

S.S. Roy and anr. Vs. the State and anr.

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Court : Orissa

Decided On : Aug-06-1952

Reported in : AIR1953Ori266

Judge : Jagannadhadas, C.J. and ;Mohapatra, J.

Acts : [Constitution of India](#) - Articles 133, 134, 134(1) and 215; Contempt of Courts Act, 1926 - Sections 1 and 2; Code of Criminal Procedure (CrPC) ; Evidence Act

Appeal No. : Supreme Court Appeal No. 6 of 1952

Appellant : S.S. Roy and anr.

Respondent : The State and anr.

Advocate for Def. : Adv.-General and ;M.S. Rao, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Judgement :

Jagannadha Das, C.J.

1. This is an application for leave to appeal to the Supreme Court against the judgment and order of this Court in Original Criminal Misc. Cases Nos. 11/51 and 14/51 both of which were dealt with by this Court by a common order. By the said order the two petitioners, viz., Sri S. S. Roy, then Magistrate, 1st Class, Cuttack,

and Sri Sankar Charan Sahu, then Sub-Inspector of Police, Cuttack, were adjudged guilty of contempt of Court and sentenced to pay a fine of Rs. 100/- and Rs. 50/- respectively. An objection was taken in the course of the argument that as against the order of the High Court adjudging any person to have committed contempt and sentencing him to punishment, no appeal lies or at any rate that the High Court has no power to grant leave to appeal. This objection will be dealt with towards the close of this order and after dealing with the other contentions that have been raised on the merits of the application. To understand those contentions correctly, it is necessary to state a few facts as shortly as possible.

2. One Hrudananda Sahu was the judgment-debtor in a money-decree obtained against him in the year 1935. A warrant of personal arrest was issued against him by the Additional Munsif of Cuttack, and was handed over on 15-4-1950 to a process-server, one Brundaban Mohanty, for execution. The said Hrudananda Sahu happened on that day to attend the Court of Sri B. Pal, Magistrate, 1st Class, Cuttack, as an accused in a criminal case. He appears to have been ordered to be released on bail. After the lapse of about four hours thereafter and while he was still near about the precincts of that Court, he came to know that the process-server of the Munsif's court was preparing to arrest him in execution of the warrant, obtained against him by the decree-holder. He then appears to have moved from one Magistrate to the other for protection from arrest and ultimately petitioner 1 herein Sri S. S. Roy, Magistrate, 1st Class, Cuttack, passed an order purporting to be under Section 144, Criminal P. C. restraining the Civil Court process-server from arresting the judgment-debtor in execution of the warrant of arrest, till he reached his home, and directed the notice of the said restraint order to be served on him at once. It would appear that no formal copy of this order for service was prepared in the office of the Magistrate, nor sealed or signed by him, nor, was it in fact served by the Civil Court process-server through the usual channel. It was also not endorsed for service through the police. But it would appear that the second petitioner herein the Sub-Inspector of police, received some intimation about a possible disturbance and came on the spot, at the time when the process-server was either about to arrest the judgment-debtor, or had in law, already just arrested him. The second petitioner on the strength of the order of the Magistrate, the original of which was somehow brought to the spot and

shown to him by the judgment-debtor's lawyer, directed the process-server not to interfere with the liberty of the judgment-debtor and brought about the escape of the judgment-debtor, thereby either preventing his arrest by the process-server or releasing him from his custody.

The Munsif who issued the warrant of arrest received a report about this from the process-server. He thereupon, made an inquiry and sent up a report to this Court against petitioner 2 the Sub-Inspector of Police, holding that his action amounted to wilful obstruction to the regular process of his Court constituting contempt of Court and recommending that proper action be taken. That was treated by this Court as a motion for proceedings for contempt and was numbered as Orl. Cr. Misc. 11 of 1951, and the same came up for orders of this Court. When that motion came up, this Court issued notice, suo motu, also to petitioner 1 the Magistrate, 1st Class, Cuttack, to show cause why he should not be committed for contempt for having passed an order restraining the Civil Court Peon from executing the process without any jurisdiction in that behalf. Thus, Orl. Cr. Misc. 11/51 is the motion in which the Court has directly or on the report of the Munsif taken the initiative. In addition to the above, the decree-holder filed an independent application to this Court for proceedings in contempt against both. That was numbered as Orl. Cr. Misc. 14/51. Both these motions came up for hearing before this Court and have been dealt with by the common order of this Court now sought to be appealed against.

3. The following main questions have been urged before us as arising on the proposed appeal to the Supreme Court and as being adequate grounds for the grant of leave. Certain important documents which have been relied on in the final order of this Court were not exhibited & some of those that have been used are inadmissible in evidence. The petitioners have been seriously prejudiced by the use of such material, since they had no opportunity of rebutting the same. It has been pointed out that one of the main documents that has been relied on as against petitioner 1 to show the absence of any powers in him to pass orders under Section 144, Criminal P. C., was a note of the Additional District Magistrate, Sri p. K. Das dated 25-6-1950 stating that Sri S. S. Roy had no powers under Section 144, Criminal P. C. on the date in question. It was contended that if this

note had been formally exhibited, the petitioner would have been able to adduce rebutting material to show that that note of the Addl. District Magistrate was erroneous in fact.

