APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

1929. October 29.

KONDALU AIYAR (PETITIONER), APPELLANT.*

Letters Patent of the High Court, cl. 15—Amendment of—Application in the High Court in a second appeal for stay of execution of decree—Dismissal by a single Judge of the High Court—Appeal against order under Letters Patent, cl. 15, after amendment—Leave to appeal, not applied for—Maintainability of Letters Patent appeal, without leave—Jurisdiction in dismissing petition, whether appellate.

Where, in a second appeal pending in the High Court, an application for the stay of execution of the decree of the lower Court was dismissed by a single Judge of the High Court, and an appeal was preferred against the order under the Letters Patent, but no leave to appeal against the order had been applied for under the amended letters patent,

Held, that the order refusing stay of execution was passed in the exercise of the appellate jurisdiction of the High Court, and an appeal against the order, without obtaining leave to appeal, wound not lie.

Sadaka Mahammad v. *Hayath Batcha Sahib*, (1928) 54 M.L. J., 323; and S.R., 12731 of 1928, followed.

APPEAL, under clause 15 of the Letters Patent, against the order of JACKSON, J., in C.M.P. No. 4152 of 1929 for stay of execution of the decree in A.S. No. 133 of 1929 in the District Court of Tinnevelly, pending S.A. No. 928 of 1929.

The facts appear from the judgment.

K. V. Venkatasubrahmanya Ayyar with *P. N. Appuswami Ayyar* for appellant.

JUDGMENT.

This is a Letters Patent Appeal from the judgment of Mr. Justice JACKSON and the question is, does the

* Letters Patent Appeal No. 103 of 1929.

appeal lie? There was a second appeal filed and in that, an application was made for stay of execution of the decree of the lower Appellate Court. The application was dismissed by Mr. Justice JACKSON and this is an appeal from his order.

It is on account of the recent amendment of the Letters Patent that the present question arises. There was no certificate granted by the learned Judge declaring that the case is a fit one for appeal. Mr. Venkatasubrahmanya Ayyar's contention is this. The order in question is not a judgment passed by the High Court in the exercise of its appellate jurisdiction. The very expression "Appellate Jurisdiction", he contends, involves a scrutiny of a proceeding of an inferior Court. The order of the High Court refusing stay is not related to any order of the lower Court and has an independent existence. Moreover, power to grant or refuse stay is conferred on the High Court by an express provision in the Civil Procedure Code. On these grounds, he maintains that the order in question was not made by a Judge of the High Court in the exercise of his appellate jurisdiction. This contention involves a fallacy. A similar argument was advanced in *Sadaka Muhammad* v. *Hayath Batcha Sahib*(1) with reference to an interlocutory order in a Civil Revision Petition. KUMARASWAMI SASTRI and WALLACE, JJ., made the following observation:

> "It is difficult to see how there can be any application apart from the Civil Revision Petition filed in the High Court, as a party could not, without filing a Civil Revision Petition in the High Court, ask for stay of execution of the decree in the lower Court."

These remarks apply to the present case. The application to the learned Judge could not have been made independent of, and apart from, the second appeal that was pending. We must therefore hold that it was

(1) (1928) 54 M.L.J., 322.

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the appellate jurisdiction of the High Court that was invoked and that the order was made in exercise of that jurisdiction. *Sri Sri Sri Chandra Chudamani Rajah Harichandran Jagadev* v. *Lokkeno Patnaik*(1), (decided by RAMESAM and TIRUVENKATA ACHARYA, JJ.), is a direct case on the point and supports our view. The appeal is dismissed.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Waller and Mr. Justice Cornish.

1929, August 21.

KESAVA PILLAI *alias* KORALAN AND ANOTHER, PRISONERS (ACCUSED NOS. 2 AND 4)

and

KESAVA PILLAI *alias* THILLAI KANNU PILLAI. (ACCUSED NO. 1), APPELLANT.*

Retracted confession—If can be acted upon without material corroboration—Reasons given by accused for making confession, subsequently retracted, on the face of them, false—If corroboration necessary.

There is no absolute rule that a retracted confession cannot be acted upon, unless there is material corroboration. If the reasons given by an accused person for having made a confession which he subsequently withdraws are, on the face of them, false, that confession may be acted upon as it stands and without any further corroboration.

TRIAL referred by the Court of Session of the South Arcot Division for the confirmation of the sentences of death passed upon accused Nos. 2 and 4 in Case No. 14 of the Calendar for 1929, and case taken up by the

(1) S.R. 12731 of 1928 (unreported).

* Referred Trial No. 82 of 1929 and Criminial Appeal No. 334 of 1929 (taken up No. 22 of 1929).