

at by our learned brother is right. All the circumstances point to the conclusion that it could not have been intended to give an absolute estate to a childless widow and that the properties must have been given to her only for her life.

We therefore see no reason to interfere in appeal with the decision of VARADACHARIAR J. in this case. The Letters Patent Appeal is accordingly dismissed with costs.

A.S.V

MANGAMMA  
v.  
DORAYYA.

## APPELLATE CRIMINAL.

*Before Mr. Justice Lakshmana Rao and  
Mr. Justice K. S. Menon.*

IN RE H. B. BABINGTON (ACCUSED), PETITIONER.\*

1936,  
September 25.

*Code of Criminal Procedure (Act V of 1898), sec. 528-B—European British subject—Claim to be dealt with as a—Relinquishment of—Failure to set up claim in trial Court or in appeal, if amounts to—Proceedings in revision—Subsequent stage of the same case, if—Claim, if can be set up in revision—Coorg Sessions Judge—Conviction on appeal by, of a person not claiming to be dealt with as a European British subject in trial Court or in appeal—Revision against—Jurisdiction to entertain—High Court or Court of Judicial Commissioner of Coorg—Criminal Procedure Code, sec. 4 (1)(j)—Coorg Code (Coorg Courts Regulation No. I of 1901), sec. 16—Effect of.*

The Sessions Judge of Coorg confirmed on appeal an order of the District Magistrate of Coorg convicting the petitioner under sections 408 and 477-A, Indian Penal Code. The petitioner applied to the High Court, Madras, to revise the order of the Sessions Judge of Coorg, alleging that he was a European British subject and contending that the High Court was the

\* Criminal Revision Case No. 943 of 1935 (Criminal Revision Petition No. 872 of 1935).

BABINGTON, *In re.* revisional authority by reason of the provisions of section 4(1) (j), Criminal Procedure Code, and section 16 (Regulation No. I of 1901) of the Coorg Code. Neither in the trial Court nor in the appellate Court did the petitioner claim to be dealt with as a European British subject and there was nothing on the record to show that he was a European British subject.

*Held* that the petitioner must, in view of the provisions of section 528-B, Criminal Procedure Code, be deemed to have relinquished his right to be dealt with as a European British subject and he was therefore precluded from asserting his status as such in revision.

Proceedings in revision before the High Court on a conviction by a trial Court or an appellate Court are a subsequent stage of the same case.

*Held further* that the Court of the Judicial Commissioner of Coorg, and not the High Court, had revisional jurisdiction in the matter.

The revisional jurisdiction of the Presidency High Courts cannot be invoked by reason of the definition in section 4 (1) (j), Criminal Procedure Code, merely because the accused is, in fact, a European British subject. The words "proceedings against European British subjects" in section 4 (1) (j) mean proceedings against persons who had actually claimed to be dealt with as such and not proceedings against European British subjects whether they had claimed to be dealt with as such, or not. The same meaning must be given to the same words occurring in section 16 (Regulation No. 1 of 1901) of the Coorg Code.

*Jeremiah v. Johnson*, (1923) 45 M.L.J. 800, and *Queen Empress v. Grant*, (1888) I.L.R. 12 Bom. 561, approved.

*Ashbey Clarke Harris v. Mrs. Peal*, (1919) 17 A.L.J. 896, and *H. G. Bolton v. Emperor*, (1932) I.L.R. 60 Cal. 676, dissented from.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Coorg Division in Criminal Appeal No. 5 of 1935 preferred against the judgment of the District Magistrate of Coorg in Criminal Case No. 12 of 1935.

COORG CODE—Coorg Courts Regulation I of 1901  
—Section 16 runs as follows :—

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The Court of the Judicial Commissioner shall, except with reference to proceedings against European British subjects, or persons charged jointly with European British subjects, be deemed to have, throughout the Province of Coorg, the powers conferred by the Code of Criminal Procedure, 1898, or by any other enactment relating to criminal jurisdiction for the time being in force in the said Province, on a High Court, other than a High Court established by Royal Charter.

*M. A. T. Coelho* and *J. S. Athanasius* for petitioner.

*A. Narasimha Ayyar* for Public Prosecutor  
(*L. H. Bewes*) for the Crown.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by K. S. MENON J.—This is an application to revise an order of the Sessions Judge, Coorg, confirming the order of the District Magistrate of Coorg, convicting the petitioner under sections 408 and 477-A, Indian Penal Code, and sentencing him to imprisonment till the rising of the Court and to pay a fine of Rs. 100 ; in default of payment of fine, simple imprisonment for one month.

K. S. MENON J.

The learned Public Prosecutor raised a preliminary objection that it is the Court of the Judicial Commissioner of Coorg that has revisional jurisdiction over the matter. Mr. Coelho for the petitioner answers that, as the petitioner is a European British subject, this Court alone is the revisional authority by reason of the provisions of section 4 (1) (j), Criminal Procedure Code, and section 16 (Regulation No. I of 1901) of the Coorg Code. It is not disputed that, if the petitioner had asserted his right as a European British subject, his case is one to which

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the provisions of Chapters XXXIII and XLIV-A, Criminal Procedure Code, would apply. But the petitioner never claimed to be dealt with as a European British subject either in the trial Court or in the appellate Court, and in view of the provisions of section 528-B, Criminal Procedure Code, he must be deemed to have relinquished his right to be dealt with as such and he shall not assert it in any subsequent stage of the case. The learned Public Prosecutor contends that the proceedings in revision in this Court must be deemed to be a subsequent stage of the case and that therefore the petitioner is not entitled to assert his right now as a European British subject. The contention of the petitioner, on the other hand, is that proceedings in revision cannot be treated as a subsequent stage of the case. On this question there has been a conflict of decisions. In the case of *Jeremiah v. Johnson*(1), this Court (KRISHNAN J.) held that proceedings in revision must be treated as a subsequent stage of the case. This is in accordance with the view of the Bombay High Court, vide *Queen Empress v. Grant*(2). On the other hand, a contrary view has been taken by the Allahabad and Calcutta High Courts. In *Ashbey Clarke Harris v. Mrs. Peal*(3) WALSH J. held that an application in revision is not a subsequent stage of the same case. The learned Judge observes :

“ It is a totally independent matter giving a right to apply to a superior Court independently of any proceedings necessarily subsequent to or consequent upon the hearing of the original case.”