We are satisfied, however, that there is no substance in this objection. The procedure that has been adopted in this case was, that all the material which was proposed to be used on the hearing of the contempt application, was sent up by the Additional Munsif, when he made the report to this Court for taking proceedings in contempt as enclosures to that report. This note of the Addl. District Magistrate, was one of those enclosures. The report of the Munsif, as well as all the papers that were sent up as enclosures thereto, were all included in the paper-book prepared for the hearing of the contempt application. Copies thereof were served on the lawyer who appeared for the petitioners on the hearing of the contempt application. It cannot, therefore, at all be said that the petitioners had no notice of the material that has been used by the Court in these proceedings.

The complaint about the absence of marking of any of these materials as exhibits is also unfounded. It may be stated at the outset, that there has so far been no prescribed or settled practice in this Court for marking of the documents as exhibits for the hearing of contempt applications. But as a matter of fact, in this case, the documents used, appear to have been marked in the aggregate as Ex. I. Learned counsel for the petitioners draws our attention to a portion of the passage in the judgment of the learned Judge who delivered the leading judgment in this matter, and urges that it was only the original petition and the order of petitioner 1 under Section 144, Criminal P. C. that were marked as Ex. 1 and not the note of the Additional District Magistrate, that has been made use of by the learned Judge, to show the want of authority in the Magistrate.

The order-sheet in the case, however, shows that not only the original petition dated 15-4-1950, but the orders passed thereon by the various Magistrates were marked as Ex. I. It may be mentioned in passing, that what has been referred to above as note of the Additional District Magistrate was not a mere ex parte office note, but an order passed by the Additional District Magistrate after calling for explanation from petitioner 1. Order No. 6 dated 17-1-52 in Orl. Cr. Misc. No.

11/51 which is initialled by one of the learned Judges shows the following note: 'The original petition dated 15-4-50 along with the orders passed thereon by the various Magistrates be marked as Ex. I.' Obviously this was not meant to confine the exhibit mark only to the order of Sri S. S. Roy, under Section 144 and the statement to that effect in the learned Judge's judgment prepared later could not have been meant to contradict this. What the learned Judge meant appears clearly from what he stated in his judgment as follows:

'All the papers on which the Munsif and Mr. M. S. Rao have relied, in support of the contempt proceedings, were typed in the paper-book and the opposite parties were fully aware that, those documents were being used against them in these proceedings. In this Court also we got the original petition and the order of Sri S. S. Roy under Section 144 marked as Ex. I, though a copy of the same has been forwarded to this Court by the Muusif himself.'

What apparently the learned Judge meant was that all the papers already sent up by the Munsif as enclosures to his order were to be treated as exhibits and that these additional papers also have been marked as an exhibit. However that may be, there is no room for the contention that any material, of which the petitioners had no notice through the advocates, was used at the hearing.

The further contention that has been urged to show that there has been violation of the fundamental principles of procedure, is that the two depositions of petitioner 2, the Sub-Inspector of police, and of the judgment-debtor, in the connected criminal case filed by the judgment-debtor against the decree-holder and the process-server and others, in connection with the same incident, were used as substantive evidence in this matter, and that the same was not admissible in evidence. It is to be noticed, however, that it does not appear that any objection to the use of this material was taken at any time before or during the course of the hearing, though the advocates were clearly put on notice about the use of the same in the report that the Munsif sent up and by the fact that they were included in the typed paper-book, it is true that the evidence which in law is inadmissible, does not become admissible, by absence of objection, but what we are concerned with, at this stage, is not about the admissibility or otherwise of this evidence; but

whether essential justice may have suffered and fundamental principles violated by the use of this material. It is also to be remembered that proceedings in contempt, though criminal in one sense, are not strictly governed by the Criminal Procedure Code or the Evidence Act. A contemner, unlike an accused, can give evidence on oath. See -- 'Subrahmanyam Editor, Tribune-- In re'. AIR 1943 Lah 329 at p. 346 (A). A procedural illegality can be waived by the contemner. See -- 'Weston v. Editor of the Bengalee', 15 Cal WN 771 at p. 772 (B). Therefore, absence of objection to any particular procedure is a material consideration in judging whether justice has suffered. Judged in this light and in view of the close connection between the proceedings in which the depositions were taken and the present proceedings, and having regard to the fact that the Sub-Inspector of Police, petitioner 2, was himself a witness in those proceedings, we are not prepared to say that there has been any such gross violation of the principles of natural justice which was likely to have caused prejudice.

