

APPELLATE CRIMINAL.

Before Mr. Justice Jackson and Mr. Justice Butler.

H. D. RAJAH, PETITIONER,

v.

C. H. WITHERINGTON AND ANOTHER, RESPONDENTS.*

1934,
March 14.

Contempt of Court—High Court's jurisdiction as to—Contempt arising within its territorial jurisdiction—Offender residing outside it.

The High Court as a Court of Record has jurisdiction in all matters of contempt of Court arising within its territorial jurisdiction even if the offender happens to reside outside it. The jurisdiction of the Court is determined by the place where the offence is committed, and not by the place where the offender may happen to reside.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to take contempt proceedings against the respondents therein and commit them for contempt of this Court.

Advocate-General (Sir A. Krishnaswami Ayyar) for respondents.—The jurisdiction of this Court must not be assimilated to that of the Supreme Court in England. The King's Court came into being as part of the Common Law of England. The King's Bench Court is a Common Law Court and not a statutory Court, i.e., the creature of any statute. The jurisdiction of the King's Bench Court is a Common Law jurisdiction and extends to the dominions of His Majesty; Halsbury's Laws of England, Vol. VIII, page 180. As regards the jurisdiction of the English Court to issue a writ of *Habeas Corpus*, see *Encyclopædia of the Laws of England*, Vol. VI, page 472, and *Rea v. Pinckney*(1).

* Criminal Miscellaneous Petition No. 1354 of 1933.

(1) [1904] 2 K.B. 84, 87.

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The Indian High Courts, on the other hand, are creatures of statute and their jurisdiction is limited by the terms of the statutes creating them. Section 8 of the Charter of our High Court does not mean that our High Court has all the jurisdiction of the King's Bench Court. The earlier part of the section shows the limits within which the Supreme Court was to have jurisdiction and the latter part of that section says that within such limits the Supreme Court was to have the jurisdiction of the King's Bench Court. The fact that some limit to the territorial jurisdiction should be placed has never been disputed, though there has been some conflict between Madras and Calcutta as to whether the limit is to be the Presidency or the Presidency-town. On the general question of jurisdiction, see *Legal Remembrancer v. Motilal Ghose and others*(1). As to contempt of Court in the mofussal, see *Emperor v. Balakrishna Govind*(2). The Supreme Court had by the terms of its Charter the same jurisdiction as the King's Bench to the extent of its territorial limits; *ibid.*, page 619. As to the meaning of territorial limit, see the same page. This Court has no jurisdiction where the publication and the residence of the person publishing are outside the territorial jurisdiction of this Court.

K. Rajah Ayyar for P. S. Raghavaraman (with him, *R. Ramamurti* and *G. Ranga Rao*) for petitioner.—The jurisdiction of the Superior Courts to commit for contempt is arbitrary and unlimited; Halsbury's Laws of England, Vol. VII, page 2. As to the origin of jurisdiction to commit for contempt in the case of the Superior Courts, see *The Queen v. Lefroy*(3). The contempt is not of the Court but of the Sovereign. Therefore the jurisdiction of the Court is co-extensive with that of the Sovereign; see also Stephen's Commentaries on the Laws of England, Vol. III, pages 276-7. The jurisdiction is not territorial. The principles of general jurisdiction are stated by Lord MANSFIELD in *Mostyn v. Fabrigas*(4). The jurisdiction is unlimited in point of territorial limits but limited in respect of its being effective. There is no distinction between a case of libel and a case of contempt of Court. Contempt of Court is only libel of 'an

(1) (1913) I.L.R. 41 Calc. 173, 202, 205, 208.

(2) (1921) I.L.R. 46 Bom. 592.

(3) (1873) L.R. 8 Q.B. 134, 137.

(4) (1774) 1 Cowp. 161; 98 E.R. 1021, 1028.

aggravated kind; *Surendra Nath Banerjee v. The Chief Justice and Judges of the High Court*(1). The ordinary rule is that jurisdiction to try an offence is determined by the area within which the offence is committed and not the area within which the offender may be found; *In re Kochunni Elaya Nair*(2). Publication within jurisdiction by a person owing allegiance to the Sovereign gives jurisdiction; *Emperor of India v. McLeod*(3) and *The King v. Johnson*(4) referred to.

