

K. Kunhammad Haji Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/807818

Court : Chennai

Decided On : Oct-11-1922

Reported in : 72Ind.Cas.599

Judge : Oldfield and ;Devadoss, JJ.

Appellant : K. Kunhammad Haji

Respondent : Emperor

Judgement :

Oldfield, J.

1. This appeal is by the third accused in S.C. No. 3 of 1922 on the file of the Special First Class Magistrate of Tirur, against the conviction and sentence therein. The Public Prosecutor opposes it on the ground that Criminal Appeal No. 395 of 1922 against the conviction, and sentence has already been dismissed by a learned Judge of this Court. The facts are, that Criminal Appeal No. 395 was presented by the accused under Section 420, Criminal Procedure Code, through the officer in charge of the Jail, where he is, on 6th May 1922, and was dismissed under Section 421, as it was out of time, by Krishnan, J., sitting as Vacation Judge on 2nd June 1922. The accused, presumably in ignorance of this, presented the present appeal on 17th July 1922 on the re-opening of the Court through Counsel. It is not disputed that, unless the decision of 2nd June 1922 can, on some grounds, be disregarded, we are debarred from disposing of the present appeal on

the merits.

2. We have been asked, first, to meet this difficulty by treating the present appeal as an application for the revision of the previous decision of Krishnan, J. But that is not the way in which it is expressed; and in any case Section 439, Criminal Procedure Code, notwithstanding the reference to procedure ordinarily to trials in a High Court, does not empower a High Court to revise the judgment of one or more of its own Judges. For, that reference may be explained either, as it was by Mitter, J., in *In the matter of Gibbons* 7 Ind. Dec. 29 as applicable to the exceptional cases in which the High Court procedure has been extended to other Courts, or intended *ex abundantii cautela* to prevent any possible conflict with the Letters Patent or other legislation by which High Courts are affected. It cannot be read as conferring or recognising by implication a power the existence of which is negated by the wording of the remainder of the section. That is supported by the case already referred to, and the obvious anomalies, which the contrary view entails are probably, the reason for the absence of further authority against it. On behalf of the accused we have been referred to no case in which revision of the judgment of one or more Judges of a High Court has been allowed. The conclusion must be that there is no power to revise it.

3. The next suggestion is, that the appeal before us should be treated as an application for a review of Krishnan, J.'s. previous order; and here again that is not the form of the petition. But, if that can be treated as immaterial, the accused relies next on the fact that the present appeal was, it happens, actually admitted by Krishnan, J., sitting in admission, and urges that this amounts to a setting aside by the learned Judge of his previous order and a re-opening of the case on its merits, such as takes place when an application for review is granted in civil proceedings. This can be rejected on the short ground that, as Mr. Srinivasagopalachariar admits on accused's behalf, the learned Judge was not conscious that there was any previous decision which would be a bar to the present appeal and which would have to be set aside before that appeal could be heard.

4. We have then to deal with the argument that we can ourselves review the decision of Krishnan, J., as that of the Court, although it was given by a Single