4. It may be noted that in order to persuade us that some prejudice may have been caused by the use of the note of the Additional District Magistrate showing want of authority in petitioner 1 to pass orders under Section 144, Criminal P. C., without giving it an exhibit mark, an attempt has been made by learned counsel for the petitioners to place before us certain additional documents to show that in fact the Magistrate had such authority. Having regard to the view which we have taken that the petitioners had ample notice of the likely use of the note of the Additional District Magistrate, and in view of the categorical statement in the order sought to be appealed against that the absence of authority was admitted, we do not think, it is open to the petitioners to adduce any additional evidence at this stage. We might, however, add that at one stage during the course of the arguments and before making up our mind, we did go through the material offered and were satisfied that it was not enough to make out that the Magistrate had the power.

5. The next question that has been pressed before us, as arising for decision, on appeal to the Supreme Court is that, on the finding that petitioner 1 though not himself the Sub-Divisional Magistrate, of Cuttack at the time, was 'in charge of the current duties of the Sub-Divisional Magistrate on that date, he must be deemed in law to have been clothed with the powers of a Magistrate in charge of the Sub-

Division and that therefore the order under Section 144, Criminal P. C. must be taken to be one legally and validly passed.

Section 13, Criminal P. C. has been relied on in this connection to show that the Provincial Government may place any Magistrate of the 1st Class or 2nd class in charge of a Sub-Division and relieve him of the charge as occasion requires, and that such Magistrates are called Sub-Divisional Magistrates. It has also been pointed out that under the same section, the Provincial Government may delegate its powers to the District Magistrate, and it is contended that petitioner 1 who admittedly is a First Class Magistrate when he was placed in charge of the current duties of the Sub-Divisional Magistrate owing to the latter's absence on other duty, must be presumed to have been placed in charge of the Sub-Division itself, by a standing order either of the Provincial Government or, of the District Magistrate under delegated powers, and that therefore, he must be deemed to be the Sub-Divisional Magistrate for the time being. On this assumption, it is urged that he had the powers to pass orders under Section 144, irrespective of the question whether he was specially vested with power in that behalf by the Provincial Government. In support of this contention, the cases in -- 'Kishori Lal v. Srinath Roy', 36 Cal 370 (C); -- 'Abdul Majid v. Nripendra Nath', AIR 1934 Cal 393 (D) and -- 'Bam Krishna v. Emperor', AIR 1938 Cal 195 (E), have been relied upon.

This point which has not been raised or argued before the Court at the hearing of the contempt proceedings, cannot now be entertained as a ground on which leave to appeal to Supreme Court can be granted. Indeed, it is not ordinarily permissible to raise a point in appeal, which was not raised in the Court appealed from, especially where both the Courts are what may be called 'Courts of Superior Jurisdiction'. See -- 'Davis v. Galmoye', (1889) 39 Ch D 322 at p. 323 (F).

Moreover, the argument raised is not with reference to a pure question of law, but is one which depends upon certain further facts which the petitioners' advocate wants to rely upon by way of assumption in order to be able to substantiate it. In support of this argument, (as also for the argument relating to the prejudice caused by relying on the note of the Additional District Magistrate as to the absence of power in petitioner 1 already referred to), learned counsel sought to

rely on copies of old circulars issued by the Government of Bihar & Orissa, dated 17-1-30 and 25-1-30 as also a list said to be recent of distribution of work among the gazetted officers in the Cuttack District Office. We cannot, however, admit this additional material at this stage to make out a fresh question of fact, especially in view of the categorical statement in the judgment sought to be appealed against, that absence of authority to pass orders under Section 144, Criminal P. C. is admitted as already mentioned. We may also state that we are not satisfied that the distribution list which is said to be in force really makes out what the petitioners' advocate contends for. It is also not asserted, nor can we assume, that an old order of 1930 of the Government of Bihar and Orissa still continues to be in force. This point, therefore, cannot be entertained as a ground that legitimately arises on appeal to the Supreme Court.

6. The next question that has been raised is, that the view taken by the learned Judges whose judgment is sought to be appealed against, to the effect that the order passed by petitioner 1 under Section 144, Criminal P. C., apart from lack of jurisdiction, was highly improper, is erroneous. It is argued that that order itself did not purport to have been based on the ground that there was any apprehension of the breach of peace, and that the validity of that order apart from the question of jurisdiction could be supported with reference to the terms of Section 144 which authorises the Magistrate to direct any person to refrain from certain act in order to prevent obstruction, annoyance or injury to any person lawfully employed.

This argument has been noticed in para. 6 of the judgment sought to be appealed against and it was pointed out that it was unnecessary to deal with this contention in view of the fact that petitioner 1 himself in his explanation stated that he passed the order, because he apprehended breach of peace. It was accordingly held that it could not be supported with reference to the situation at the time. Besides, the question as to whether the judgment-debtor at the time was lawfully employed and was entitled to immunity from arrest under Section 135, Civil P. C. would, as pointed out by the learned Judge, depend on a further investigation of the facts and circumstances, leading to his stay in the criminal court premises till 12 noon that day, i.e., for four hours after the order, for release on bail, was passed. Indeed, if the facts are taken to be what have been stated in the report of the

Munsif on which these proceedings have been initiated, it would be open to argument that the judgment-debtor at the time, was not lawfully employed and was not entitled to protection. This point, therefore, cannot be permitted to be raised on appeal and cannot furnish a ground for granting leave to appeal.

