the Andhra High Court. The learned Judge observed that the learned Sessions Judge erred in holding that, according to the practice and convention prevailing in the Guntur District, advance notice for suspension of sentence should be given to the Public Prosecutor. But, all the same, he rejected the further contention of Sri T.V. Sarma that the appellate Court had no such power to direct notice to Public Prosecutor before order is passed under Section 426 Cr. PC which contention was urged on the ground that Section 426 Cr. PC does not in terms provide for issuing such notice. The learned Judge also held that certain observations in *Emperor v. Dahu Raut*, 68 Mad LJ 653: (AIR 1935 PC 89) did not in any way affect the jurisdiction or right of the appellate Court in proper cases to issue notice to the Public Prosecutor before exercising powers under Section 426 Cr. P.C. In fact, he decided that, in the matter of ordering notice to the Public Prosecutor, the Court had got a right to follow a certain procedure which it considers necessary or expedient in the interests of justice.

35. It has been observed in *Sangram Singh v. Election Tribunal Kotah*, : [1955]2SCR1 by the Supreme Court as follows: (at p. 435 of SCJ): (at p. 429 of AIR):

'Now a Code of Procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.'

36. The position can be summed up as follows:

Section 554 Cr. PC distinguishes between State High Courts and Courts of the Judicial Commissioner. Sub-section (2) of Section 554 Cr. PC specifically vests certain powers in the Courts of Judicial Commissioners. Of this, Sub-rule (c) gives

power to the Court of the Judicial Commissioner to make rules for regulating its own practice and procedure and also practice and procedure of all criminal courts subordinate to it. It does not give such powers under Sub-section (1) to the State High Courts to frame rules as mentioned in Sub-section 2(c). The Legislature must have had good reason for making this distinction. That reason is that State High Courts already possessed powers to make Rules such as referred to in Sub-section 2(c) and so there was no necessity to make a provision similar to Sub-section 2(c) for State High Courts.

37. The State High Courts had a long history behind them and possessed certain powers resulting from their origin, history, background and tradition which included the power to make rules to regulate their own procedure and practice. Taking Andhra Pradesh High Court as a specific example, the position may be stated thus. The Supreme Court at Madras was created by Royal Charter of 1800. Under Section 8 of that Charter, that Court had jurisdiction, authority and power to the same extent as Justices of the Court of King's Bench in England. The King's Bench in England had inherent power to regulate its own procedure so as not to be inconsistent with rules laid down by the statute or adopted by ancient usage (Halsbury's Laws of England, Vol. 1, p. 344). The High Courts Act (or the Charter Act) was passed in 1861 by Parliament authorising establishment of High Court in Madras by Letters Patent and providing that, on such establishment of High Court, the Supreme Court at Madras should stand abolished.

Accordingly, the High Court at Madras was established by Letters Patent of 1865 and it stood in the place of Supreme Court which stood abolished. Section 9 of the Charter Act and recitals in the Letters Patent based on this Section 9, preserved in the High Court all jurisdiction and power which had been exercised by the Supreme Court subject to the two conditions namely, (1) what was by Letters Patent 'otherwise directed' and (2) what was enacted as statute law by 'Governor-General of India in Council'. Clause 38 of the Letters Patent made provision for regulation of procedure in criminal cases. It also made provision regarding regulation of procedure in criminal cases which it specified as follows: (a) Criminal Cases which shall be brought before High Court in its ordinary original criminal jurisdiction. (b) All other criminal cases over which High Court had jurisdiction

before publication of the Letters Patent. (c) All other criminal cases.