Judge, and it is not necessary to rely on the fact that the Court is now constituted differently from the Court which passed that decision in order to hold that we cannot do so with reference either to any power conferred by the Code or to the position of the High Court as a Court of Record or any general inherent power. As regards this, Section 369 expressly negatives (subject to certain exceptions not at present in question) the power of Courts other than High Courts to review and no other provision authorising High Courts to exercise that power, their exclusion from the purview of the section cannot be read as conferring it by implication. High Courts, no doubt, under Section 106 (Government of India Act 5 and 6 Geo. V, Chap. 61) are Courts of Record and in a Court of Record, if there appears any mistake of the clerk in making up the record, the Court will direct him to amend it; and in general all slips in legal proceedings may be amended by an order of the Court to be obtained in a summary way. Stephen's Commentaries, 16th Edition, Vol. III, 501. But this which, in fact, goes no further than Section 369 does as regards inferior Courts, is not sufficient to support accused's argument, since the question is of a dismissal which may or may not have been mistaken, but which was certainly deliberate, on a ground of limitation, to which the Court must be supposed to have applied its mind. As regards authority, decisions such as *Rajjab Ali v. Emperor* 50 Ind. Cas. 46 and *High Court Proceedings*, 7th November 1873 7 M.H.C.R. App. 29 (if the latter was really given judicially) are not in point, because they deal with cases in which the accused not having had the reasonable notice enjoined in Section 4420, Criminal Procedure Code, a condition precedent to the exercise of the Court's jurisdiction, was not fulfilled, the conclusion not being reached strictly in review, but on the ground that there was no previous valid adjudication to bar a hearing on the merits, and the absence of reasonable notice is not in question here, since it is not disputed that accused had the notice to which the appellants from Jail are entitled under Criminal Rules of Practice No. 59. Generally, the course of authority is plainly against the power to review. For a fact conclusive, in the nature of the case, against the existence of an inherent power, no instance of its exercise has been produced and it is negatived in the case last referred to and in *In the matter of Gibbons* 7 Ind. Dec. 29 *Queen-Empress v. Durga Charan* 7 A. 672 : A.W.N. (1885) 177 : *Queen-Empress v. Fox* : 5 Ind. Dec. 502 and in *Ranga Row v. Emperor* 16 Ind. Cas. 518 : (1912) M.W.N. 982. The

accused's claim must, therefore, fail if it is regarded as to a review.

5. The accused finally argues for his right to a hearing of this appeal on its merits on the ground that the dismissal of his previous appeal is void, because it was not within the power of Krishnan, J., sitting (as he was) as Vacation Judge, to deal with it at all. This can, no doubt, at first sight be supported to some extent by the terms of the Notification of 20th March 1932 regarding Krishnan, J.'s sittings. For it is notified that the Vacation Judge will dispose of 'urgent applications which require to be heard immediately' and, in spite of the wording of Appellate Side Rule 1(1)(f), it is doubtful whether an appeal can be described as an application, the only reference to appeals is that implied in the specification of 'urgent criminal work' as to be disposed of by an Appellate Court of two Judges: and although there is no doubt provision for the reception of appeals under Section 420, Criminal Procedure Code, from appellants in Jails, it is made in the portion of the Notification which refers to the Registrar's Office, not to the Judge. But, even so, the appointment of Krishnan, J as Vacation Judge was notified with no qualification of his powers in the usual way in accordance with an order of the Chief Justice, nominating him for that function, which we have seen, and even if no definition of the powers and duties of the Vacation Judge could be deduced from Statute or Rules, the practice of the Court would, afford guidance and the fact that, as we have ascertained, some Vacation Judges in past years have admitted or dismissed appeals from accused in Jail without complaint would go some way towards negating the argument before us. In fact, however, the answer to that argument is that the powers of the Vacation Judge are not to be looked for in the Notification, as though it was a self-contained and exhaustive advertisement to the public of their scope and nature. For it need not and must not be regarded, a more than a general statement of the powers, which the Vacation Judge ordinarily will exercise and cannot be read as derogating from those, which in virtue of Statute and Rules he possesses and of which he cannot, consistently with them, be deprived. Appellate Side Rule 4, which has the force of law, directs that during the vacation of the Court its appellate jurisdiction may be exercised by a Single Judge acting as Vacation Judge this being subject only to an exception not alleged to be in question at present. Section 108, Government of India Act, 1915 (5 and 6 Geo. V, Chap. 61) provides that 'each High Court may by its own rules (the Appellate

Side Rules above referred to) provide as it thinks fit for the exercise by one or more Judges of the appellate jurisdiction vested in the Court,' and that 'the Chief Justice shall determine what Judge is in each case to sit alone.' Appellate Side Rule (1) provides for the hearing and determination by one Judge of appeals from the judgment or order of a Criminal Court. It is not necessary for the present purpose to attempt an exhaustive enumeration of the Vacation Judge's powers or to go beyond these references to establish that Krishnan, J., was competent to dismiss accused's appeal. Its dismissal, therefore, cannot be regarded as a nullity or otherwise than as a bar to the hearing of a second appeal against the same conviction.