7. It must, therefore, be taken on this application for leave to appeal that no grounds have been made out, of such a nature as would entitle the petitioners to challenge by way of appeal, the findings of this Court that the order of petitioner 1 Sri S. S. Roy was without jurisdiction, and that it was on the facts an improper order.

8. The further facts that have been found and which concern petitioner 2 alone, have been fully dealt with in paras. 8 and 9 of the judgment of this Court sought to be appealed against. The finding is that by the time he went to the spot, the judgment-debtor was still in his car on the road and that the process-server was standing there and was showing the warrant of arrest issued by the Civil Court, but instead of performing his obvious duty of dispersing the crowd, which, on the view of the facts taken as proved by the learned Judges, could have been easily done, and instead of helping the process-server in effecting the execution of the warrant, he allowed the judgment-debtor to escape from the custody of the process-server and thereby effectively prevented the process-server from executing the process.

The Court also found that the police officer should have been aware that the order of the Magistrate was not promulgated by regular service on the process-server, nor endorsed over to him or to the police for service on the process-server and that he showed excessive zeal in purporting to act on the original order of the Magistrate shown to him by the judgment-debtor or his lawyer and in helping the judgment-debtor against the arrest by the process-server. The learned Judges have clearly found that the plea of petitioner 2 that he went to the spot for the purpose of preventing a breach of peace, and that his interference was for nothing else except to disperse the crowd and to refer the parties to the Civil Court, does not stand any scrutiny and that the fact that petitioner 1 had passed an order under Section 144, valid or invalid, affords no justification for his interference on the basis thereof when there has been no promulgation at all of that order and

when there has been no endorsement of the same to him for service.

On a consideration of the entire case of this petitioner and the explanation offered by him, the learned Judges have come to a clear conclusion that his interference with the civil process cannot be said to have been in good faith. As against these findings, all that has been urged before us, is only the reiteration of the arguments which were addressed to the Court at the original hearing, to show the justification for and good faith of the action of petitioner 2. No other ground has been shown to us for a challenge of the findings as against him, for the purpose of any appeal to the Supreme Court. The only further argument that could be urged was that in coming to the finding of absence of good faith against him, the Court made use of the evidence of the Sub-Inspector, petitioner 2, and of the judgment-debtor, in the connected criminal case and that the admission of that evidence is illegal. This contention has already been dealt with and we have held that this cannot afford any sufficient ground in the circumstances of this case for challenging on appeal the correctness of the findings.

9. Having regard, therefore, to the well established principle of sole and exclusive jurisdiction of a Court of record in matters relating to contempt of Court, none of the findings arrived at by the learned Judges as against petitioner 1 or 2, we open to further challenge. We cannot, therefore, grant any leave to appeal in this case for the purpose of challenging the correctness of those findings, with reference to any of the contentions raised before us, and dealt with above.

10. Learned counsel for the petitioners, however, argues that even on the footing that the findings of this Court are no longer open to challenge on appeal the petitioners cannot be adjudged guilty of contempt of Court in view of the specific finding of, the learned Judges themselves, negating the suggestion made by the decree-holder that the two petitioners, in what they did, were influenced by the relationship of the judgment-debtor with an influential personage, namely, Sri Dinabandhu Sahu, M. L. A. It is urged that having regard to the facts and the circumstances of this case, the question whether on the findings of this Court a contempt of Court has been committed at all, is one of great public importance and that leave to appeal to the Supreme Court ought to be granted on that ground.

On a consideration of this aspect of the argument, there arises a clear difference between the case of petitioner 1 and that of petitioner 2. So far as petitioner 2 the Sub-Inspector of police, is concerned, notwithstanding that the suggestion of extraneous motive by way of influence due to relationship of the judgment-debtor with a high-placed personage has been negated, the learned Judges have come to a clear and categorical finding of absence of good faith in him. Their findings in paras. 8 and 9 of the judgment shows that in their view the action of the police officer was unjustifiable and unwarranted and was therefore an act of high-handed interference with the execution of civil process of Court. No executive officer highhandedly interfering with civil process, can escape the penalty for such contempt. The fact that he may have done so without being influenced by anybody is of no consequence. As regards petitioner 2, therefore, the findings of this Court do not in our opinion raise any question of public importance and the case against him is concluded by the view of the facts taken by the learned Judges.

11. So far as petitioner 1 however is concerned, the case may stand on a somewhat different footing, since, in what he did, he purported to act in his judicial capacity as a Magistrate and not as a mere executive officer, and inasmuch as positive bad faith has not been found against him. It is pointed out that so far as he is concerned, what all has been found by the learned Judges against him is 'gross negligence' in his not satisfying himself that he had the necessary powers to pass a judicial order under Section 144, Criminal P. C., notwithstanding the opposition by the decree-holder, and the 'impropriety' of the order, on merits, consisting in his easy assumption as to the existence of an apprehension of breach of the peace, without any adequate material, and in his having conferred immunity on the judgment-debtor from arrest under the civil process instead of directing him to obtain orders from the Civil Court itself. It is contended that all this cannot constitute an act of contempt by a Magistrate against a civil Court.

