In Re: V. Venkataraman

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Court : Chennai

Decided On : May-25-1948

Reported in : AIR1948Mad100; 1949CriLJ792; (1948)2MLJ513

Appellant : In Re: V. Venkataraman

Judgement :
ORDER

Yahya Ali, J.

1. In Crl. M.Ps. Nos. 883 and 916 of 1948 which were dismissed by me on 19th May, 1948, an application was made orally by the learned Counsel for the petitioners for leave to appeal to the Federal Court, and as it was then brought to my notice by the Public Prosecutor that it had recently been held by a Bench of this Court that an appeal did not lie against an order made under Section 491, Criminal Procedure Code. I posted the matter to be heard on the point to this date with regard to both these applications, In the meantime a written application has been made in Crl. M.P. No. 883 of 1948 for leave to appeal to the Federal Court against the order and judgment in that case.

2. Under Section 3 (a) of the Federal Court (Enlargement of Jurisdiction) Act, 1947, which came into force on 5th January, 1948, it is provided that--

an appeal shall lie to the Federal Court from any judgment to which this Act applies.

In Section 2(b) the expression 'judgment to which this Act applies ' is defined to mean,

any judgment, decree or final order of a High Court in a civil case from which a direct appeal could have been brought to His Majesty in Council, either with or without special leave, if this Act had not been passed.

It has been held by Horwill and Govinda Menon, JJ., in CM.P. No. 2849 of 1948 Since reported in : (1948)2MLJ76 which arose out of an order made in Crl. M.P. No. 439 of 1948 under Section 491, Criminal Procedure Code, that an order made under Section 491 was in the exercise of the criminal jurisdiction of this Court, and that, in any case, it was not in the exercise of Civil jurisdiction within the meaning of the Federal Court (Enlargement of Jurisdiction) Act, 1947 (Act I of 1948). It was in that view held by the learned Judges that no appeal lay to the Federal Court against an order made under Section 491, Criminal Procedure Code. In the course of that judgment reference was made to a number of decisions and adverting to the Privy Council decision in Emperor v. Sibnath Banerjee (1945) 2 M.L.J. 325 : 1945 F.L.J 222 it was pointed out that the Privy Council assumed that the jurisdiction exercised by the High Court under Section 491 was criminal. In the case before the Privy Council the question arose, treating the matter as one falling within the criminal jurisdiction of the High Court whether an appeal lay against the judgment of the High Court to the Federal Court and in turn against the judgment of the Federal Court to the Privy Council. The conclusion arrived at by their Lordships was that although there is no specific right of appeal provided under the Criminal Procedure Code against orders passed under Section 491, Section 205 of the Government of India Act provides one of the exceptions referred to in Section 404, Criminal Procedure Code and that Section 205 of the Constitution Act relates both to criminal and civil jurisdictions of the High Courts. The result of this ruling is that, where questions affecting the interpretation of the Constitution Act or of orders in Council passed thereunder are involved in the disposal of a case under Section 491 of the Criminal Procedure Code, a right of appeal would arise under Section 205 of the Government of India Act.

3. A contention now put forward by Mr. A.K. Pillai in Crl. M.P. No. 883 of 1948 is that the case falls within the exception pointed out by the Judicial Committee. The argument is that under Section 59 of the Government of India Act, 1935,

all executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

and that,

orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor....

It is argued that the orders in this case did not conform to the requirements of Section 59. In the present case, however, the order of detention was passed by the Commissioner of Police under powers duly vested in him on that behalf. No orders were passed or other instruments made by the Provincial Government. What was done, as required under Madras Act No. I of 1947 was that after the Commissioner of Police communicated to the Provincial Government the order of detention and the grounds, the Provincial Government sent to the detenu in turn certain grounds and particulars as prescribed under Section 3 of that Act. It was only a memorandum despatching to the detenu the grounds of the detention which had been ordered by another authority duly constituted. Clearly, therefore, Section 59 has no application to an instance of this kind.

4. Secondly, Section 59(1) of the Constitution Act deals with the normal executive activities of Government which are not covered by statute. It does not purport to limit the scope and extent of any special enactment passed by a competent legislature and within its province. Act I of 1947 confers upon the Provincial Government the power of detention and authorises them to delegate those powers to other officers. No objection has been or can be taken to the order of detention made in this case as having contravened the provisions of Section 59(1) of the Constitution Act.

5. Thirdly, no question of the interpretation of Section 59 is involved here; nor was one raised in the affidavits or even orally at the time of the hearing of the petition. The application was first heard on the 4th and 5th May, when Mr. Mani argued the case, It was subsequently posted for the examination of the Commissioner of Police, Madras, on the 18th and heard again on that date, when Mr. A.K. Pillai, further argued the case on behalf of the petitioner. Immediately after the close of the hearing, judgment was pronounced on that day and on the following day. When the judgment was concluded on the 19th, Mr. Ramachandran orally asked for leave to appeal to the Federal Court against the order which was then pronounced, and as already stated, the matter was adjourned to this date for hearing. At none of these stages did either Mr. Mani or Mr. A.K. Pillai, or Mr. Ramachandran raise the contention that there was a contravention of Section 59 of the Government of India Act or invite the Court to apply the provisions of that Act to the memorandum that was sent by the Provincial Government containing the grounds of detention. The only argument that had been raised on the 4th by Mr. Mani was that the copy of the grounds that was delivered to the petitioner at the Central Jail, Vellore was signed by one Mr. M.G. Menon, and a doubt was raised as to who he was and what authority he had to sign on behalf of the Chief Secretary, who was however admitted to be the proper and duly constituted authority for signing such communications on behalf of the Provincial Government. The only doubt was as to the genuineness of the copy of the memorandum that was served. It was that contention that was mentioned by me in my judgment in Crl. M. P. No. 883 of 1948. No questions were raised to the effect that an order had been passed by the Provincial Government and that it had to be, if it was to be valid, in the name of the Governor, and that since the memorandum did not purport to have been issued by the Chief Secretary in the name of the Governor it involved a question under Section 59 of the Government of India Act.

6. Mr. A.K. Pillai drew my attention to Sub-section (1) of Section 205 in which it is stated that,

it shall be the duty of every High Court to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

As already stated, there is no question of the interpretation of the Constitution Act or of any order in Council made thereunder involved in these proceedings. I am therefore of opinion that neither of those two provisions of the Government of India Act has any application to this case; and as this is not a case falling within the ambit of Section 205, I am bound by the Bench decision of this Court above referred to. I must hold that since these are orders passed in the exercise of criminal jurisdiction no appeal lies to the Federal Court under the provisions of the Federal Court (Enlargement of Jurisdiction) Act, 1947.

7. Leave to appeal is refused.