6. The result is, that the appeal cannot be heard and must be dismissed.

Devadoss, J.

7. This is an appeal presented under Section 419, Criminal Procedure Code, by one Kunhammad Haji against his conviction By the Special First Class Magistrate of Tirur, under Section 436, Indian Penal Code. The appellant presented, under Section 420, Criminal Procedure Code, what is commonly known as a Jail appeal, which was dismissed by Mr. Justice Krishnan, the Vacation Judge of 1922, with the remark 'the appeal is out of time, and there is no proper ground for excusing the delay and the case is proved against the accused by the prosecution evidence which there is no reason to discredit. The sentence is a correct.' Mr. Srinivasa Gopaiacbari who appears for the appellant urges that the judgment of Krishnan, J., on the appeal presented by the appellant through the Superintendent of Jails was passed without jurisdiction, and that this Court has power to hear the appeal presented by him on the merits.

8. He urges three points (1) the order of Krishnan, J., having been passed without jurisdiction, the order is no order at all, and, therefore, his appeal could be heard on the merits; (2) the appellant had no reasonable opportunity of being heard in support of his appeal and so his appeal could be heard; (3) the order of Krishnan, J., could be, reviewed by a Bench of two Judges hearing criminal appeals.

9. The appellant was convicted on 13th April 1922, the copy of the lower Court's judgment was given to him on 24th April 1922 and the Jail appeal was forwarded to the High Court on 4th May 1922. The High Court was closed for the long vacation on 6th May 1922 and the Jail appeal was dismissed on 2nd June 1922. Mr. Srinivasa Gopalachari presented the appeal petition on behalf of the appellant on 17th July 1922. It was moved before Krishan, J., who was sitting in the Admission Court; he ordered notice on 27th July 1922 with the remark 'Admitted as regards sentence only. It is not clear why the third accused should have been given a fine also.' It is contended by Mr. Srinivasa Gopalachari that the learned Judge was not informed of the dismissal of the Jail appeal when he moved for notice on his appeal, and that both Counsel and Judge were not aware at the time of the order of 2nd June 1922.

10. The learned Counsel's contention is that the Vacation Judge could only hear urgent applications and the Jail appeal not being an application regarding an urgent matter, Mr. Justice Krishnan had no jurisdiction to dispose of it and that the notice published under the signature of the Registrar simply said that the office of the Registrar would be open for the receipt of urgent applications, Jail appeals under Section 420 and application in non-contentious matters.

11. The question for determination is, whether a Judge of a High Court sitting as Vacation Judge has or has not jurisdiction to dispose of not only urgent matters but also matters which came up before him.

12. By Section 2 of 24 and 25 Vict., Chap. 104, an Act for establishing High Courts of Judicature in India, it was provided that the High Court of Judicature at Madras shall consist of a Chief Justice and as many Judges, not exceeding 15, as Her Majesty may from time to time think fit and appoint. By Section 13 of the Act it is provided 'subject to any laws or regulations which may be made by the Governor-General in Council, the High Court established in any Presidency under this Act may, by its own rules, provide for the exercise by one or more Judges or by Divisional Courts constituted by two or more of the Judges, of the said High Courts of the Original and Appellate Jurisdiction vested in such Court in such manner as may appear to such Court to be convenient for the due administration of justice.'

