

CRIMINAL REVISION.

Before Lord-Williams and Jack J.J.

CURTIS

v.

EMPEROR.*

1934

Nov. 14.

*Leave to Appeal to Privy Council—Criminal matter—Letters Patent, 1865,
cls. 25, 41.*

No application for leave to appeal to His Majesty in Council lies under clause 41 of the Letters Patent of 1865 against an order made by the High Court in the exercise of its Criminal Revisional Jurisdiction upholding an order of conviction by the Chief Presidency Magistrate of Calcutta.

The words in clause 41 (of the Letters Patent of 1865) "by any Court^t 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."

Chintamon Singh v. King-Emperor (1), *Ataur Sing v. King-Emperor* (2) and *Billinghurst v. King-Emperor* (3) relied on.

APPLICATION FOR LEAVE TO APPEAL to His Majesty in Council.

The accused was tried and convicted by the Chief Presidency Magistrate of Calcutta for not exhibiting any token in a motor car. Against the conviction the accused moved the Hon'ble High Court. The High Court [judgment delivered by Guha J. (4)] upheld the conviction. Against the said order of the High Court the accused applied for leave to appeal to the Privy Council.

The material facts will appear from the judgment of Guha J. (4).

Brahmachari, Surendranath Basu (II) and *Bibhootibhooshan Lahiri* for the petitioner.

Anilchandra Ray Chaudhuri for the Crown.

*Application for Leave to Appeal to His Majesty in Council in Criminal Revision, No. 385 of 1934.

(1) (1908) 18 C. L. J. 119.

(3) (1923) 38 C. L. J. 406.

(2) (1913) 18 C. L. J. 121.

(4) (1934) I. L. R. 62 Calc. 169.

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LORT-WILLIAMS J. 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 Mr. Justice Guha, 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. Mr. Justice Guha confirmed and upheld the conviction and sentence.

The learned advocate, who has appeared on behalf of the petitioner, was invited by us to point to any authority to the effect that this Court has jurisdiction to entertain such a petition and, in my opinion, he has been unable to do so. This is not a new point. It was considered so far back as the year 1913 in the case of *Chintamon Singh v. King-Emperor* (1), in which it was decided that no appeal lies under clause 41 of the Letters Patent to His Majesty in Council against an order made by the High Court on its Appellate Side under section 118 of the Code of Criminal Procedure. In the same volume, in the case of *Ataur Singh v. King-Emperor* (2), 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 of the 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 the case of *Billinghurst v. King-Emperor* (3), 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 of the Letters Patent or under any other provision of the law. In that case, the whole of the previous cases were reviewed and a number of unreported cases were

(1) (1908) 18 C. L. J. 119.

(2) (1913) 18 C. L. J. 121.

(3) (1923) 38 C. L. J. 406.

considered. One of these, *Madho Singh v. King-Emperor* (1), 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 of the Letters Patent.

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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 Mr. Justice Guha 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 of the 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 said 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 said High Court.

(1) (1916) P. C. 3 of 1916 in Cr. Ref. 24 of 1915, decided by Greaves and Walmsley JJ. on 19th Jan.

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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 misconceived the meaning of the words "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, in my opinion, 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. I agree.

Application refused.

A.K.D.