

Shakuntala Negi Vs. State Etc.

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Court : Delhi

Decided On : Apr-23-1970

Reported in : ILR1970Delhi538

Judge : H.R. Khanna, C.J.

Acts : Letters Patent (Lahore) Act; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 145

Appeal No. : Letter Patent Appeal No. 22 of 1970

Appellant : Shakuntala Negi

Respondent : State Etc.

Advocate for Pet/Ap. : K.L. Sharma,; Gulshan Rai,; S.S.Bawa and;

Judgement :

H.R. Khanna, C.J.

(1) This appeal under Clause 10 of the Letters Patent by Shrimati Shakuntala Negi is directed against the judgment of learned Single Judge whereby a criminal revision filed by the appellant was dismissed.

(2) Shrimati Chandar Kanta Respondent 1s occupying the premises in dispute, situated in Rajouri Garden, new New Delhi, as a tenant of the appellant for running a school called the Angels School. Disputes arose between the parties and

Shrimati Chandar Kanta filed a suit for injunction against the appellant. The suit was dismissed by the trial Court but on appeal the decision of the trial Court was reversed and a decree for injunction was granted in favor of the tenant. On October, 24, 1969, the husband of Chandar Kanta made a report to the police that on the preceding night the appellant Along with some other persons had trespassed into the premises in dispute by breaking open the locks and had removed some articles. The police registered a case under Section 448, Indian Penal Code, on the basis of that report. A report was also made by the police to Sub-Divisional Magistrate for initiating proceedings under Section 145, Criminal Procedure Code, on October 24, 1969.

(3) The learned Magistrate passed a preliminary order under Section 145 of the Code and also directed that the property in dispute be attached. Attachment of the property in dispute was thereafter effected. Affidavits were after that filed by the parties. The appellant then moved the Court of Session by means of a revision petition to quash the proceedings under Section 145, Criminal Procedure Code. Learned Additional Sessions Judge as per order dated January 6, 1970, dismissed the revision petition. The appellant then came up in revision to the Court but her revision was dismissed by Rangarajan, J. as per judgment dated February 26, 1970. The present appeal is directed against that judgment.

(4) A preliminary objection has been raised by Mr. Shivcharan Singh on behalf of the contesting respondent that no appeal under Clause 10 of the Letters Patent lies against the impugned judgment. This stand has been controverted by Mr. Sharma on behalf of the appellant. After hearing the learned counsel for the parties we are of the view that the preliminary objection is well-founded. Clause 10 of the Letters Patent of Lahore High Court, under which the appeal has been filed, reads as under :

'10. And we do further ordain that an appeal shall lie to the said High Court of Judicial at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in exercise of revisional jurisdiction, and not

being a sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) or one Judge of the said High court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors.

(5) The above clause corresponds to Clause 15 of the Letters Patent of Calcutta and Madras High Courts. Perusal of the above clause shows that, apart from some other cases with which we are not concerned no appeal lies under the clause against an order or judgment of one judge passed in exercise of criminal jurisdiction. The Letters Patent of Lahore High Court were issued subsequent to 1919. So far as Calcutta and Madras High Courts were concerned, the Letters Patent were issued long before 1919. The words used in this respect in the clause, as it stood before the amendment of March 11, 1919, were 'sentence or order passed or made in criminal trial.' As a result of the said amendment the above words were deleted and in their place the words 'in exercise of criminal jurisdiction' were introduced. The words 'in exercise of criminal jurisdiction' have a much wider connotation and amplitude than the words 'in criminal trial'. The result of the above amendment is that in cases where there is no sentence or order made in a criminal trial but the order is made in exercise of criminal jurisdiction the right of Letters Patent Appeal would be excluded against the order of a Single Judge. In a Bench decision of Calcutta High Court (Harries C.J. and B. K. Mukherjea, J.) in the

case of Shyam Sundar Halwasiya v. Jodhraj Halwasiya : AIR1948 Cal214 , Mukherjea, J., with whom Harries C.J. agreed, observed :

'(6)It would be pertinent to point out here that in the Letters Patent as it stood before the amendment of 11-3-1919 the expression used in Clause 15 was 'sentence or order passed or made in any criminal trial' and not an order made in the exercise of criminal jurisdiction'. As the orders in contempt cases arising out of civil proceedings cannot ordinarily be said to have been made in course of a criminal trial, it was held by sargent C.J. in 7 Born. 5 that an appeal would lie against an order for attachment for contempt under Clause 15 of the Letters Patent as it then stood. Beaumont, C.J. was apparantly not properly informed when in commenting on this decision in a subsequent case reported in 57 Born. 286 he observed that the exact wording of Clause 15 of the Letters Patent was overlooked by Sargent C.J. in the previous case. It is clear, however, that the amendment of the Letters Patent in the year 1919 deliberately changed the expression, and the expression 'criminal jurisdiction' apparently has a wider connotation than a 'criminal trial as used in Clause 25 of the Letters Patent'.