13. Section 14 is in these terms: 'The Chief Justice of each High Court shall from time to time determine what Judge in each case shall sit alone, and what Judges of the Court whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.' It is clear from these two Sections that the High Court may by its own rules provide for the exercise by one or more Judges or by Division Courts of the Original and Appellate Jurisdiction of the Court. The rules framed by the High Court under Section 13 would give jurisdiction to Judges to dispose of any matter excepting those which by Statute they could not dispose of. The function of the Chief Justice is to determine what Judge in each case shall sit alone, and what Judges of the Court shall constitute Divisional¹ Benches. He has to assign work, and when work has once been assigned, the Judge or Judges have full jurisdiction to dispose of it. The contention of Mr. Srinivasa Gopalachari is that the learned Chief Justice restricted the power of the Vacation Judge to urgent applications. In the first place, there is no evidence that the learned Chief Justice, granting he has the power to do so, ever intended to restrict the jurisdiction of the Vacation Judge to urgent matters only. The Notification published under the signature of the Registrar is only to inform the public that the Vacation Judge was prepared to hear urgent applications and not that the Vacation Judge had power only to hear urgent matters. Secondly, the jurisdiction of a Judge can only be restricted by Statute as in the case of appeals by persons under sentence of death (Vide Section 377, Criminal Procedure Code) and as in the trials under the Criminal Law Amendment Act of 1908, Section 11 or by rules framed by the High Court under Section 13.

14. The case of *In the matter of Abdool Sobhan* 4 Ind. Dec. 40 throws considerable light on this question. In that case an objection application for transfer was made before a Division Bench consisting of Mr. Justice Cunningham and Mr. Justice Prinsep. When the Counsel opened the case for transfer, the learned Judge-s intimated there was no use in going on further with the matter and dismissed the application. Thereupon, another Counsel moved the Chief Justice to have the matter re-heard on the ground that the learned Judges composing the Division Bench did not give full hearing to the case. In the course of the argument the Chief Justice Garth observed: 'Suppose, I did the same thing, who is to set me in order? Is a Division Bench consisting of two puisne Judges in a different

position from a Division Bench consisting of myself and another Judge? In such a case the proper course is to appeal to Government.' The Counsel answered: 'Your Lordship is undoubtedly above the other Judges of the Court.' To which he replied, 'As Chief Justice I have certain functions to perform in constituting Benches but having done so, have I power to call them to account?' The learned Chief Justice held that as Chief Justice he could not ask the learned Judge to re-hear the case. In that the application was an application for transfer of a case from one Court to another which could be renewed on proper grounds as the order on a transfer application is not *res judicata*. The learned Chief Justice intimated that they might renew the application or ask the Judges, if they were disposed to do so, to hear Counsel fully: In the course of the judgment reference was made to a precedent which happened during the time of Sir Barnes Peacock, Chief Justice of Bengal. To quote the words of Chief Justice Garth in respect of that case: 'A Criminal Bench of this Court, consisting of two Judges, had been appointed by the Chief Justice in the usual way, for the purpose of hearing criminal appeals;' instead of sitting together to hear these¹ appeals, the Judges thought proper to hear them separately, that is to say, one Judge sitting alone heard some of them, and the other sitting alone heard the rest; but the judgments in all the cases were signed by both Judges. Upon this being represented¹¹ the Chief Justice, he considered that, in point of law, there had been no hearing at all of these appeals, because they had not been heard by a legally constituted Court; and one Judge sitting alone had no jurisdiction to hear them. He, therefore, ordered the same Criminal Bench to hear them again; and upon the Judges of that Bench declining to do so upon the ground that they had been already judicially decided, the Chief Justice sent them to another Division Bench by whom they were finally determined. In this view of my learned predecessor I entirely agree. It is the province and duty of the Chief Justice under Section 14 of the High Courts Act, to determine what Judge or Judges shall decide each case; and if two Judges are appointed by him to hear an appeal, it is quite clear, I think, that no Single Judge has any jurisdiction to hear it.' With regard to the case of the Queen v. Zuhiruddin : 25 W.R. Cr. 27 : 1 Ind. Dec. 140 the learned Chief Justice observed: 'In that case a prisoner was committed to take his trial at Patna. On the application of the District Magistrate by letter to this Court, the Judge in the English Department made a summary order transferring

