

suggested, if the order made had been in a mofussil Court, that an appeal would have lain under Order XLI. But that perhaps is not so material here, as it would be in Bombay where it would possibly have been regarded as decisive of the question against the appellant: *Sonbai v. Ahmed'hai Habibhai* (1).

We must, therefore, dismiss this application with costs.

WOODROFFE J. I agree.

Appeal dismissed.

Attorneys for the appellants: *Watkins & Co.*

Attorneys for the respondents: *Orr, Dignam & Co.*

J. C.

(1) (1872) 9 Bom. H. C. 398.

PRIVY COUNCIL.

BALMUKUND

v.

KING-EMPEROR.

P.C.^o
1915

March 3.

[ON APPEAL FROM THE CHIEF COURT OF THE PANJAB AT LAHORE.]

Privy Council, Practice of—Special leave to appeal in Criminal case, application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition, refusal of—Tendering advice as to exercise of King's Prerogative of pardon.

On an application for special leave to appeal in a case in which the petitioners had been sentenced to death, their Lordships of the Judicial Committee, not being a Court of Criminal Appeal, declined to interfere with regard to staying execution of the sentences pending the hearing,

^o *Present*: THE LORD CHANCELLOR (LORD HALDANE), LORD DUNEDIN, LORD ATKINSON, SIR GEORGE FARWELL AND MR. AMEER ALI.

1915
SUKHLAL
CHUNDER-
MULL
v.
EASTERN
BANK, LD.
JENKINS C.J.

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 ———
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 EMPEROR.

or to express any opinion as to whether they ought to be suspended. The tendering of advice to His Majesty as to the exercise of His Prerogative of pardon is a matter for the Executive Government, and is outside their Lordships' province.

PETITION for special leave to appeal from an order (17th February 1915) of the Chief Court of the Panjab confirming an order (6th October 1914) of conviction and sentence of death passed by the Special Sessions Judge of Delhi.

The petitioners were arrested at Delhi in connection with what was known as the Delhi Conspiracy case arising out of the occurrence of a bomb outrage at Lahore by which a man was killed. The charge against the accused, four of whom were the petitioners, was under sections 120 B and 302 of the Penal Code, being conspiracy to murder, and committing certain offences under the Explosive Substances Act (VI of 1908). The Magistrate at Delhi committed the accused for trial which took place before the Special Sessions Judge (Mr. Harrison) with three native assessors, with the result that three of the four petitioners were sentenced to death, and the fourth to transportation for life, the rest of the accused being acquitted.

On appeal to the Chief Court of the Panjab, the convictions were affirmed, and all four of the petitioners were sentenced to death.

The petition stated that the executions were to be carried out a few days after the date of the present application.

Sir R. Finlay, K. C., and *B. Dube*, for the petitioners, said that the petition for special leave to appeal could not be proceeded with until the transcript of the evidence and the judgment of the Chief Court were received from India, and asked that the

hearing of the petition should stand over, and that by order of the Board, or by advice tendered by the Board to the Government of India, execution of the sentences should be stayed pending the hearing of the petition for special leave to appeal. It was very desirable that they should not be carried out before the arrival of the necessary documents in England, and the hearing of arguments on the petition.

A. M. Dume, for the Crown.

The judgment of their Lordships was delivered by

THE LORD CHANCELLOR. Their Lordships are unable to advise His Majesty to make any order on the petition for special leave to appeal at this stage.*

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With regard to staying execution of the sentence of death, their Lordships are unable to interfere. As they have often said, this Board is not a Court of Criminal Appeal. The tendering of advice to His Majesty as to the exercise of His Prerogative of pardon is a matter for the Executive Government, and is outside their Lordships' province. It is, of course, open to the petitioners' advisers to notify the Government of India that an appeal to this Board is pending. The Government of India will no doubt give due weight to the fact, and consider the circumstances. But their Lordships do not think it right to express any opinion as to whether the sentence ought to be suspended.

Solicitors for the petitioner: *Barrow, Rogers & Nevill*.
Solicitor for the Crown: *Solicitor, India Office*.

J. V. W.

* The petition was eventually dismissed on the 28th April 1915.
Rep. Note.