

CRIMINAL REVISION.

Before Bartley and Khundkar JJ.

HARI SADHAN RAY

v.

PRABHA KAR RAY.*

1938
May 4, 6.

Revision—Decision by the Union Bench, if can. be revised by the High Court—Bengal Village Self-Government Act (Ben. V of 1919), ss. 71, 93—Code of Criminal Procedure (Act V of 1898), ss. 435, 439, 526.

Sections 435, 439 and 526 of the Code of Criminal Procedure do not apply to any trial or proceeding before a Union Bench and the High Court has no jurisdiction to interfere under those sections with any order passed at such trial or proceeding.

Section 71 of the Bengal Village Self-Government Act bars any appeal by a person convicted by a Union Bench. The right to challenge any such decision must be exercised in the manner provided in the Act itself.

Yasin Moral v. Isaf Khan (1) and *Khudiram Kundu v. Surendra Mohan Chakravarty* (2) referred to.

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The material facts and the arguments appear sufficiently from the judgment.

BARTLEY J. These three Rules, in Revision Case No. 1205 of 1937, No. 284 of 1938, and in Mis. Case No. 6 of 1938, involve consideration of the same question of law.

In Revision Case No. 1205, the petitioner was convicted of theft by a Union Bench, and an application to set aside the conviction, made under s. 71 of the Village Self-Government Act, was rejected by the Subdivisional Officer.

*Criminal Miscellaneous Case, No. 6 of 1938, against the order of N. Das, Subdivisional Magistrate of Bishnupur, dated Jan. 4, 1938 and Criminal Revision, No. 1205 of 1937, against the order of W. H. S. Smith, Subdivisional Magistrate of Madaripur, dated Sep. 7, 1937, confirming the order of Bhojeshwar Union Bench, dated July 18, 1937, and Criminal Revision, No. 284 of 1938, against the order of B. Rahman, Subdivisional Magistrate of Uluberia, dated Jan. 10, 1938, modifying the order of Benapore Union Bench, dated Oct. 24, 1937.

(1) (1932) I. L. R. 59 Cal. 1080.

(2) (1934) 38 C.W.N. 986.

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In Revision Case No. 284, the petitioners were convicted under s. 504 of the Indian Penal Code. On application, made under s. 71 of the Village Self-Government Act, the sentence was reduced by the Subdivisional Officer.

In Mis. Case No. 6, an application was made by the petitioners to the Subdivisional Officer to transfer a criminal case pending against them before a Union Bench. This application was refused after enquiry by the Subdivisional Officer.

In all these instances, Rules have been issued by this Court, and the point of law involved is whether the Court has jurisdiction to interfere.

It is material that the application to this Court was made in Case No. 1205 under s. 439 of the Criminal Procedure Code, in Case No. 284 under ss. 435 and 439 of the Criminal Procedure Code and in Mis. Case No. 6 under s. 526 of the Criminal Procedure Code.

The statutory provisions on the point are ss. 71 and 93 of the Village Self-Government Act. Section 71 provides that, notwithstanding anything contained in the Code of Criminal Procedure, there shall be no appeal by a convicted person, in any case tried by a Union Bench.

Provided that the District Magistrate or Subdivisional Officer, if satisfied that a failure of justice has occurred, may, of his own motion or on the application of the parties, cancel or modify any order of conviction or compensation made by a Union Bench, or direct the retrial of any case by a Court of competent jurisdiction subordinate to him.

Section 93 of the Act lays down that the provisions of the Code of Criminal Procedure, excepting Chap. XXXIII, shall not apply to any trial, suit or proceeding before a Union Bench or Union Court.

Now it seems perfectly clear that s. 71 of the Act bars any appeal by a person convicted by a Union Bench. The right to challenge any such decision is not taken away, but it must be exercised in the manner provided in the Act itself.

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The further question then is whether there can be any such challenge by way of invocation of the Revisional Jurisdiction of this Court.

On consideration of the whole matter, we are of opinion that there cannot be any such challenge.

The jurisdiction invoked in all these cases is a jurisdiction derived from the Code of Criminal Procedure and outside Chap. XXXIII of that Code.

Section 93 of the Act provides that the Code, except the said Chapter, shall not apply to any trial or proceeding before a Union Bench. We are unable, therefore, to hold that any jurisdiction derivable from the Code of Criminal Procedure exists in this Court.

We may note in conclusion that reference was made before us to two reported cases.

In *Yasin Moral v. Isaf Khan* (1), Mitter J. adverted to this very point and indicated the view that the revisional powers of this Court were "restricted", having regard to ss. 71 and 93 of the Village Self-Government Act. He, however, discharged the Rule in that case on another ground.

In *Khudiram Kundu v. Surendra Mohan Chakravarty* (2), which was a case of a civil suit tried by a Union Court, S. K. Ghose J. did interfere in revision, but it is not clear, from the language of the report, whether he purported to do so under s. 115 of the Code of Civil Procedure or under s. 107 of the Government of India Act, a section now repealed.

(1) (1932) I. L. R. 59 Cal. 1080.

(2) (1934) 38 C.W.N. 986.

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In any case, the present Rules are concerned with criminal proceedings before Union Benches, and for the reasons indicated previously we hold that we have no jurisdiction to interfere.

The Rules are accordingly discharged.

KHUNDKAR J. I agree.

Rules discharged.

A. C. R. C.