On the other side, it is contended that, as found by the learned Judges, the order of petitioner 1 was intended to have the effect, and in fact, had the effect, of preventing the process-server of the Civil Court from executing the process issued to him by the Munsif and that, by itself and without anything more, was enough to constitute contempt, unless the petitioner could justify his action by showing that

he had authority to pass the order and that what he did was only a bona fide error of judgment, in respect of a matter within his competence. It is urged that once absence of jurisdiction or authority has been made out, as also gross negligence in the exercise thereof, it is an abuse of official authority by the Magistrate and that the Magistrate is not entitled to any protection when he issues orders which have the intended effect of interference with the orders of processes of the Civil Court. Reliance in this context has been placed on a passage from Halsbury's Laws of England, Vol. 7, 1909 Edition, p. 209, para. 636 which states as follows:

'Judges of inferior Courts are punishable by attachment for acting unjustly, oppressively or irregularly' in execution of their duty.'

It may be noticed that the same passage also contains a statement that :

'A great part of this Jurisdiction is virtually superseded by modern statutes giving the Lord Chancellor power to remove a Judge of an inferior Court for inability or misbehaviour.'

It may be doubted, however, whether supersession of this jurisdiction, if it existed, can be assumed for our purposes, in the conditions still prevailing in this country, where the Magistracy and the Civil Judiciary are not under one centralised disciplinary control and occasions of conflict such as arose in this case are not altogether uncommon. The duties of the Magistrates with reference to Civil Court processes have been clearly indicated as early as in -- 'Rahmatullah, In the matter of the Petition of, 17 All 485 at p. 489 (FB) (G). But it is regrettable that conflicts of this kind do still occasionally arise, and therefore deliberate and intended interference with Civil Court process by a Magistrate without authority and, exercising his official position without due care, may well require to be checked by this Court by proceedings in contempt, it is unnecessary, however, that we should discuss further the arguments raised on either side as to whether on the findings arrived at by the Court, a contempt of Court can be said to have been committed by the Magistrate in this case because in our view, the question is one of sufficient importance with reference to which leave to appeal to the Supremo Court may be granted as regards petitioner 1 if this Court has the power to grant such leave.

12. The question, therefore, that remains for consideration is whether this Court has the power to grant leave to appeal to the Supreme Court as against the sentence imposed on petitioner 1, on his being adjudged guilty of contempt. The provisions under which this Court can grant such leave are Arts, 132, 133 and 134 of the [Constitution of India](#). As regards Article 132, though there has been some faint argument before us suggesting that a question of law as to the interpretation of the Constitution arises on the appeal, that contention was not substantiated. There is also no scope for invoking the power under Article 133, inasmuch as the contempt adjudged against petitioner 1 is not civil contempt, but what is called criminal contempt. The distinction between the two has been clearly pointed out in -- 'Governor of Bengal v. Motilal', AIR 1914 Cal 69 at p. 121 (H). As stated therein : 'A Civil contempt is failure to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein,' while 'A criminal contempt' is conduct that is directed against the dignity and authority of 'the Court.' The present proceedings have been initiated directly by this Court on the report of the Munsif for the purpose of vindicating the authority of a Subordinate Court as against interference by an alleged unauthorised order of the Magistrate. It is, therefore, clearly in the nature of a criminal contempt and hence Article 133 is not applicable to this case. The only provision under which, if at all, leave to appeal could be granted by us in this case is Article 134, Clause (I) (C). The applicability of that Article depends on the question whether the proceeding by way of contempt in this Court is or is not a criminal proceeding within the meaning of the said provision in the Constitution. That question, however, is not free from difficulty. The fact that according to the practice of this Court a contempt proceeding is called an Original Criminal Miscellaneous case is of no consequence by itself.

13. There can be no doubt that proceedings by way of contempt are punitive in nature, and in that sense criminal. This has been held to be so for purposes of the essential requirements of the fundamental principles that must govern the exercise of such jurisdiction. That the proceeding by way of contempt is criminal in this sense has been held by the Privy Council as early as in 1868: --'In re : E. H. Pollard', (1868) 5 MooP C N S 110 : 16 E B 457 at p. 464 (I). Their Lordships in that case stated as follows :

'In their (Lordships') judgment no person should be punished for contempt of Court 'which is a criminal offence', unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him.'

This case has been repeatedly followed in every subsequent case to show that the essence of 'criminal procedure' for adjudging a person guilty of an offence should be observed in proceedings by way of contempt. See -- 'Ebrahim Mammoji V. Emperor', AIR 1926 Bang 188 (J).

