

M.A. Jalil Vs. Rex

M.A. Jalil Vs. Rex

SooperKanoon Citation : sooperkanoon.com/467636

Court : Allahabad

Decided On : Nov-08-1949

Reported in : AIR1952All550

Judge : Misra and ;Kaul, JJ.

Acts : Uttar Pradesh High Courts Amalgamation Order, 1949 - Article 14; High Court Rules - Rule 4; Code of Civil Procedure (CPC) - Sections 24

Appeal No. : Criminal Revn. No. 124 of 1949

Appellant : M.A. Jalil

Respondent : Rex

Advocate for Def. : Nasirullah Beg, Government Adv.

Advocate for Pet/Ap. : Sir Iqbal Ahmad and ;J.S. Trivedi, Adv.

Judgement :

Misra, J.

1. An office report has raised the question whether these two revision applications can be heard & disposed of by the Lucknow Bench of the High Court.

2. One M. A. Jalil was convicted in two cases for offences under Sections 420, 420/511 & 420, 406, Penal Code & sentenced to imprisonment as well as fine. He

preferred two appeals which were dismissed by the learned Sessions Judge of Bareilly. These two revision applications, were filed by M. A. Jalil against the orders passed by learned Sessions Judge in his appeals. The revision applications were filed at Allahabad, & the petitioner engaged Sir Iqbal Ahmad to argue them on his behalf.

3. Sir Iqbal Ahmad was a Judge of the old Allahabad High Court for a number of years, & retired as the Chief justice of that Court. Since his retirement he resumed practice at the Bar. At the time of his appointment as a Judge of the old High Court, he had to give an undertaking that after his retirement he would not practise in that Court or in a Court subordinate thereto. Though the old Allahabad High Court & the Avadh Chief Court were by an order of the Governor-General amalgamated on 26-7-1948, it has been held that, in view of the undertaking given by Sir Iqbal Ahmad, he cannot practise as an advocate in cases heard by the Allahabad Bench of the new High Court or in Courts subordinate thereto, (i. e. subordinate Courts in what is generally known as Agra Province) Article 8, U. P. High Courts Amalgamation Order dated 19-7-1949 as modified by the Amendment Order dated 4-11-1948). As the petitioner was anxious that his applications should be argued by Sir Iqbal Ahmad, he moved two applications, praying that either Sir Iqbal Ahmad be granted permission to argue his cases In the High Court at Allahabad or, if that be not possible, 'the Hon'ble the Chief Justice be pleased to direct as an administrative measure that the said revisions be listed before & heard by some Hon'ble Judge sitting in the Lucknow Bench' so that Sir Iqbal Ahmad, his Counsel in these cases, be able to argue them. These applications were put up before the acting Chief Justice in Chambers & he passed the following order thereon:

'I allow these applications & direct that the cases mentioned above shall be transferred to the Lucknow Bench of this Court.'

The records of the two revision applications were accordingly sent from Allahabad to Lucknow. As in view of the provisions of the U. P. High Courts (Amalgamation) Order some doubt was entertained as to the power of the Lucknow Bench to hear these two revision applications, the office has put up a report raising the question

whether the Lucknow Bench has, in view of the provisions of the High Courts (Amalgamation) Order, authority to hear & dispose of these applications. Under the orders of the Hon'ble Senior Judge, this matter was listed for hearing before a Bench of two Judges.

4. It is pointed out in the office report that the question raised must be determined in accordance with the provisions of Article 14 of the said order. The article runs as follows:

'The new High Court, & the Judges & division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, such Judges of the now High Court, not less than two in number, as the Chief Justice may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh as the Chief Justice may direct, the jurisdiction & power for the time being vested in the new High Court:

vided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad.'

The view taken in the office report is that the effect of the two provisos to Article 14 is that cases arising in Avadh may, if the Chief Justice in his discretion so orders, be heard at Allahabad by such Judges of the new High Court as the Chief Justice may from time to time nominate, but that the Judges who sit at Lucknow can exercise jurisdiction only in respect of cases arising in such areas in Avadh as the Chief Justice directs. Judges sitting at Lucknow (generally called Lucknow Bench) cannot exercise jurisdiction & powers vested in the new High Court in cases arising outside Avadh. It may be mentioned in passing that on 28-7-1849, the Hon'ble the Chief Justice in exercise of the powers conferred by Article 14 of the Amalgamation Order nominated a number of Judges who were to sit & exercise jurisdiction vested in the High Court at Lucknow, Orders like the one just mentioned, nominating different Judges who were to sit in Lucknow. have been

passed since, by the Chief Justice from time to time. Such Judges have so far exercised jurisdiction & powers vested in the new High Court only in cases arising in the districts of Avadh.

