

R.C. Curtis Vs. Emperor

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Court : Kolkata

Decided On : Nov-14-1934

Reported in : AIR1935Cal477,157Ind.Cas.653

Appellant : R.C. Curtis

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. This is an application for leave to appeal to the Privy Council, made on behalf of Mr. R.C. Curtis, who desires to complain against a decision of Guha, J. who discharged a rule which had been issued to the Chief Presidency Magistrate to show cause why the order of conviction and sentence passed by him against the present applicant should not be set aside. Guha, J. confirmed and upheld the conviction and sentence.

2. The learned Advocate who has appeared on behalf of the petitioner was invited to point to any authority to the effect that this Court has jurisdiction to entertain such a petition and, he has been unable to do so. This is not a new point. It was considered so far back as the year 1913 in Chintamon Singh v. Emperor (1913) 21 IC 470, in which it was decided that no appeal lies under Clause 41, Letters Patent, to His Majesty in Council against an order made by the High Court on its Appellate Side under Section 118, Criminal P.C. In the same volume, in Ataur

Singh v. Emperor (1913) 21 IC 912 it was decided that leave to appeal to the Privy Council from a decision of a third Judge in a criminal case, on a reference arising out of a difference of opinion between two Judges of the High Court, could not be granted because the matter did not come within the ambit of Clause 41, Letters Patent. That was a reference for confirmation of a death sentence, The two Judges, who heard the reference, disagreed and the matter was referred to a third Judge. In Phillip E. Billingham v. Emperor, 1924 Cal 338 it was decided that an accused person cannot invite the High Court to grant him leave to appeal to His Majesty in Council from its appellate judgment, either under Clause 41, Letters Patent, or under any other provision of the law.

3. In that case the whole of the previous cases were reviewed and a number of unreported cases were considered. One of these, Madho Singh v. Emperor, which was tried in 1916, was a case in which an application for leave to appeal to His Majesty in Council was presented against an order made on a Criminal Reference. The application was rejected for the same reason, that the matter did not come within Clause 41, Letters Patent. The learned Advocate for the petitioner, therefore is not correct in his contention that none of the previous cases are on all fours with the present petition because none of the previous cases dealt with matters of revision such as we are concerned with in the present petition. But assuming for the sake of argument that he had been correct in his contention, even so it appears to us that Clause 41 cannot possibly be held to cover such a case as this. That clause provides that from any judgment, order or sentence of the High Court made in the exercise of the Original Criminal Jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the High Court in manner thereinbefore provided, by any Court which has exercised Original Jurisdiction, it shall be lawful for the person aggrieved to appeal to His Majesty in Council. The order made by Guha, J. was not made in the exercise of the original criminal jurisdiction, nor was it made in any criminal case where any point or points of law had been reserved for the opinion of the High Court by any Court which had exercised original jurisdiction. The words in manner hereinbefore provided in Clause 41 refer to the provisions made in Clause 25, Letters Patent. In that clause it is provided that

There shall be no appeal to the High Court from any sentence or order passed or made in any criminal trial before the Courts of Original Criminal Jurisdiction which may be constituted by one or more Judges of the High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the High Court.

4. It is clear, therefore, that the present case does not come within the provision made in that clause, because no such Court, referred to in that clause, has reserved any point or points of law for the opinion of the High Court. The learned Advocate has argued that the phrase 'in manner hereinbefore provided' cannot be intended to refer only to Clause 25, because Clause 25 deals only with the Original Criminal Jurisdiction of the High Court; whereas Clause 41 refers also to orders made by any Court which has exercised original jurisdiction. His contention has been that the words 'by any Court' must have reference to Courts other than the High Court and, therefore the provisions of Clause 41 cannot have reference only to the provisions made under Clause 25. I think that he has mis conceived the meaning of the word 'by any Court' in Clause 41. Those words have reference only to the Original Criminal Jurisdiction of the High Court. Clause 25 refers to criminal trials before Courts of Original Criminal Jurisdiction which may be constituted by one or more Judges of the High Court and it proceeds to state that it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the High Court. In my opinion, the words in Clause 41 'by any Court which has exercised Original Jurisdiction' have reference only to the words in Clause 25 'Courts constituted by one or more Judges of the High Court.' Consequently, the learned Advocate has not been able to distinguish the present case from cases which have been decided previously, which decisions are binding upon this Court. This petition therefore must be rejected.

Jack, J.

6. I agree.