But it is also well-recognised that the power of the High Court to adjudge a person guilty and punish him for contempt is not by virtue of any provisions in the Penal Code, or the Criminal Procedure Code; but by inherent jurisdiction. This has been laid down by the Privy Council as early as in -- 'Surendra Nath v. Chief Justice and Judges of the High Court of Bengal', 10 Cal 109 (K). The point decided therein has been summarised in the case in -- 'Bai Amrit, In re ', 8 Bom 380 at p. 387 (L), as follows :

'A High Court in India being a Superior Court of record, has amongst other powers, that of punishing summarily for contempt -- a power it possesses not from the Civil or Criminal Procedure Code, or from the Penal Code; but from the fact of its being a Court of record. A very recent decision on that point is -- '10 Cal. 109 (PC) (K).

14. The Privy Council in -- '10 Cal 109 (PC) (K)' in addition to elucidating the position that the High Courts in India have inherent jurisdiction in contempt matters and derive such jurisdiction from the fact that they are Courts of Record, laid stress also on the principle that the jurisdiction of the High Court in such cases is sole and exclusive -- a principle laid down as early as in -- 'William Rainy v. Justices of Sierra Leone', (1853) 8 Moo P C 47 (M). This principle of sole and exclusive jurisdiction was held in that case to preclude any appeal to the Privy Council from colonial Courts.

In this context, our attention has been drawn to a number of cases of the Privy Council in recent years where the Privy Council appears to have departed from its earlier view in -- '10 Cal 109 (PC) (K)'. See -- 'Andre Paul Terence Ambard v. Att. General of Trinidad, Tobago', AIR 1936 PC 141 (N); --'Debi Prasad v. Emperor',

AIB 1943 PC 202 (O) and -- 'Parashuram Dataram v. Emperor', AIB 1945 PC 134 (P). These cases, however, including that in -- '10 Cal 109 (PC) (K)' are cases in which the question that arose was not about the power of the High Courts to grant leave to appeal in the normal course, but about the power of the Privy Council itself to grant special leave in such cases. It is true that the later cases make a departure to this extent that the Privy Council did not feel that the principle of sole and exclusive jurisdiction of a Court of Record in contempt proceedings should stand in the way of the prerogative right of the Crown to entertain such appeals by special leave. It will be found, however, on examination of the cases in which such leave was granted that they are cases in which in the opinion of the Privy Council, there was room for thinking that the Jurisdiction to punish for contempt was not applicable and yet such jurisdiction was exercised, thereby resulting in miscarriage of justice. Thus, in -- 'AIR 1936 PC 141 (N)', their Lordships elucidated the position at p. 146 in the following terms:

'They are satisfied that the Supreme Court took the course they did with a desire to uphold the dignity and authority of the law as administered; there nevertheless seems to their Lordships to have been a misconception of the doctrine of contempt of Court as applied to public criticism. A jurisdiction of a very necessary and useful kind was applied in a case to which it was not properly applicable, and this, in the view of their Lordships has resulted in a substantial miscarriage of justice.'

In -- 'AIR 1943 PC 202 (O)', their Lordships interfered because the act which was punished as being contempt of court was found not to be a criticism of any judicial act of the Chief Justice or any imputation on him for anything done or omitted to be done by him in the administration of justice, and hence it was held that the proceedings for contempt were misconceived.

In the case in -- 'AIR 1945 PC 134 (P)', their Lordships interfered because the High Court punished a legal practitioner for contempt for having used in open Court very derogatory words in respect of the members of the Bar and their Lordships held that the words so used must, in the context, be taken to have been intended by him against the pleader for the opposite party, which in their Lordships' opinion, could not constitute contempt of Court and consequently, there was no jurisdiction

in the learned Judge to exercise summary powers in respect thereof.

These cases, therefore, are by themselves no authority for saying that the principle of sole and exclusive jurisdiction of a court of Record in contempt proceedings is to be ignored. They only show that that principle cannot limit the prerogative of the Crown. It may, therefore, well be urged, that power of the High Court to permit an appeal in such cases is precluded by this principle and that to hold that the High Court has power to grant leave to appeal would be to stultify this principle of sole and exclusive jurisdiction. It is acting on this principle of sole and exclusive jurisdiction that the Allahabad High Court in--'AIR 1935 All 811 (R)' refused to grant leave to appeal as against an order in contempt proceedings. This principle has again been emphasized by the Lahore High Court in--'Gaubha K. L. Lahore, In re', AIR 1942 Lah 105 (Q), even after the Privy Council case in -- 'AIR 1936 PC 141 (N)', though in terms it is not a case of leave to appeal. No case, however, dealing with that question subsequent to -- 'AIR. 1936 PC 141 (N)', has been brought to our notice.

15. It has been urged that whatever difficulty may arise with reference to an appeal against an order in a proceeding for contempt against the High Court itself, on account of the principle of sole and exclusive jurisdiction, or on account of the doubt whether the proceedings are criminal, the dilemma does not exist in respect of proceedings for contempt of subordinate Courts in respect of which the High Court derives its jurisdiction under the Contempt of Courts Act, with which we are concerned in this case. It is said that such jurisdiction is not an inherent and sui generis jurisdiction, but that in respect of the exercise thereof, the Act itself uses words like 'offence' 'guilty' and 'sentence' and so forth, indicating that the jurisdiction is purely in the nature of a statutory criminal jurisdiction. This distinction, however, is untenable.