5. The correctness of the view taken by the office was challenged on behalf of the applicant. Mr. A. P. Pandey of the Allahabad Bar, who argued this matter for the petitioner, contended that the order passed by the acting Chief Justice on 29-4-1949, transferring the cases to the Lucknow Bench, was a judicial & not an administrative order. That being a judicial order, it must be given effect to by the Judges of the Lucknow Bench. That there was no fundamental lack of jurisdiction in the Lucknow Bench to hear these cases. That even if it was an administrative order, it is final & cannot be called in question.

6. In support of this contention as regards the nature of the order of 29-4-1949, Mr. Pandey invited our attention to the application made on behalf of M. A. Jalil on 19-4-1949, to which reference had already been made. He argued that it complied with all the requirements of an application which called for the determination of a judicial matter. It was stamped like other such applications & that it was presented to the petition Judge who passed thereon the order 'Lay before the Hon'ble the Chief Justice'. On 20-4-1949, a notice was issued to the Government Advocate to appear & have his say in the matter. It was directed that the application be put up on 21-4-1949, before the acting Chief Justice. It could not be heard on the 21st or the 22nd of April. The next two days were Saturday & Sunday. The application could not be heard for the next four days, 24th, 25th, 26th and 27th. It was heard on 28th when orders were reserved. Ultimately an order transferring the cases to the Lucknow Bench was passed on 29-4-1949. Mr. Pandey conceded that the order of transfer was no more than a direction by the Hon'ble the Chief Justice that these cases be listed for hearing before a Judge of the Lucknow Bench. Reference was made to Section 108, Government of India Act 1915-16, as amended by the Government of India Act 1919 and to Sections 219 and 223, Government of India Act, 1935. The learned counsel also referred to the case of *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation* 1931 A. C. 275 at p. 295 where their Lordships of the Privy Council quoted with approval the definition of the expression 'judicial power' as given in *Huddart Parker and Co. v.*

Moorehead (1908) 8 C. L. R. 330 at p. 357. We find the following observation at p. 295 of the report : 'What is 'judicial power'? Their Lordships are of opinion that one of the best definitions is that given by Griffith C. J. in *Huddart Parker Co. v. Moorehead*, (1908-8 C. L. R. 330).

He says :

'I am of opinion that the words 'judicial power' as used in Section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.' '

We are clear that the definition of the expression 'judicial power' as given by Griffith C. J. can be of no assistance to the present applicant. Under Article 7, Amalgamation Order, the new High Court has, in respect of the whole of the United Provinces, all such original, appellate and other jurisdiction as, under the law in force immediately before 26-7-1948, was exercisable in respect of any part of the province by either the old High Court or the Chief Court of Avadh. Under Article 9, new High Court has all such powers to make rules and orders with respect to practice and procedure as were immediately before 26-7-1948, exercisable by the High Court in Allahabad. The article further provides that any rules or orders which were in force before 26-7-1948, shall, with necessary modifications, apply in relation to practice and procedure in the new High Court. According to Rule 4 of chap. VI of the Allahabad High Court Rules, subject to any order of the Chief Justice, the Deputy Registrar or Assistant Registrar has to prepare a list of cases which may be heard by each Bench of the High Court on any day. It is, clear, therefore, that the inclusion or omission of any case from the cause list prepared for any Bench is entirely within the discretion of the Chief Justice. This is not a matter in which any party or other person has any say. Nor can it be doubted that the Chief Justice, may in his discretion, direct any change in the daily cause list prepared for any Bench. For obvious reasons no litigant has a

