

ORIGINAL CIVIL—SPECIAL BENCH.

*Before Sir Murray Coultts Trotter, Kt., Chief Justice,
Mr. Justice Krishnan, and Mr. Justice Beasley.*

In re SHEIK ABDUL KADIR MARAKAYAR & Co.

1925,
November 11.

*Indian Income-tax Act (XI of 1922), sec. 33, cls. (1), (2) and (3)
and sec. 66 (1)—Obligation of Commissioner to state a case
even in cases under sec. 33 of the Act—Sec. 45, Specific
Relief Act (I of 1877).*

Even in cases coming under section 33 of the Indian Income-tax Act, the Commissioner of Income-tax is bound to state a case to the High Court if in the course of enquiry under that section any question of law arises in the case and if he improperly declines to do so, the High Court may under the discretionary power vested in it by section 45 of the Specific Relief Act compel him to do so in proper cases.

APPLICATION under section 45 of the Specific Relief Act and section 66 of the Indian Income-tax Act.

In a case disposed of by the Commissioner of Income-tax on review under section 33 of the Income-tax Act, he was requested by the assessee to refer to the High Court a substantial question of law arising in the case. He refused to do so. Thereupon the assessee filed this application under section 45 of the Specific Relief Act and under section 66 of the Income-tax Act for an order to compel the Commissioner to refer the case to the High Court.

K. S. Krishnaswami Ayyangar (with N. Srinivasa Ayyangar) for assessee.—The Commissioner of Income-tax who disposed of this case under section 33 of the Income-tax Act was requested to refer the substantial question of law arising in the case for the opinion of the High Court; and he declined to do so. He is bound to refer under section 66 of the Act and section 45 (b) of the Specific Relief Act. "May" in section 66 (1) has been interpreted as "shall" in *Alcock Ashdown and Co., Ltd. v. Chief Revenue Authority of Bombay*(1).

(1) (1923) I.L.R., 47 Bom., 742 (P.C.).

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M. Patanjali Sastri for the Commissioner.—The Income-tax Act is a complete Code and section 66 must be deemed to have exhausted all cases where the Commissioner can be compelled to refer. That section compels him to refer only in cases falling under sections 31 and 32. As this case was disposed of by him under section 33, he cannot be compelled to refer. He may refer if he chooses. Hence this application does not lie.

JUDGMENT.

By section 66 (1) of the Indian Income-tax Act, 1922, it is enacted,

“ If, in the course of any assessment under this Act, . . . a question of law arises, the Commissioner may, either on his own motion or on reference from any income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court ”
and by sub-section (2)

“ Within one month of the passing of an order under section 31 or section 32, the assessee, in respect of whom the order was passed, may, by application accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within one month of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court.”

There is a proviso with which we are not concerned enabling the assessee, if the final determination of the Commissioner under section 33 is favourable to him, to withdraw his application and get a refund of the fees that he paid. By sub-section (3),

“ If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court and the High Court, if it is not satisfied of the correctness of Commissioner's decision, may require the Commissioner to state the case and refer to it and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.”

It is clear that sub-sections (2) and (3) of section 66 are in terms limited to orders passed under sections 31 and 32. As to orders in review passed by the Commissioner under section 33 as in the present case there is nothing to operate upon except 66 (1) and the assessee has no remedy unless we hold that the Court has power to order the Commissioner to state a case embodying any point of law that may arise in the course of proceedings under section 33. The Privy Council has held in *Alcock Ashdown and Co., Ltd. v. Chief Revenue Authority of Bombay*(1) that the words of the older Act of 1918 import a mandate to the Commissioner to state a case where a real point of law arises, and has further held that if he improperly declines to do so the Court may compel him under the general powers of the Specific Relief Act. It is conceded by Mr. Patanjali Sastri that sub-sections (2) and (3) of section 66 of the present Act only apply to orders under sections 31 and 32; but he asks us to draw the inference that the power of the High Court was meant to be confined to cases under those sections and was by implication taken away in the case of orders under section 33. The result would be that the Commissioner by calling up the records under section 33 would be in a position to burke any further enquiry whatever. We do not think that that can have been intended and we accordingly hold that the principle of *Alcock Ashdown and Co., Ltd. v. Chief Revenue Authority of Bombay*(1) must be applied to orders under section 33. It follows that the statute has set a period of limitation on applications which relate to orders passed under sections 31 and 32 and not on those which relate to orders passed under section 33. The answer appears to be that the jurisdiction conferred by section

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45 of the Specific Relief Act is discretionary and that in the case of unreasonable and unexcused delay the Court would refuse to exercise it.

The Court therefore directs the Commissioner to state a case it not being seriously contended that there is not a substantial point of law involved. Costs of this application reserved.

N.R.

APPELLATE CRIMINAL—FULL BENCH.

Before Sir Murray Coultts Trotter, Kt., Chief Justice, Mr. Justice Phillips, Mr. Justice Krishnan, Mr. Justice Beasley and Mr. Justice Madhavan Nayar.

TIRUVENGADA MUDALI (ACCUSED)

1926,
February 15.

v.

TRIPURASUNDARI AMMAL (COMPLAINANT)*

Defamation in a complaint not in good faith—Absolute privilege, if any—Sec. 499, exception VIII, Indian Penal Code—English Common Law not applicable.

According to exception VIII to section 499, Indian Penal Code, defamatory statements in complaints to Magistrates are not absolutely privileged. Unless they are made in good faith, the complainant is guilty of defamation. *In re Venkata Reddy*, (1913) I.L.R., 36 Mad., 216 (F.B.), overruled.

Held, further, that on matters specifically dealt with by the Penal Code, such as this, the English Common Law is not applicable.

Quære.—Whether any absolute privilege attaches to advocates and witnesses when charged criminally?

CASE referred to High Court under section 438, Criminal Procedure Code by the Sessions Judge of North Arcot in Calendar Cases Nos. 3 and 10 of 1925 before Sub-divisional Magistrate, Vellore.

* Case Referred No. 66 of 1925.