

In Re: Amirthalingam Pillai

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Court : Chennai

Decided On : Aug-04-1948

Reported in : 1949CriLJ541

Judge : Govindarajachari and; Mack, JJ.

Appellant : In Re: Amirthalingam Pillai

Judgement :

Govindarajachari, J.

1. This is an application for leave to appeal to His Majesty in Council against the judgment of this Court in B. T. No. 2 of 1943, dated 1st March 1948, confirming the conviction and sentence of the petitioner in sessions case No. 64 of 1947 in the Court of Session, West Tanjore Division, The petitioner was convicted of murder and sentenced to death.

2. When the application was first filed it was stated to be under Clause 15, Letters Patent. It was then pointed out by the High Court office that Clause 15, Letters Patent would not apply to criminal cases. The learned advocate for the petitioner then quoted two other provisions of law, Section 223, Government of India Act, 1935, and Rule 2, Judicial Committee Rules, 1935.

3. The High Court office again pointed out that the application cannot be maintained under those provisions either. The learned advocate then asked that

the matter may be posted before Court for orders.

4. As the question is one of jurisdiction we directed notice to issue to the Public Prosecutor.

5. Mr. Swami the learned advocate for the petitioner has attempted to invoke the jurisdiction of this Court in several ways, He first cited two decisions of the Privy Council. The first was the one reported in *F. W. Gillet and Co, Ltd, v. Lumsdan*, 1905 A. C. 601 : 74 L. J. p. c. 165 which dealt with the revised statutes of Ontario, 1897, Chapter 48, Section 1, The other was the decision in *Devis v. Shauganessy*, 1932 A.C. 106 : 101 L. J. P. o. 37, which was concerned with Article 68, Civil P. C. of Quebec In both these statutes, an appeal to the King in Council was provided and in both there was a requirement that the Court from whose judgment the appeal was sought to be filed should be approached for leave. We are not here concerned with the nature of the jurisdiction which a Court exercises when it is approached for leave. As has been pointed out in several cases that jurisdiction is discretionary.

6. We are concerned rather with the question whether there is any jurisdiction at all in the High Court to grant leave to appeal against judgment in criminal appeals arising out of the judgments of mofussil Courts. There is no statutory provision conferring on this Court jurisdiction *sirailai*¹ to that conferred under the two statutes just mentioned.

7. The learned advocate then argued that he was invoking the jurisdiction of this Court under Section 561-A, Criminal P. C, read with Section 233, Government of India Act, 1985. As regards the former section, it saves such inherent power as had existed in this Court prior to its enactment. It is, however, impossible to maintain that there was any inherent power in this Court to grant leave to appeal to His Majesty in Council. It is true that Section 228, Government of India Act, 1985, preserves the jurisdiction of this Court to the extent it existed before the establishment of the Dominion but if as we have just indicated there is no inherent power or jurisdiction in this Court to grant leave to appeal to His Majesty in Council, Section 223 would not advance the contention of the petitioner any further.

8. The learned advocate then relied on Rule 2, Judicial Committee Rules, 1925. That rule does not give any right of appeal nor is it concerned with conferring jurisdiction upon or defining the jurisdiction of either the Judicial Committee or of the Courts from which appeals may be taken to the Judicial Committee. It only assumes the existence of two classes of appeals (1) appeals which may be brought to the Judicial Committee in pursuance of leave obtained from the Court appealed from and (2) appeals brought in pursuance of special leave to appeal granted by His Majesty in Council. If, as we are inclined to think, there is no jurisdiction in this Court to grant leave to appeal in cases of the present description it is not possible to rely on Rule 2 as creating such jurisdiction. The Judicial Committee Rules deal only with the procedure which is to be followed in regard to the several appeals which may be taken to the Judicial Committee. It may be mentioned that when those rules were framed in 1926, appeals could be taken to the Privy Council with leave of the High Court in criminal cases arising out of its original criminal jurisdiction, subject to the conditions laid down in Of. 41, Letters Patent and Rule 2 might have had those appeals in view and possibly some others. Finally the learned advocate said that under clause was Letters Patent granted in 1800, the Supreme Court at Madras had the same powers as the Court of the King's Bench in London but assuming that we have inherited the jurisdiction of the Supreme Court in this respect, the learned advocate has been unable to show us that in like circumstances the Court of the King's Bench had any inherent power to grant leave to appeal to a higher tribunal.

9. The result is that whichever way we may look at this question, it is not possible to maintain that this Court has any jurisdiction to grant leave to appeal in the present case. In the course of the discussion between the learned advocate and the High Court office, a reference was made to Clause 41, Letters Patent of this Court but the learned advocate did not rely on this provision in the course of his argument before us. It was held in *Hemayetuddin Ahmed v. Emperor*, 68 Gal. 344 : A.I.R. 1951 Cal. 626: (1951) Cri. L. J. 1183, that there is no jurisdiction under that clause to grant leave to appeal to His Majesty in Council against judgments of Presidency High Courts in criminal appeals against the judgments of the Courts of Session in the mofuesil. Besides it was enacted in 1945 that Of. 41, Letters Patent 'shall cease to have effect' (See Section 7(1) of Act XXVI [26] of 1943).

10. We say nothing as to the jurisdiction of the King in Council which is founded on prerogative. The petitioner may, if he is so advised, move the Judicial Committee for special leave.

11. The present petition, however, does not lie and must be dismissed.

12. We have been asked by the learned advocate for the petitioner to grant a certificate under Section 205, Government of India Act, 1935. We are not satisfied that the case involves a substantial question of law as to the interpretation of the Constitution Act or any Order in Council made thereunder. So far as we can see there is no difficulty in interpreting Section 223, Government of India Act which was the only section of that Act referred to in the course of the argument. We must accordingly refuse to grant the certificate-prayed for.

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