(6) The matter was also dealt with by a division Bench (Balakrishna Aiyar and Rajagopala Ayyangar JJ.) in re S. Govind Swaminathan (S) : AIR1955 Mad121 , The learned judges observed :

'THEnext question that falls to be considered is whether the expression 'in the exercise of criminal jurisdiction' should be read as confined or limited to the exercise of the jurisdictions mentioned in clauses 22 to 29 of the Letters Patent. Before dealing with this it might be pointed out that in the Letters Patent as issued in 1865 the exclusion of the right of appeal was confined to 'sentences or orders passed or made in any criminal trial before the Courts of original criminal jurisdiction which might be constituted by one or more Judges of the High Court.'

(7) In 1919 the Letters Patent were amended so as to widen the exemption from appeals not merely to cases of 'sentences or orders in criminal trials' but also to those passed 'in the exercise of criminal jurisdiction.' The words now used are very general and in our opinion include within their scope the exercise of jurisdiction by a Judge of the High Court dealing with any criminal matter and we are unable to

see any distinction between the expression 'criminal cause or matter' as understood in England and the words 'in the exercise of criminal jurisdiction' in the Letters Patent.'

(8) A Division Bench of Allahabad High Court (Mukherji and King JJ.) in *Mt. Haidri Begum v. Jawwad Ah Shah* : AIR1934 All606 , also referred to the amendment in the Letters Patent mentioned above and held that no appeal under Clause 10 of the Letters Patent was maintainable from an order passed on an application under section 491 of the Code of Criminal Procedure.

(9) Question then arises as to whether an order made in proceedings under Section 145 of the Code of Criminal Procedure is in the exercise of criminal jurisdiction. In this context it would be pertinent to examine as to what exactly is the import of the words 'criminal jurisdiction.' According to Mr. Sharma, criminal jurisdiction pertains to the trial of persons alleged to have committed crime. Reference in this context has been made to the Law Lexicon of British India by Ramanatha Aiyar page 651, wherein it is stated that 'criminal jurisdiction is that which exists for the punishment of offences.'

(10) We have given the matter our consideration and are of the view that though the trial of persons alleged to have committed crimes is the main function of the criminal court when they act in exercise of their criminal jurisdiction, that is not their only function. The Courts in exercise of criminal jurisdiction no doubt deal with the trial of persons alleged to have committed offences but they also deal with a number of other matters connected with crimes including those relating to prevention of crime. A criminal proceeding, as observed by Shah, J., speaking for the majority, in the case of *S.A.L. Narayan Row and another v. Ishwarlal Bhagwandas and another* : [1965]57ITR149(SC) , is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. It would, therefore, not be correct to say that a Court in exercise of its

criminal jurisdiction deals only with trial of persons alleged to have committed offences under the law. The object of criminal law is to preserve law and order, and with that end to bring the offenders to book and prevent breach of law. Proceedings under Section 145 of the Code of Criminal Procedure are essentially of a preventive nature because they are designed to prevent breach of peace in cases of dispute about immovable property. As such they find a rightful place in the Code of Criminal Procedure and, in our opinion, deal with matters which pertain to exercise of criminal jurisdiction. We, therefore, have no doubt that when a learned Judge of the High Court passes an order in a criminal revision against an order made in course of proceedings under Section 145 of the Code of Criminal Procedure the order is made by him in exercise criminal jurisdiction. As such the appeal under Clause 10 of the Letters Patent would not be maintainable.

(11) Mr. Sharma has referred to a Full Bench case of *Rajah of Kalahasti v. P. Narasimha Navani Varu and others* (1907) 5 CRI LR 343. It was held in that case that the judgment of a Single Judge of the High Court passed on revision in proceedings under Section 145 of the Code of Criminal Procedure is not one made in a 'criminal trial' within the meaning of Clause 15 of the Letters Patent and as such an appeal lay from such judgment. The decision of the Full Bench in the above case was given before the amendment made in 1919 in the above Clause of the Letters Patent. It would follow from what has been stated earlier that this decision would not hold good after the amendment made in the above Clause in 1919.

(12) We, therefore, uphold the preliminary objection that the present appeal is not competent. As such, it is dismissed.