the case for trial to Shahabad. The prisoner then applied to this Court for a Rule calling on the Crown to show cause why the order of the transfer should not be rescinded, upon the ground it had been made without notice to him, and that the Judge in the English Department had no power to make it. This Rule was heard by a Full Bench, of which the Judge of the English Department was a member, and with his entire concurrence the Rule was made absolute.' It is clear, therefore, that where a Judge or a Bench of Judges is asked to dispose of a certain matter they have jurisdiction to dispose of it. The constitution of the Bench is the province of the Chief Justice and if the Judges refuse or neglect to be constituted into Benches as arranged by him and choose to dispose of cases as they please they would be acting without jurisdiction. If a learned Judge who has been asked to do admission work takes into his account or without his being asked to do Original Side work calls up Original Side cases of his own accord and disposes of them he may be said to be acting without jurisdiction. That a Vacation Judge has all the powers of the High Court can be inferred from Clause 36 of the letters Patent which is in these terms: 'We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras in the exercise of its Original or Appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose under the provisions of the 13th Section of the aforesaid Act of the 24th and 25th years of Our Reign.' The Government India Act of 1915, 5 and 6 George V, Chap. (sic) Section 108 re-produces Sections 13 and 14 of the older Act. In England the Rules of the Supreme Court regulate the sitting among vacation. Order XLIII, Rule 11 provides for the selection of two Judges at the commencement of the long vacation to be Vacation Judges. Rule 12 provides for the arrangement of the sittings, Two Judges sit separately together as a Divisional Court as Occasion shall require and may hear and dispose of all causes, matters and other business to whichever Division the same may be assigned. In *Ex parte George Wise* (1909) 127 L.T. 127 1 Hamilton, J., (now Lord Sumner) issued a writ, of mandamus during the vacation. In the course of the arguments by Mr. F.E. Smith, (now the Lord Chancellor) the learned Judge observed: 'It you satisfy me that I have the jurisdiction to do so, I should certainly grant a Rule Nisi. A Vacation Judge is not a Divisional Court.' The learned Counsel answered: 'It is provided by Order LXIII;

Rule 12 that Vacation Judges may sit either separately or together as a Divisional Court as occasion shall require and may hear and dispose of all causes, matters and other business to whichever Division the same maybe assigned.' Hamilton, J., said 'you may take your Rule Nisi,' and passed an order to that effect. This shows that an application for a prerogative writ of mandamus which according to the Supreme Court Orders has to be made to a Divisional Court or Ring Bench was made before a Single Vacation Judge who granted a Rule Nisi and considering who the learned Judge is and who the learned Counsel who appeared before him is, we may assume that the issue of the Rule was within the jurisdiction of the Single Vacation Judge.

15. The practice for the office is to circulate Jail appeals presented under Section 420 to the Judges. Jail appeals are disposed of by only one Judge. Notice is issued on Jail appeals or they are dismissed summarily by a Judge in Court after the appellant's name has been called. The Vacation Judge has been pursuing this practice at least for some years. The Vacation Judge disposes of matters which are ordinarily disposed of by a Bench of two Judges. Transfer applications are as a rule made to a Bench of two Judges. But during the vacation, a Single Judge disposed of transfer applications. Till recently, it was the practice in the High Court to post second appeals for notice before a Single Judge (Sitting in the Admission Court. The Admission Judge either ordered notice or dismissed the appeal. For the last few years the practice has been changed, and second appeals are circulated to the Judges who order notice if they find there are sufficient grounds for notice and if they find there are no points of law they order the cases to be posted under Order XLI, Rule 11 and then they come up before a Bench of two Judges who after hearing appellant's Counsel or Vakil either order notice or dismiss them.

16. If the practice obtaining here is an indication of what is considered to be the jurisdiction of a Vacation Judge we find he disposes of matters which are usually disposed of at other time by a Bench of the High Court consisting of two Judges. I hold that Krishnan, J.'s jurisdiction to dispose of Jail appeals was not in any way restricted by the Notification of the ~ 20th March 1922 under the signature of the Registrar.