right to insist that his case shall be heard by any particular Bench. This is a matter which is connected only indirectly with the determination of the jural relation between parties to the cases which come up for decision before the High Court. It constitutes only a step in setting the stage so to say, for the determination of the controversies which come up before the High Court for decision. It was held by the High Court of Bombay in *Queen Empress v. Tulja*, 12 Bom. 36 at p. 42 that an enquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons, or between him and the community generally, but, even a Judge, acting without such an object in view, is not acting judicially. Judged by this standard the order passed by the Hon'ble acting Chief Justice on 29-4-1949, cannot be said to be a judicial order. Reference was in course of argument made by Mr Pandey to Section 24, Civil P. C. We are clear that there is no analogy between an order of transfer or withdrawal passed by the High Court or district Court under Section 24, Civil P. C., and the powers of the Chief Justice to include in or omit a case from the Courts Cause lists. It is not a transfer of a case from one Court to another. It is only arranging the business of the Court. It is general principle of law that a plaintiff has a right to choose his own forum, subject to any law applicable to the choice of forum. When this right is sought to be interfered with either under Section 22 or Section 24 of the Code, the party concerned has a right to be heard. They have, however, no say in the matter of the preparation of the cause list of the High Court. The attempt to draw an analogy between the power of the Chief Justice in the matter of the preparation of the cause list of the High Court and an order passed under Section 24, Civil P. C., cannot but be misleading. We are satisfied, therefore, that the order of 29-4-1949, passed by the acting Chief Justice, was not a judicial order. It was an administrative order.

7. We are clear, however, that the question raised by the office report must be determined irrespective of whether the order passed by the acting Chief Justice was a judicial order or an administrative order. It is the duty of every Court to determine whether it has jurisdiction to hear and dispose of any case that is brought before it : *Rashmoni Dasi v. Gunada Sundari Dasi* A. I. R. (2) 1915 Cal. 49. If a Court has no jurisdiction or authority to hear and dispose of a case, the mere fact that a case has been transferred to it by the High Court, or the district

Court, would not invest it with such jurisdiction. There is possibly one exception to this general rule, as may be inferred from Sub-section. (4) of Section 24. Civil P. C., which seems to have authorised the withdrawal of a suit from a Court of Small Causes and order its transfer to a Court not invested with such powers. The Code provides that in such a case the latter Court shall be deemed to be a Court of Small Causes. Accordingly, we have to consider the question whether the two revision applications filed by M. A. Jalil can be heard and disposed of by the Lucknow Bench.

8. The question, as pointed out by the office must be determined with reference to the provisions of Article 14, U. P. High Courts Amalgamation Order. The article consists of the main provision contained, in, what may be called, part of the article, and two provisos. The first part of the article lays down the venue of the High Court. It directs that the High Court shall sit at Allahabad. Power is, however, given to the Chief Justice to appoint any other place for the sitting of the Judges and division Courts of the High Court, but he can do so only with the approval of the Governor of the United Provinces. The first proviso, however, lays down that such Judges of the new High Court, not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Lucknow, unless the Governor of the United Provinces, with the concurrence of the Chief Justice, otherwise directs. The distinction between the main part of the Article and the proviso with regard to the person in whom the power to take action in the matter is vested, is noteworthy. Under the main Article, it is the Chief Justice who may, with the approval of the Governor, appoint the place, other than Allahabad, for sitting of the Judges and division Courts of the High Court. Under the proviso it is the Governor who is invested with the power to direct that no Judge or division Court of the High Court shall sit at Lucknow, and the Governor can do so only with the concurrence with the Chief Justice. The purpose for which two or more Judges are to sit in Lucknow is also specified in the proviso. They

'shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court.'

