

APPELLATE CRIMINAL.

Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.

Re ADUR DESIKACHARI AND SEVEN OTHERS (ACCUSED),

APPELLANTS.*

1915.
February
9 and 10.

Letters Patent (24 & 25 Vict., cap. 104), sec. 15, appeal under—Order of a single Judge in revision against order to give security to keep the peace—No appeal—"Criminal trial."

23 M.A.J. 307

Proceedings taken for binding over persons to keep the peace under Chapter VIII, Criminal Procedure Code, are "criminal trials" within the meaning of section 15 of the Letters Patent, and hence no appeal lies from the judgment of a single Judge disposing of a Revision Petition presented against an order of a Magistrate under section 118 of the Code of Criminal Procedure.

In *In the matter of Ramasamy Chetty* (1904) I.L.R., 27 Mad., 510, followed.

APPEAL under section 15 of the Letters Patent against the order of SADASIVA AYYAR, J., who rejected Criminal Revision Case No. 502 of 1914 (Criminal Revision Petition No. 426 of 1914), presented under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the order of M. AZIZ-UD-DIN, the District Magistrate of South Arcot, in Criminal Revision Case No. 4 of 1914, against the order of S. V. NARGUNAM, the Sub-Divisional Magistrate of Cuddalore, in Miscellaneous Case No. 32 of 1913.

The facts of the case appear from the ORDER of the High Court.

T. V. Venkatrama Ayyar, T. Narasimha Ayyangar and K. S. Krishnaswami Ayyangar for the appellants.

Sidney Smith for the Public Prosecutor for the Crown.

The following ORDER of the Court was delivered by SPENCER, J.—A preliminary objection has been taken that no appeal lies in this case. In our opinion proceedings taken for binding over persons to keep the peace under Chapter VIII are "Criminal trials" within the meaning of section 15 of the Letters Patent, and if this is so, the section provides no appeal from the judgment of a single Judge dealing with a revision petition presented against the order of a Magistrate under section 118 of the Code of Criminal Procedure.

SPENCER
AND
SESHAGIRI
AYYAR, JJ.

In *In the matter of Ramasamy Chetty* (1) this was the view taken by the officiating CHIEF JUSTICE who gave several reasons for his opinion.

* Letters Patent Appeal No. 336 of 1914.
(1) (1904) I.L.R., 27 Mad., 510.

Re
 DESIKACHARI,
 SPENCER
 AND
 SESHAGIRI
 AYYAR, JJ.

The learned CHIEF JUSTICE was apparently mistaken in saying that an appeal was allowed against an order to give security for keeping the peace.

Section 406 of the Code of Criminal Procedure provides only for appeals from orders to give security for good behaviour.

But the procedure prescribed by section 117 of the Code of Criminal Procedure for conducting enquiries under Chapter VIII is that for conducting trials and persons ordered to give security may under section 123 of the Code of Criminal Procedure be committed to jail, the imprisonment for failure to give security for keeping the peace being simple and for failure to give security for good behaviour being rigorous. Imprisonment is a kind of punishment (vide section 23 of the Indian Penal Code).

An order passed under order 106 (3) by an Appellate Court that persons convicted of offences involving a breach of the peace should execute bonds to keep the peace is treated in section 423 (1) (b) (3) as an enhancement of sentence.

At the end of the enquiry, if it is found unnecessary to bind over the person proceeded against, he is to be "released" or "discharged" according as he happens to be in custody or not at the time. We have no doubt therefore that proceedings under this chapter are of a criminal nature.

The next question is whether they constitute a trial. It may be that if the definition in section 4 (4) of the Code of Criminal Procedure, of "enquiry" be used as a test, such proceedings might fall within the scope of an enquiry rather than of a trial. But it is not to be supposed that when the Letters Patent were enacted in 1865, the definition afterwards embodied in the Criminal Procedure Code of 1882 was in the mind of the legislature. In the Code of 1861, the word "enquiry" was used only to denote proceedings preliminary to trial.

There can be no doubt that proceedings under Chapter VIII are "Criminal cases," and can be transferred from one Magistrate's file to another's: vide *Wazed Ali Khan v. Emperor* (1).

For these reasons, we consider that *In the matter of Ramasamy Chetty* (2) was rightly decided. Mr. Sidney Smith for the

Public Prosecutor has also suggested another reason for holding that no appeal lies. Section 15 of the Madras Letters Patent falls within that part which begins at section 11 dealing with civil jurisdiction. It cannot be understood by implication that an appeal lies in every case in which the right of appeal is not denied by this section. We must take it that rights of appeal do not exist unless expressly conferred by the legislature. The portion of the Act which commences at section 22 and deals with Criminal Jurisdiction gives no right of appeal against the order of a single Judge acting as a Court of revision.

This was the view taken in *Srinivasa Ayyangar v. Queen Empress*(1), with which we agree.

We therefore dismiss this petition.

N.B

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

SUBRAMANIA PILLAI (SIXTH DEFENDANT, PETITIONER),
APPELLANT,

1915.
March 1.

v.

KUMARAVELU AMBALAM *alias* V. E. K. R.
KARUPPIAH KANGANI (PLAINTIFF, RESPONDENT),
RESPONDENT.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 5—Agreement between one of the judgment-debtors and the decree-holder to enter up satisfaction of the decree—Agreement prior to decree—Application to enter up satisfaction, if maintainable—Civil Procedure Code (Act XIV of 1882), sec. 244.

An application was made to the executing Court by one of the judgment-debtors to enter up satisfaction of the decree as against him, on the ground that there was an agreement to that effect entered into between himself and the decree-holder prior to the passing of the decree. The latter objected that such an application was not sustainable. *Held*, that the application was maintainable under Order XXI, rule 5 of the Civil Procedure Code (Act V of 1908).

Rukmani Ammal v. Krishnamachary (1911) 9 M.L.T., 464, referred to.

Laldas v. Kishondas (1898) I.L.R., 22 Bom., 463, followed.

Hassan Ali v. Ganzi Alum (1904) I.L.R., 31 Calc., 179, dissented from.

(1) (1894) I.L.R., 17 Mad., 105.

* Appeal against Appellate Order No. 92 of 1913.