

In Re: H.B. Babington

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SooperKanoon Citation : sooperkanoon.com/785469

Court : Chennai

Decided On : Sep-26-1936

Reported in : AIR1937Mad14; (1936)71MLJ827

Appellant : In Re: H.B. Babington

Judgement :

K.S. Menon, J.

1. This is an application to revise an order of the Sessions Judge of Coorg, confirming the order of the District Magistrate of Coorg, convicting the petitioner under Sections 408 and 477-A, Indian Penal Code, and sentencing him to imprisonment till the rising of the Court, and to pay a fine of Rs. 100, in default of payment of fine, simple imprisonment for one month.

2. The learned Public Prosecutor raised a preliminary objection that it is the Court of the Judicial Commissioner of Coorg that has revisional jurisdiction over the matter. Mr. Coelho for the petitioner answers that, as the petitioner is an European British subject this Court alone is the revisional authority by reason of the provisions of Section 4(j) of the Criminal Procedure Code, and Section 16 of the Coorg Code. It is not disputed that, if the petitioner has asserted his right as a European subject, his case is one to which the provisions of Chapters XXXIII and XLIV-A of the Criminal Procedure Code would apply. But the petitioner never claimed to be dealt with as an European British subject either in the trial Court or

in the appellate Court, and in view of the provisions of Section 528-B of the Criminal Procedure Code, he must be deemed to have relinquished his right to be dealt with as such and he shall not assert it in any subsequent stage of the case. The learned Public Prosecutor contends that the proceedings in revision in this Court must be deemed to be a subsequent stage of the case and that therefore the petitioner is not entitled to assert his right now as European British subject. The contention of the petitioner, on the other hand, is that proceedings in revision cannot be treated as a subsequent stage of the case. On this question there has been a conflict of decisions. In the case of *Jeremiah v. Johnson* : AIR1924 Mad373 , this Court (Krishnan, J.) held that proceedings in revision must be treated as a subsequent stage of the case. This is in accordance with the view of the Bombay High Court, vide *Queen-Empress v. Grant* I.L.R.(1888) 12 Bom. 561. On the other hand, a contrary view has been taken by the Allahabad and Calcutta High Courts. In *Harris v. Peal* (1919) 17 A.L.J. 896, Walsh, J., held that an application in revision is not a subsequent stage of the same case. The learned Judge observes:

It is a totally independent matter giving a right to apply to a superior Court independently of any proceedings necessarily subsequent or consequent upon the hearing of the original case.

3. This view was accepted in preference to that of this Court and of the Bombay High Court by a Division Bench of the Calcutta High Court. *H.G. Bolton v. Emperor* I.L.R. (1932) 60 Cal. 676. The reason given for adopting the view taken by the Allahabad High Court is that as Section 439, Criminal Procedure Code, confers no rights on a person convicted either by a trial Court or a lower appellate Court to invoke the revisional jurisdiction of the High Court and as that jurisdiction is often exercised without an application having been made to it and is discretionary, the, hearing in revision, cannot be properly described as a subsequent stage of the case. With all respect, we are unable to agree with the view of the Allahabad or of the Calcutta High Court in this matter. If a person who is convicted by a trial Court or an appellate Court brings the fact of such conviction to the notice of the High Court, and the High Court exercises its revisional jurisdiction in that matter, orders passed in revision by the High Court are orders in the original case itself, and

there can be no doubt that they are orders passed at a stage subsequent to the trial stage and the appellate stage of the case. It cannot at all be said that such orders are passed independently of any proceedings consequent on the hearing of the original case. It is the records of the original case that have to be amended in pursuance of the orders of the High Court in revision, and not of any other totally independent proceedings. And even though a person who is convicted has no right to invoke the revisional jurisdiction of the High Court, still if such jurisdiction is exercised by the High Court, it cannot at all be said that the orders made by the High Court in revision are not orders in the case. In other words, whether the orders passed in revision are to be deemed to be orders passed in the case itself or not, does not depend on whether^ the person who is affected by the order has a right to invoke the jurisdiction by the exercise of which such orders were passed. It follows therefore that proceedings in revision before the High Court on a conviction by a trial Court or an Appellate Court is a subsequent stage of the same case.

4. This does not, however, dispose of the difficulty in this case, for Mr. Coelho contends that even though his client is precluded from asserting his right as a European British subject and thus invoke the jurisdiction of this Court in revision, still by virtue of the definition in Section 4(j), Criminal Procedure Code, it is this Court and this Court alone that has jurisdiction in this matter, as the petitioner is a European British subject. The contention of the learned Public Prosecutor, on the other hand, is that it is only in cases where the right to be dealt with as a European British subject has been claimed that this Court becomes a Court of revision and that, in all other cases, whether the person be an European British subject or not, it will be the highest Court of Criminal Appeal for the local area that will have revisional jurisdiction. The question therefore is whether the words 'proceedings against European British subjects' in Section 4(j) really mean proceedings against European British subjects whether they had claimed to be dealt with as such or not, or only against those who had actually claimed to be dealt with as such. This question was dealt with at length by a Division Bench of the Bombay High Court (Birdwood and Parsons, JJ.) in the case of *Queen-Empress v. Grant* I.L.R. (1888) 12 Bom. 561 and also by this Court (Krishnan, J.) in the case of *Jeremiah v. Johnson* : AIR1924 Mad373 , already referred to, and both the Courts held that the words 'European British subject' in Section 4(j) of the Code of Criminal Procedure

meant European British subjects who had claimed to be dealt with as such. As we generally agree with the reasons given by the learned Judges in those cases and with the conclusion arrived at, we do not think it is necessary to repeat what has already been stated in those decisions, but shall only add a few observations. Ordinarily, a Court is not expected to know whether the accused in any proceeding before it is an European British subject or not. If no claim is made to be dealt with as such, the case would be tried in the ordinary manner without reference to the special provisions in Chapters XXXIII and XLIV-A of the Criminal Procedure Code. In such a case there will be nothing on the record for the High Court to know that the proceedings are really against an European British subject unless the accused brings the fact to the notice of the High Court by asserting his status as such. This we have already held, he is precluded from doing by reason of the provisions of Section 528-B of the Code of Criminal Procedure. Unless there is something on record to show that the proceedings are really against a European British subject, the revisional jurisdiction of the Presidency High Courts cannot be invoked by reason of the definition of in Section 4(j) of the Code of Criminal Procedure, merely because the accused is, in fact, a European British subject. We therefore think that the words 'proceedings against European British subjects' in Section 4(j) mean proceedings against persons who had claimed to be dealt with as European British subjects, and that that was the intention of the Legislature, for otherwise the result would be that the definition in Section 4(j) would nullify the effect of the substantive provision in Section 528-B. The same meaning must be given to the same words occurring in Section 16 of the Coorg Code as reference is made therein to the Code of Criminal Procedure. It follows that it is the Court of the Judicial Commissioner, Coorg, and not this Court, that has jurisdiction in this matter. The preliminary objection is therefore upheld. The petition is dismissed.