It is true that there was at one time some doubt as to the jurisdiction of the High Courts in regard to contempts of lower Courts and that the Legislature intervened to settle it. See --'AIR 1914 Cal 69 (H)', on the one side and -- 'AIR 1935 All 811 (R)', on the other. But when the Legislature intervened, it cannot necessarily be said that it conferred any new statutory jurisdiction. It may well be taken to have

recognised the inherent jurisdiction and placed it beyond doubt. The nature of such inherent jurisdiction has been clearly indicated in the very learned Judgment of Wills J. in -- 'King v. Davies', (1906) 1 KB 32 (S).

However this may be, Section 3(1), Contempt of Courts Act, places the nature of the jurisdiction of the High Court in such cases, as at present exercised, beyond any controversy by enacting that

'Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of contempts of Court subordinate to it as it exercises in respect of itself.'

It cannot, therefore, be said that the right of appeal in the present case can be based on considerations different from those applicable to contempts against the High Court itself, merely because it relates to contempt of a subordinate. Court.

16. It is clear that none of the considerations above discussed help to decide the question under consideration, definitely. The decision must ultimately depend on whether the contempt proceedings can or cannot be said to be criminal proceedings, where the contempt itself is a criminal contempt. The question as to whether such proceedings in the High Court are criminal or not, has assumed more importance after the new Constitution than before, by virtue of Article 134 of the Constitution, which for the first time enables the High Court to grant leave to appeal in criminal matters -- a power which it did not have before -- excepting as regards original criminal jurisdiction of the High Courts under the Letters; Patent. The Letters Patent of the various High Courts provided that as against any judgment, order or sentence passed by the High Court in exercise of its original criminal jurisdiction there was to be a right of appeal to the Privy Council, if the High Court declared the case as a fit one for such appeal. The question accordingly arose in some cases whether proceedings in contempt before the High Courts were not original criminal proceedings for the above purpose. This question has been specifically dealt with by the Calcutta High Court in -- 'Tushar Kanti Ghosh, in the matter of, AIR 1935 Cal 419 at p. 451 (PB) (T), and it has been held that the jurisdiction in contempt proceedings exercised by the High Courts is sui generis and not criminal within the meaning of Clause 41, Letters Patent, and

that therefore no leave to appeal to the Privy Council could be granted. The Bombay High Court, however, has held the jurisdiction of the High Court in such contempt matters to be criminal jurisdiction. It accordingly ruled that an appeal would not lie in contempt proceedings from an order of a single Judge to a Division Bench of the High Court, having regard to Clause 15, Letters Patent of 1865. That clause provides for an appeal to a Bench of two Judges only from the judgment of a single Judge 'otherwise than in exercise of the criminal jurisdiction'. See -- 'Narayanrao Vithal v. Solomon Moses', AIR 1933 Bom 108 (U). Consistently with this view, the Bombay High Court also seems to have held that leave to appeal could be granted by the High Court to the Privy Council under Clause 41, Letters Patent, in respect of contempt matters on the ground that it was in the exercise of original criminal jurisdiction. Clause 41 Letters Patent provides that

'from any judgment, order or sentence of the High Court made in the exercise of original criminal jurisdiction, the person aggrieved may appeal to the Privy Council if the High Court declared the case a fit one for such appeal.'

See the statement of facts in -- 'AIR 1945 PC 134 (FX, for an instance, in which such leave was granted by the Bombay High Court. In this last case, the Privy Council noticed the question as to whether leave to appeal to the Privy Council could be granted by the High Court under Clause 41, Letters Patent in respect of committal for contempt of Court. They state that the Advocate-General of Bombay raised an objection in the Bombay High Court to that Court granting leave to appeal, that it was overruled but that they (Privy Council) would leave the question undecided in view of the concession made by the respondent's counsel that the appeal was competent.

17. The question as to whether proceedings in contempt before a High Court were or were not criminal in nature for purposes of appeal to a higher Court in respect of what may be called 'criminal contempt' has similarly arisen in English Courts. It appears from the case in --'O'Shea v. O'Shea', (1890) 15 PD 59 (V), that the Court of Appeal in England held that contempt proceedings are to be treated as criminal for purposes of appeal. The question in that case arose on an objection taken by the respondent that no appeal lay against an order of the High Court sentencing

the appellant in contempt proceedings. The question turned upon the construction of Section 47, Judicature Act of 1873 which was in the following terms:

'No appeal shall lie from any judgment of the said High Court in any criminal cause or matter save for some error of law or error of record etc.'

The question that was considered was whether the judgment under appeal was one 'in a criminal cause or matter'. All the three learned Lords Justices who constituted the Bench of the appellate Court in that case unanimously held that it was a criminal cause or matter. They consequently upheld the objection that no appeal lay. This case clearly shows that for purposes of an appeal to a higher Court, proceedings in contempt were understood as criminal matters.