For cases in categories (a) and (b), it provided that they should be regulated by the procedure and practice which was in use before the Letters Patent i.e., in the Supreme Court. For cases in category (c), the clause provided that they should be regulated by the Code of Criminal Procedure and other laws which may be enacted. Regarding cases in category (c), it mentioned about procedure but did not mention about practice. This clause did not provide that the High Court should not have, or should cease to have, the powers which the Supreme Court already had to frame rules as already mentioned above. The Cr. P.C. itself, by Section 25, made all the judges of the High Court Justices of the Peace and in effect confirmed and continued in the High Court, the jurisdiction and authority which the Supreme Court at Madras had possessed before it was abolished. The Madras Supreme Court had power to frame rules to regulate its own procedure similar to Court of King's Bench as mentioned in Halsbury's Laws of England. It is not shown that any legislation positively had abolished the power of the Supreme Court which it already had, like Court of King's Bench, to frame Rules. The High Court possessed and continued to have the power to frame rules which its predecessor Supreme Court possessed because it was not 'otherwise directed' by the Letters Patent and the power was not abolished by Statute.

38. Section 106 of the [Government of India Act, 1915](#) provided that the several High Courts should continue to possess what power which they already had to make rules for regulating the practice of the Court. That Act applied only to Chartered High Courts in British India i.e., High Courts established in British India by Letters Patent.

39. When the [Government of India Act, 1935](#) was passed, Section 223 similarly declared that the power of High Court to make rules of Court continued unaffected by the Act. Section 219, as amended subsequently, explained the meaning of the words 'High Court in that Act to mean the High Courts in Calcutta, Madras, Bombay, Allahabad, Patna, and Nagpur, the High Court of East Punjab, the Chief Court in Oudh, any other court in India constituted or reconstituted under this chapter as a High Court, and any other comparable Court in India which an Act of

the appropriate Legislature may declare to be a High Court for the purposes of this Act. Sub-sections (2) and (3) of Section 219 provided as follows:

'(2) The provisions of this Chapter shall apply to every High Court in India.

(3) In this Chapter, 'India' means the territories comprised in the Governors' Provinces and Chief Commissioners' Provinces, and does not include any Acceding State.' Under Section 223, the power to make rules was continued in all the 'High Courts' as defined in Section 219. When the Constitution came into force, Article 225 recognized, preserved and confirmed the power of the State High Courts to make rules for regulating their own procedure and practice. Thus, the Madras High Court, by its origin and history and by virtue of the provisions in various enactments of the Constitution, has from the beginning and up-to-date, the powers to make rules to regulate its own procedure and practice subject to the restrictions already mentioned. By Section 32 of the [Andhra State Act, 1953](#), the Andhra High Court possessed the same powers to make rules for itself as the Madras High Court. So it has a right to make rules subject to the conditions mentioned above.

40. Rule 184(2) of the Criminal Rules of Practice is not inconsistent with the Letters Patent of the Madras High Court or with any provision in the Crl. P.C. or any other law. Rule 184 has been in existence from a long time back. Rule 184(2) has also been in existence from 1942. Under the principle stated in Broom's Legal Maxims, 1924 at page 94 it is convenient to adhere to Rule 184(2) merely on the ground that it is the practice even if no reason can be assigned for it. But, it is obvious that the sub-rule was introduced to fulfill a real need and to enable the revision court to dispose of the revision petition satisfactorily. The sub-rule was a sound basis. The power of the High Court to frame rules for regulating its own procedure has been exercised for a long time and been acquiesced in by all parties concerned including the Government and the Legislature. In this way, the position is similar to the rule of the High Court which provided for levy of court-fees.

41. Sri Sarma relies on Section 369 of the Crl. P.C, and seeks to construe this section as meaning that the High Court has less power than other courts. He

contends that the High Court had less power than a subordinate Court under the Crl. PC. This contention, even if true, as regards Section 369 Cr. PC, would not in any way affect the question of the Rule 184(2) of the Criminal Rules of Practice. I find that the contention of Sri Sarma regarding Rule 184(2) is untenable and that Rule 184(2) is valid.

42. In the result, I agree with the officer that the petitioner has to comply with the requirements of Rule 184(2) of the Criminal Rules of Practice and file the certified copy of the order of the trial court duly stamped.

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