17. The next contention is, that the appellant had no opportunity to engage a Counsel to argue his case because the Notification specifically stated that only urgent applications could be made. The Notification runs thus: 'The Vacation Judge will dispose of urgent applications which require to be heard immediately whether in proceedings on the Appellate or Original Side of the High Court. In any case of great urgency application may be made by delivering to the Registrar a request to transmit the necessary papers to the Vacation Judge.' Under the heading 'Registrar's Office' the Notification is 'Except petitions and applications in non-contentious testamentary and intestate matters and appeals received under Section 420 of the Code of Criminal Procedure from appellants who are in Jail, no application other than an urgent application as above-mentioned will be received or filed during the vacation.' The appellant contends that the office would not receive a memorandum of appearance on behalf of an appellant in Jail during the vacation because in the case of Jail appeals unless there is a bail application, the appeal is considered not to be an urgent matter. Under Section 420 of the Criminal Procedure Code an appellant in Jail may present his petition of appeal to the officer in charge of the Jail who shall thereupon forward the same to the Appellate Court. Section 421 provides 'that no appeal presented under Section 419 shall be dismissed unless the appellant or his Pleader has had a reasonable opportunity of being heard in support of the same.' This provision does not apply to appeals presented under Section 420, Criminal Procedure Code. Rule 50 of the Criminal Rules of Practice lay down 'that no appeal shall be summarily rejected until seven days have elapsed after its receipt by the Appellate Court. In forwarding such an appeal the officer in charge of the Jail shall invariably certify that the appellant has been informed that if he intends to appoint a Pleader, an appearance must be put in within seven days from the date on which his petition may reach the Appellate Court.' Seven days' time is allowed before a Jail appeal is circulated to the judges. So an appellant has an opportunity of engaging Counsel if he wishes to do so. I do not think the office could have refused to receive a memorandum of appearance from a Practitioner on behalf of an appellant in jail if it was brought to the notice of the office that the Jail appeal might be disposed of during the vacation. There is nothing to show that in this case the appellant had not had an opportunity of engaging a Counsel before his appeal was disposed of. So there is no substance

in this contention.

18. It is further urged that as the appellant was not heard there ought to be a re-hearing of the case. When an appeal has once been disposed of, the Court is *functus officio* and cannot re-hear the appeal. This is quite clear from a number of decisions of the Madras High Court as well as of other High Courts. In *Ranga Row v. Emperor* 12 M.L.T. 350 : 23 M.L.J. 317 : it was held that if a criminal revision petition is dismissed on account of the non-appearance of the Practitioner who had filed it, the High Court is not competent to restore to its file such a petition. In the course of the judgment reference is made to Referred Trial No. 40 of 1905 of this Court. It appears that after the dismissal of the appeal the learned Chief Justice thought that his order was wrong and he wanted to allow the appeal. On the matter being argued before him and Mr. Justice Moore, they both thought that they were *functus officio* the moment they delivered their judgment and that they had no power to re-open the matter and they directed that a letter be addressed to Government for the exercise of the prerogative of mercy in view of the doubt which they entertained as to his guilt. It has been brought to our notice that in a recent case Mr. Justice Spencer who dismissed a criminal revision petition for default of appearance of a Practitioner restored it to file and heard the case on the merits. In the case of a criminal appeal or criminal revision petition there is no provision in the Code of Criminal Procedure for dismissing an appeal or revision petition for default of appearance. In a criminal matter the question is not between party and party and it is the duty of the Court to go into the matter and dispose of it on the merits. The only way of reconciling the conflicting decisions on this point is to hold that when a criminal appeal or a criminal revision petition is dismissed for default of appearance there is no decision on the merit and, therefore, there is no proper disposal of it according to law and the Court may re-hear it. The order of dismissal for default of appearance in such cases is no judgment at all, and the order is tantamount to an adjournment of the case till some one appears and moves the Court to hear him. With due respect to the learned Judges who decided *Ranga Row v. Emperor* 16 Ind. Cas. 518 : (1912) M.W.N. 982 I think that the High Court, though it is not bound to hear a Practitioner in support of a criminal revision petition, is not entitled to dismiss it for default of appearance but could only dispose of it on the merits.