An examination of some of the English cases in which the question arose as to whether there was or was not an appeal in such cases, shows that the appealability was assumed to turn only on the question whether the matter was considered civil or criminal in nature in the particular case. It does not appear to have been suggested that there was a third category. See -- 'Scott v. Scott', (1913) AC 417 (W). and the cases cited in the arguments at pp. 420-421, also the cases cited in the arguments in -- '(1890) 15 PD 59 (V)', already quoted. See also Oswald on Contempt, p. 229. Edn. 3.

It appears to me, therefore, that in English practice, the decided cases are in favour of the view that proceedings by way of contempt relating to what may be called 'criminal contempt' are treated as 'criminal cause or matter'. It is this view that has been followed by their Lordships of the Bombay High Court in -- 'AIR 1933 Bom 108 (U)'. I apprehend that that is the reason why eminent counsel who appeared for the Crown in -- 'AIR 1945 PC 134 (P)'. conceded before the Board that the High Court properly granted leave to appeal in the case on the footing that such leave could be granted under Clause 41, Letters Patent. It does not appear that the attention of the Calcutta High Court in -- 'AIR 1935 Cal 419 at p. 451 (FB) (T)', was drawn to the case in-- '(1890) 15 PD 59 (V)', or to that in --- 'AIR 1933 Bom 108 (U)'. On a consideration of the above mentioned cases, we are inclined to hold that the exercise of jurisdiction in contempt in a case of what is normally called 'criminal contempt' must be taken to be criminal in nature within the

meaning of Article 134 of the Constitution.

18. Our attention has been drawn to a very recent case in -- 'Zikar v. State', AIR 1952 Nag 130 (X), in which leave to appeal to Supreme Court in respect of such contempt proceedings was refused. The learned Judges appear to have been inclined to the view that a proceeding for such contempt, cannot be said to fall under Article 134 of the Constitution. For this view, they relied upon the fact that the proceeding is not regulated by the ordinary law of Criminal Procedure Code. They also notice the fact that Article 132 of the Constitution shows that a third category besides 'Civil and Criminal' is recognised by the use of the phrase 'other proceeding'. Undoubtedly, there is some force in these observations. But on the other hand it may be said that the mere fact of a proceeding not being governed by the Criminal Procedure Code is not decisive of the question whether the proceeding is or is not criminal. As regards the inference from the use of the phrase 'other proceeding' in Article 132, it may be suggested that that phrase was introduced to cover cases of what may be called 'special jurisdiction' such as say, the 'advisory jurisdiction of the High Court' under Section 66, Indian Income-tax Act, or other such statutory or other jurisdictions. The above case of the Nagpur High Court, cannot also be taken as a definite ruling on the question at issue, because the learned Judges themselves did not give a final decision on the matter. They dismissed the application for leave to appeal on its merits. The only other recent case to which our attention has been drawn is the case in -- 'Bathina Ramakrishna v. State of Madras', AIR 1952 SC 149 (Y). That was a case in which special leave was granted by the Supreme Court. Whether the High Court was moved in the first instance and what view the High Court took of its own power to grant leave does not appear from the report.

19. Having therefore given our best consideration to the case and following the view taken in -- 'AIR 1933 Bom 108 (U)', and conceded before the Privy Council in -- 'AIR 1945 PC 134 (P)', and having regard to the unanimous opinion of the learned Judges in -- '(1890) 15 PD 59 (V)', we are inclined to the view that the jurisdiction in contempt proceedings for what is called 'criminal contempt' is criminal and that the High Court has the power to grant leave to appeal in such cases under Sub-clause (C) of Clause (1) of Article 134 of the Constitution, but

only on the very limited grounds akin to those on which the Privy Council was granting special leave as in the case in -- 'AIR 1936 PC 141 (N)'. referred to above. This accords also with the statement made by the Privy Council in the same case --'AIR 1936 PC 141 (N)', that orders in such cases are to be treated as orders in criminal cases. It may be mentioned in passing, that this view of the powers of the High Court in such cases under Article 134(1)(c) will harmonise with the undoubted power that the Supreme Court has itself got, to grant special leave therein under Article 136 of the Constitution. It may otherwise lead to the anomalous situation that while the Supreme Court has got the power to grant leave, the High Court has no such power in respect of its own judgments in such cases in spite of its sole and exclusive jurisdiction in contempt matters. It is, apparently to do away with, such anomalous situations in respect of criminal proceedings that the Constitution while preserving for the Supreme Court the right to grant special leave under Article 136 in cases, where the Privy Council was exercising it formerly by virtue of the prerogative of the Crown, has conferred on High Courts also the power to grant leave to appeal in such cases on the same grounds a power doubted or denied before 1950.

20. We are of the opinion, therefore, that the present is a fit case to grant leave to appeal under Article 134(1)(c), so far as petitioner 1 Sri S. S. Roy is concerned with reference to the question whether on the facts as found by this Court against him, there was in law, a contempt of Court committed by him.

21. We accordingly grant leave to appeal to the Supreme Court from the judgment of this Court as stated above, so far as regards petitioner 1 Sri S. S. Roy is concerned. The application is dismissed as regards petitioner 2 Sri Sankar Charan Sahu.

Mohapatra, J.

22. I agree.