

APPELLATE CRIMINAL.

Before Rankin C. J. and Mukerji J.

HEMAYETUDDIN AHMED

v.

EMPEROR.*

1930

May 5.

Privy Council—Appeal—Leave to appeal to Privy Council—Whether appeal lies against judgment of High Court in criminal appeal—Letters Patent, 1865, cl. 39.

No appeal lies to the Privy Council against a judgment of the High Court sitting in Criminal Appeal from a trial by the Court of Sessions. The words "in any matters not being of criminal jurisdiction" govern all the classes of judgments or decrees or orders mentioned in clause 39 of the Letters Patent of 1865.

Phillip E. Billingham v. King-Emperor (1) referred to.

APPLICATION FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL, by the accused.

The petitioner was tried by the Court of Sessions at Barisal and sentenced to eighteen months' rigorous imprisonment under sections 366/114 and 366/120B of the Indian Penal Code. The petitioner's appeal to the High Court was dismissed. Thereupon the petitioner filed this application for leave to appeal to His Majesty in Council.

A. K. Fazlul Huq (with him *Amiruddin Ahmad*) for the petitioner.

Debendranarayan Bhattacharya for the Crown.

RANKIN C. J. This is an application for leave to appeal to the Privy Council, made on behalf of an accused person, who desires to complain against a decision of this Court, sitting in Criminal Appeal, from the trial by the Court of Sessions of certain persons upon criminal charges. We have not gone into the nature of the charges or the merits of the

*Application for leave to appeal to His Majesty in Council, in Criminal Appeal No. 3 of 1930.

complaint that may be made against the Sessions Court's decision or against the decision of the Criminal Bench. We have confined ourselves to calling upon Mr. Fazlul Huq, who appears for the petitioner, to show us that we have any jurisdiction to grant leave to appeal to the Privy Council from a decision of the Criminal Bench sitting in appeal from the Court of Sessions. Mr. Fazlul Huq does not contend that clause 41 of the Letters Patent governs this case, which is a case from the *mofussil*, but he contends that clause 39, while it is confined to matters not being of criminal jurisdiction so far as regards the first two classes of judgment mentioned therein, is not so confined as regards the words "from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our Heirs or Successors, in Our or Their Privy Council." In my opinion, it is reasonably plain, as a matter of construction of clause 39, that the words "in any matter not being of criminal jurisdiction" govern all the classes of judgments or decrees or orders which are thereafter in that clause mentioned. The same view was expressed in the case of *Phillip E. Billinghamurst v. King-Emperor* (1). It has not seldom happened that attempts have been made to apply to this Court for leave in criminal cases to appeal to the Privy Council. So far as can be ascertained, when they have not been made under clause 41 of the Letters Patent, such applications have always been dismissed. It appears to me that it is entirely inconsistent with our judicial system that any such contention as has now been put before us should be accepted.

The application must, therefore, be rejected.

MUKERJI J. I agree.

Application rejected.

S. M.

(1) (1923) 38 C. L. J. 406.

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