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Court : Allahabad

Decided On : Oct-21-1916

Reported in : AIR1917All474; 36Ind.Cas.585

Judge : Henry Richards, C.J. and; P.C. Banerji, J.

Appellant : Ramjas

Respondent : Mahadeo Pershad and After His Death Panna Lal and ors.

Judgement :

Henry Richards, C.J.

1. This appeal arises under the following circumstances. There was pending in this Court a civil appeal against a preliminary decree for the dissolution of partnership. An application was made for a stay of further proceedings in the Court below pending the decision of the appeal. Both sides filed affidavits in support of and against the application. The appellant here was the deponent in one of these affidavits and it is alleged that some statement (or some statements) in this affidavit were untrue. An application was made for sanction to prosecute the appellant for the offence of perjury and a learned Judge of this Court granted the sanction. It is against this order that the present appeal has been preferred. A preliminary objection has been taken that no appeal lies.

2. Under ordinary circumstances it is open to any person aggrieved by the alleged commission of a criminal offence by another person to institute criminal

proceedings. Section 195 of the Criminal Procedure Code however provides that No Court shall take cognizance of offences punishable under the sections therein mentioned and amongst' other offences punishable under Section 193 of the Indian Penal Code 'when such offence is committed in or in relation to any proceedings in any Court except with the previous sanction or on the complaint of such Court or of some other Court to which such Court is subordinate. It will thus be seen that in certain cases the Legislature thought (it to place same limitation on the institution of criminal proceedings. It seems to us abundantly clear that no appeal lies against the order of the learned Judge of this Court unless it can be made under the provisions of Section 10 of the Letters Patent of this Court That section provides that an appeal shall lie to the High Court of Judicature from the judgment not being a sentence or order passed or made in any Criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court pursuant to Section 13 of the said recited Act. On behalf of the respondent it is contended that the order of the learned Judge of this Court granting sanction to prosecute cannot be said to be a judgment' within the meaning of the section. In my opinion this contention has force. The order of the learned Judge of this Court decided nothing. It merely armed the applicant with an order of sanction, which he could bring to the Court that was to investigate the charge against the appellant. Such order of sanction would entitle that Court to take cognizance of the alleged offence. A number of authorities have been cited from the different High Courts and amongst them two cases from the Calcutta High Court in which it has actually been held that an appeal does lie from an order of a Judge of the High Court sanctioning a prosecution. No reasons are given by the learned Judges for coming to this conclusion. The question what is a judgment within the meaning of the section of the Letters Patent arose in the case reported as *Hurish Chunder Ohowdhry v. Kali Sunderi Debi* 9 C. 482 (P.C.), 12 C.L.R. 511 : 1 I.A. 4 : 7 Ind. Jur. 16 : 4 Sar. P.C.J.. 46 4 Ind. Dec. (N.S.) 970. In that case a learned Judge made an order refusing to send down a decree of the Privy Council for execution. The Judges of the Court as well as their Lordships of the Privy Council considered that the effect of the order of the single Judge was of the most vital consequence to the decree-holder and most of the Judges were of opinion that he had made a great mistake as to his jurisdiction in the matter. The question was distinctly raised as to

whether or not an appeal lay. Their Lordships of the Privy Council at page 493 of the Report state as follows: Their Lordships do not think that Mr. Justice Pontifex can be properly treated as having usurped jurisdiction; but if he had, this would have been a valid ground of appeal, and they are unable to agree with the Chief Justice, that if a Judge of the High Court makes an order under a misapprehension of the extent of his jurisdiction the High Court have no power by appeal or otherwise in setting right such a miscarriage of justice. The High Court has an inherent jurisdiction to make orders to prevent a miscarriage of justice and this right is expressly recognised by Section 151 of the Code of Civil Procedure. It is to be noted that their Lordships of the Privy Council abstain from deciding that the order of Mr. Justice Pontifex was a judgment within the meaning of that expression in Section 10 of the Letters Patent. But assuming that the order of Mr. Justice Pontifex in that case could be regarded as a judgment within the meaning of the Letters Patent, it was a very different order from the order of the Court granting sanction to institute a prosecution. It is unnecessary for us in the present case to express any opinion as to exactly what class of decrees or orders are within the expression. In this Court by the rules and practice in the allotment of business, care is taken that matters do not come before a single Judge where the order of such Judge would finally decide a matter of importance and leave the party against whom the order was made without a remedy. I am clearly of opinion that the order of the learned Judge in the present case was not a judgment within the meaning of that expression in the Letters Patent.

4. It is next contended that this Bench is entitled to revoke the sanction granted by the learned Judge sitting alone under the provisions of Clause 6 of Section 195 of the Criminal Procedure Code. That section provides as follows: Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate. Clause 7: For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. In my opinion, a single Judge of the High Court sitting alone cannot be said to be an authority subordinate to any other Bench of the High Court. A Judge sitting to transact work properly allotted to him is the High Court itself just as any other Bench. I do not think that the provisions of Clause 7 help the appellant. Clause 7 clearly applies to the application for

revocation of sanction being made to a Court superior to the Court which granted the sanction nor do I think that it can be said that appeals ordinarily lie from a single Judge to a Bench of Judges. I would allow the preliminary objection and dismiss the appeal.

Baneraji, J.

5. I concur and have nothing to add. 1 agree in the order proposed.

6. We dismiss the appeal with costs. We fix the costs at Rs. 100. The stay order is discharged.

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