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Cur. adv. vult.

The ORDER of the Court was delivered by JACKSON J.—The respondents, the editor and printer of a magazine called “Review of India”, have been ordered to show cause why they should not be committed for contempt of Court.

The facts are not in dispute.

An order was issued by the Presidency Magistrate, Madras, against one Harihar Dharma Rajah under section 112, Criminal Procedure Code, to show cause why he should not be bound over under section 110 (f), Criminal Procedure Code. The learned Magistrate, finding that Harihar Dharma Rajah was instilling revolutionary ideas in the minds of young persons, ordered him to find security and on his failure committed him to jail on 20th September 1933. He appealed to this Court and in order not to undergo imprisonment he furnished the required security on 25th October 1933. While the appeal was pending a paragraph appeared in the November number of the respondents' review to the effect that a terrorist who was in jail in connection with a scheme in Madras to

(1) (1893) I.L.R. 10 Calc. 109, 125, 129, 134 (P.C.).

(2) (1921) I.L.R. 45 Mad. 14, 18. (3) (1880) I.L.R. 3 All. 342, 345.

(4) (1805) 6 East 583; 102 E.R. 1412.

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send poisoned handkerchiefs to officials as Christ-mas presents had been released on bail presumably to enable him to proceed with his plan of preparing poisoned handkerchiefs. Neither in the findings nor in the evidence in the security proceedings is it suggested that Harihar Dharma Rajah was intending to send out poisoned handkerchiefs, and of course the suggestion that the Court had released him on bail in order to enable him to proceed with this plan is in the highest degree offensive. The respondents have filed affidavits tendering their sincere regret, and stating that they were not aware that an appeal was pending. It might have occurred to them that there would be no question of bail unless proceedings were pending, and, no matter what false opinion of the facts they may have conceived, there could be no possible justification for their saying that the Court had released the prisoner to enable him to prepare poisoned handkerchiefs.

We find that the respondents have committed a contempt of Court, and order that they each pay a fine of Rs. 100 to His Majesty the King-Emperor and do pay the costs of this motion—special costs since a legal argument was raised, Rs. 250.

It might have been hoped that the proceedings would have terminated with this unqualified apology and submission to the authority of the Court, for apology is not as a rule coupled with argument; but the respondents have further instructed the learned Advocate-General to challenge our jurisdiction and a whole afternoon has been occupied with this question, although in the affidavits filed by the respondents no such

question of jurisdiction has been raised. There can be no doubt but that this Court as a Court of Record has jurisdiction in all matters of contempt of Court arising in the Madras Presidency. So much is conceded; but the learned Advocate-General argues that because the offenders happen to reside in Calcutta, the hands of this Court are tied. A party can malign prisoners and insult Courts to the top of his bent, so long as he is careful to be beyond the territorial jurisdiction of the Court when notice issues. We find no warrant for this view of the law. Contempt of Court is not an offence within the ambit of the Penal Code, but nevertheless it conforms to the ordinary rule that the jurisdiction of the Court is determined by the place where the offence is committed, and not by the place where the offender may happen to reside. (*Cf.* section 177, Criminal Procedure Code.) If an offender has removed himself beyond the territorial jurisdiction of the Court, there may be difficulty both in securing his appearance and in executing his sentence, but that is not to deprive the Court of jurisdiction over the offence. Nor in the present case is there any difficulty over the appearance of the party, because the respondents have appeared, and apologized, and submitted to the jurisdiction. The only possible difficulty that can arise is if they succeed in removing themselves from the Court's jurisdiction before the execution of the penalty, and that is not a matter which need be considered at this stage. The learned Advocate-General finds an analogy between this case and a case where the Court of King's Bench in London may issue a writ of *Habeas Corpus* to some remote

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place which is not otherwise within the jurisdiction of a Court of Record ; but that is rather to assume that the present contempt has been committed outside the territorial jurisdiction of this Court. If the respondents had confined the circulation of their review to Oates Land the analogy might be more happy and it would be necessary to follow the learned Advocate-General along his excursus into the origin of the Court of King's Bench and its relation to other Courts of Record ; but in the present circumstances it seems to be rather beside the point.

Attorneys for respondents: *King* and *Partridge*.

A.S.V.