There is no doubt that even under the main part of the Article, the Chief Justice may, with the approval of the Governor, appoint Lucknow as the place where the Judges and division Courts of the High Court may sit. If that is done, such Judges and division Courts will in every respect exercise all the jurisdiction and power for the time being vested in the new High Court and which is exercised by the Judges and division Courts sitting at Allahabad. But it appears to us that the Judges who are nominated by the Chief Justice to sit at Lucknow under the power conferred upon him under the proviso must confine themselves to the exercise of jurisdiction and power for the time being vested in the new High Court 'in respect of cases arising in such areas in Oudh as the Chief Justice may direct.' We are confirmed in this opinion by the second proviso which forms part of the Article. It lays down the Chief Justice may in his discretion order that any case or class of cases arising in the said areas in Avadh shall be heard at Allahabad. Our reading of the Article, is that in the scheme of the High Courts Amalgamation Order the new High Court is to consist of, so to say, two divisions, one division consisting of such Judges of the new High Court not less than two in number, as the Chief Justice may from time to time nominate, sitting at Lucknow in order to exercise jurisdiction and power vested in the new High Court in respect of cases arising in such areas in Oudh as the Chief Justice may direct and the other division consisting of the rest of the Judges of the High Court sitting at Allahabad exercising jurisdiction and power for the time being vested in the Court in respect of the whole of the United Provinces, except such areas in Avadh in respect of which jurisdiction and power is exercised by the first mentioned division. It is also noteworthy that though power is conferred upon the Chief Justice to order in his discretion that any case or class of cases arising in the areas in Avadh, in respect of which the first mentioned division of the High Court exercises jurisdiction, may be heard at Allahabad, there is no corresponding provision empowering the Chief Justice to direct that the cases arising in such areas of the province, in respect of which the division Bench which sits at Allahabad exercises jurisdiction, may be heard at Lucknow. If the Chief Justice desires to do so, it can be done only if action is taken by him under the main Article, and with the approval of the Governor he appoints Lucknow as the place where the new High Court and the Judges of the division Courts thereof may sit. Were it otherwise it would be permissible for the Chief Justice, if he be so

inclined to direct that all cases pending at any time in the division of the High Court at Allahabad may be heard at Lucknow and thus for all practical purposes render nugatory the provision contained in the main part of the Article which directs that the new High Court and Judges and the division Courts thereof shall sit at Allahabad, and that if the Chief Justice appoints any other station instead of Allahabad as the place where the Judges and the division Courts of the High Court are to sit, he must do so with the approval of the Governor of the Province. If the construction put upon the article by Mr. Pandey be accepted, it would not be necessary for the Chief Justice to obtain the approval of the Governor in order to have the entire judicial business of the High Court transacted at Lucknow. We are clear that this was not intended by the Amalgamation Order.

9. The argument advanced by Mr. Pandey that there is no inherent lack of jurisdiction in the Judges sitting at Lucknow to hear cases arising in areas outside Oudh is not at all helpful. The present Bench at Lucknow sits for a specific purpose namely :

'In order to exercise in respect of cases arising in such areas in Oudh as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court.'

We know that till lately all the cases arising within the whole of the province of Oudh in respect of which the High Court could exercise jurisdiction and power were disposed of by the Lucknow Bench, A few months ago the ambit of this area was cut down under an order of the Chief Justice. Cases arising in the districts of Eyzabad and Sultanpur are now heard at Allahabad and the Lucknow Bench cannot exercise jurisdiction in respect of such cases.

10. Mr. A. P. Pandey was not present when the Government Advocate finished his arguments for the other side, and so by way of rejoinder some argument was addressed to us by Sir Iqbal Ahmad. He raised a new point and asked us to hold that as soon as the acting Chief Justice passed an order that these two revision applications be listed before a Lucknow Bench, they fell within the category of "Cases arising in such areas in Avadh as the Chief Justice may direct.' In support of his argument he took by way of illustration a case instituted in the Court of the

Civil Judge, Allahabad, which by an order of the High Court passed under Section 24, Civil P. C , was transferred to the Civil Judge, Lucknow. He argued that such a case, because it was originally instituted at Allahabad must be deemed to have arisen in an area outside Oudh. He mooted the question whether the appeal in such a case from the decision of the Civil Judge, Lucknow, could not be heard by the Lucknow Bench of the High Court? It may be conceded that the appeal in such a case against the decision of the Civil Judge of Lucknow would be heard either by the District Judge, Lucknow, or the Lucknow Bench, as the circumstances of the case might require. But there can be no analogy between an appeal against a decision given by the Civil Judge of Lucknow and an administrative order of the Hon'ble acting Chief Justice that it be listed before the Lucknow Bench. It is unnecessary for us to lay down specifically what are the classes of case which can be said to arise in Avadh, but we are clear that a revision application filed in the Allahabad High Court against the dismissal of an appeal in a criminal case heard by a Magistrate in Bareilly cannot be said to be a case arising in Avadh merely by reason of the fact that the Hon'ble Acting Chief Justice passed an administrative order that it be listed before the Lucknow Bench of the High Court. We are of opinion that the Lucknow Bench, constituted as it is under the first proviso to Article 14, High Courts Amalgamation Order, has no jurisdiction to hear these revision applications. The record of the two cases shall be placed before the Hon'ble the Chief Justice for such orders as he may deem fit to pass.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com