

Pochay Mitay Vs. Emperor

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Court : Kolkata

Decided On : Aug-10-1912

Reported in : 16Ind.Cas.167

Judge : Holmwood and; Carnduff, JJ.

Appellant : Pochay Mitay

Respondent : Emperor

Judgement :

Holmwood, J.

1. The question which arises upon this Rule is whether the provisions of Article 154 of the Limitation Act are applicable to proceedings under Section 195 of the Code of Criminal Procedure, or, in other words, whether that section grants a right of appeal as laid down in Section 404 of the Code.

2. Now, Section 404 of the Code states very precisely that no appeal shall lie from any judgment or order of the Criminal Court except as provided for by this Code or by any other law for the time being in force.

3. In order, therefore, to give a right of appeal, Section 195 must contain, in our opinion, within itself a distinct declaration that there is a right of appeal and we can find no such declaration, either expressly or by implication. It is true that a Full

Bench. of the Allahabad Court, in the case of Hardeo Singh v. Ranuman Dat Narain 26 A. 244 : A.W.N. (1904) 10 : 1 Cr.L.J. 7 held, in answer to an academic question, that the expression in Section 439 giving certain powers to a Court of Appeal raised an inference that the Legislature, in referring to a Court of Appeal in connection with Section 195, Sub-section 6, regarded the application to be made under that sub-section as an application made to a Court of Appeal and, therefore, in the nature of an appeal. But the Full Bench went on to say: It does not appear, however, to us at all material by what name the application is called in pursuance of which the Appellate Court sets aside an order for sanction and gives sanction under the provisions of Section 195.'

4. The Allahabad Court had not before it this question of limitation and this question is the only question upon which the designation of the proceeding under Section 195 could be of any importance whatever and it is, therefore, solely in connection with this point of limitation that we are concerned with it.

5. There is another ruling, to which we have been referred, Muthuswami Muiali v. Vceni Chetti 30 M. 382 : 2 M.L.T. 239 : 17 M.L.T. 266 : 6 Cr. L.J. 102. This is also a ruling of a Full Bench of the Madras Court in which the question was decided whether on a revocation of a sanction by a lower Appellate Court, the party aggrieved could proceed to the High Court in the same way as it could if there had been a refusal of sanction; and the Full Bench held that the revocation of sanction was precisely the same thing as a refusal of sanction and that the same right of proceeding to the authorised Appellate Court as laid down in Section 195 was given to the party aggrieved, In coming to this decision, the Full Bench has somewhat loosely made use of the expression 'right of appeal' and this has been used throughout the judgment; but it does not touch the point before us and for the purposes of that decision, it did not in the least matter whether the Full Bench made use of the words 'right of appeal' or right of petitioning for sanction or revocation of sanction.

6. The only case reported, which deals with the matter directly, is the case of Hari Mandal v. Keshab Chandra Manna 16 C.W.N. 903 : 14 Ind. Cas. 760 : 13 Cr.L.J. 296 to which one member of the present Bench was a party. It is there laid down

that, inasmuch as an application under Sub-section (6) of Section 195, Criminal Procedure Code, is not an appeal within the meaning of Sub-section 2 of Section 22 of the Bengal Civil Courts Act, the Court to which an application to revoke a sanction or grant a sanction is made cannot transfer the case to a Subordinate Judge. This case, perhaps, does not cover the whole ground but it certainly is authority for the view that an application under Section 195 is not an appeal within the meaning of Section 404. It had already been decided in a sense by another Bench of this Court in *Ram Charan v. Tirupulla* 13 Ind. Cas. 1007 : 16 C.W.N. 645 : 13 Cr.L.J. 191 : 39 C. 774 and I may mention that the Criminal Bench of this Court, over which I have had the honour to preside for the greater part of the last two years, has decided on more than one occasion that an application under Section 195 is not an appeal although that was not decided with regard to this question of limitation. But as this is a question of limitation, it has merely to be stated that there is a doubt as to whether this is an appeal or not, to give the applicant the benefit of the longer period. That is a rule which has been laid down by Lord Esher in the case of *In re North, Ex parte Hasluck* (1895) 2 Q.B. 264 at p. 270 : 64 L.J.Q.B. 694 : 14 R. 436 : 72 L.T. 854 : 2 Manson 326 : 59 J.P. 724 and it is a rule which has always been followed in this Court and is cited in *Oopal Lai Sahai v. Bahomi* 13 Ind. Cas. 900 : 15 C.L.J. 120.

7. Speaking for myself, I think that the considerations set out by Knox, J., in the case of *Mehdi Hasan v. Tota Ram* 15 A. 61 are of extreme force and lay down the correct view of the law; but it is only necessary to hold, although we do not so hold, that there is any doubt on the subject, to give the applicant the bane-fit of the law of limitation; while, therefore, we have no doubt in our own mind that there is no appeal under Section 195 and that it is a matter of revision, we have no hesitation in making the Rule absolute and directing that the learned Judge in the Court below should deal with the matter as if there was no limitation at the time of hearing the application.

8. The stay of the charge under Section 242 is no longer necessary and may be discharged but stay of the trial under Section 211 will, of course, abide the result of these proceedings.

9. The Rule is made absolute and the case remanded to the lower Court.

Carnduff, J.

10. I agree. Sub-section (6) of Section 195 of the Code of Criminal Procedure, 1898, provides that any sanction given or refused under that section may be revoked or granted by the higher authority indicated. I think that this language is such as to confer, not a right of appeal on the person aggrieved by the grant or refusal to the higher authority, but a discretionary power of interference on the higher authority. What is given is not a right of appeal from below but power to intervene, if thought advisable from above.

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