19. In High Court Proceedings, 7th November 1873, 7 M.H.C.R. App. 29 a ruling is given to the effect that, when a criminal appeal has been rejected without hearing the appellant's Pleader, under the corresponding Section 421 of the Criminal Procedure Code and if it appears that an adequate excuse has been made for the Pleader's non-appearance, the Court could restore the case to its file and hear him. In *Emperor v. Kallu* : 1 C.L.J. 710 : A.W.N. (1904) 195. it was held that a Judge who passed an order on a Jail appeal to the effect that no appeal lay and that no sufficient ground appeared for interference in revision was not precluded from entertaining the application for review presented by a Counsel in relation to the same matter. It has been held in some cases that a judgment or order is not complete until it is signed and sealed and, therefore, the matter could be re-opened. Under Section 369 of the Criminal Procedure Code when a judgment has been signed it is final, and there is no power left in the Court to re-open the case.

20. The Bombay High Court in *Empress v. Mahomed Yashin* 4 Ind. Jur. 579 : 2 Ind. Dec. 577 takes a narrow view with regard to the power to re-hear criminal appeals and revision petitions dismissed for default. But with great respect to the learned Judges of the Bombay High Court, I consider that when a criminal appeal or revision petition is dismissed without hearing, there is no judgment at all and the learned Judge of the Bench which disposed of the matter for default of appearance could re-hear the matter.

21. The third point argued is, that the High Court had power to revise an order passed in a criminal matter. I think this is concluded by authority. The earliest case on the point is in *Queen v. Godai Racut* 5 W.R. Cr. 61 : B.L.R. Sup.. 436. A Full Bench of the Calcutta High Court presided over by Sir Barnes Peacock held that the High Court could not entertain the application to review a judgment passed by it in a criminal case. The learned Judge observed at page 63: 'The Code of Criminal Procedure does not contain any provision expressly authorising a review of judgment in a criminal case after the judgment has been recorded. The Code of Criminal Procedure was passed after the Code of Civil Procedure. The latter contains a section expressly authorising review of judgment but the former contains no corresponding section. From this it may reasonably be inferred that the legislature did not intend to confer in criminal cases a power similar to that

which they had been given in civil cases.' Now, the Code of Criminal Procedure has been amended a number of times, and the Legislature has not chosen to give a power of review to any Court in a criminal case. Section 369 is relied upon as showing that the High Court had power by implicit ha to review a judgment passed in a criminal case. I think such a contention is untenable. Section 369 runs thus: 'No Court, other than a High Court, when it has signed its judgment, shall alter or review fie same, except as provided in Sections 395 and 484 or to correct a clerical error.' The exception contained in Section 369 is with reference to the power of review in regard to cases decided by a Judge of the High Court presiding over the Sessions when points are reserved for consideration by the Full Bench, or on the certificate of the Advocate-General. The cases reported I as Queen-Empress v. Durga Charan 7 A. 672 : A.W.N. (1885) 177 : 4 Ind. Dec. (N.S.) 867, Queen-Empress v. Fox 10 B. 176 : 5 Ind. Dec. (N.S.) 502, In the matter of Gibbons 14 C. 42 : 7 Ind. Dec. (N.S.) 29 are all authorities for the position that a Division Bench of the High Court ha no power to review its judgment pronounced in a criminal revision case or a criminal appeal. In this case the appellant has not applied for review and I consider that- this Bench which did not hear the case originally has no power to review the order. In these circumstances, the order of Mr. Justice Krisinan made daring the vacation on the appeal of the appellant is good and the matter cannot be re-opened. That being so, we cannot hear the appeal before us and it must be dismissed.