This view was accepted in preference to that of this Court and of the Bombay High Court by

(1) (1923) 45 M.L.J. 800.

(2) (1888) I.L.R. 12 Bom. 561.

(3) (1919) 17 A.L.J. 896.

a Division Bench of the Calcutta High Court in *H. G. Bolton v. Emperor* (1). The reason given for adopting the view taken by the Allahabad High Court is that, as section 439, Criminal Procedure Code, confers no rights on a person convicted either by a trial Court or a lower appellate Court to invoke the revisional jurisdiction of the High Court and as that jurisdiction is often exercised without an application having been made to it and is discretionary, the hearing in revision cannot be properly described as a subsequent stage of the case. With all respect, we are unable to agree with the view of the Allahabad or of the Calcutta High Court in this matter. If a person who is convicted by a trial Court or an appellate Court brings the fact of such conviction to the notice of the High Court, and the High Court exercises its revisional jurisdiction in the matter, orders passed in revision by the High Court are orders in the original case itself, and there can be no doubt that they are orders passed at a stage subsequent to the trial stage and the appellate stage of the case. It cannot at all be said that such orders are passed independently of any proceedings consequent on the hearing of the original case. It is the records of the original case that have to be amended in pursuance of the orders of the High Court in revision, and not of any other totally independent proceedings. And, even though a person who is convicted has no right to invoke the revisional jurisdiction of the High Court, still, if such jurisdiction is exercised by the High Court, it cannot at all be said that the orders made by the High Court in revision are not

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orders in the case. In other words, whether the orders passed in revision are to be deemed to be orders passed in the case itself or not does not depend on whether the person who is affected by the order has a right to invoke the jurisdiction by the exercise of which such orders were passed. It follows therefore that proceedings in revision before the High Court on a conviction by a trial Court or an appellate Court are a subsequent stage of the same case.

This does not, however, dispose of the difficulty in this case, for Mr. Coelho contends that, even though his client is precluded from asserting his right as a European British subject and thus invoking the jurisdiction of this Court in revision, still by virtue of the definition in section 4 (1) (j), Criminal Procedure Code, it is this Court and this Court alone that has jurisdiction in this matter, as the petitioner is a European British subject. The contention of the learned Public Prosecutor, on the other hand, is that it is only in cases where the right to be dealt with as a European British subject has been claimed that this Court becomes a Court of revision and that, in all other cases, whether the person be a European British subject or not, it will be the highest Court of criminal appeal for the local area that will have revisional jurisdiction. The question therefore is whether the words "proceedings against European British subjects" in section 4 (1) (j) really mean proceedings against European British subjects whether they had claimed to be dealt with as such, or not, or only against those who had actually claimed to be dealt with as such. This question was dealt with at length by a Division

Bench of the Bombay High Court (BIRDWOOD and PARSONS JJ.) in the case of *Queen Empress v. Grant*(1) and also by this Court (KRISHNAN J.) in the case of *Jeremiah v. Johnson*(2), already referred to, and both the Courts held that the words "European British subjects" in section 4(1) (j) of the Code of Criminal Procedure meant European British subjects who had claimed to be dealt with as such. As we generally agree with the reasons given by the learned Judges in those cases and with the conclusion arrived at, we do not think it is necessary to repeat what has already been stated in those decisions but shall only add a few observations. Ordinarily, a Court is not expected to know whether the accused in any proceeding before it is a European British subject or not. If no claim is made to be dealt with as such, the case would be tried in the ordinary manner without reference to the special provisions in Chapters XXXIII and XLIV-A, Criminal Procedure Code. In such a case there will be nothing on the record for the High Court to know that the proceedings are really against a European British subject, unless the accused brings the fact to the notice of the High Court by asserting his status as such. This, we have already held, he is precluded from doing by reason of the provisions of section 528-B of the Code of Criminal Procedure. Unless there is something on the record to show that the proceedings are really against a European British subject, the revisional jurisdiction of the Presidency High Courts cannot be invoked by reason of the definition in section 4(1) (j) of the Code of Criminal

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(1) (1888) I.L.R. 12 Bom. 561.

(2) (1923) 45 M.L.J. 800.

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*In re.*  
K. S. MENON J. Procedure, merely because the accused is, in fact, a European British subject. We therefore think that the words "proceedings against European British subjects" in section 4 (1) (j) mean proceedings against persons who had claimed to be dealt with as European British subjects, and that that was the intention of the Legislature, for otherwise the result would be that the definition in section 4 (1) (j) would nullify the effect of the substantive provision in section 528-B. The same meaning must be given to the same words occurring in section 16, Regulation No. I of 1901 of the Coorg Code, as reference is made therein to the Code of Criminal Procedure. It follows that it is the Court of the Judicial Commissioner, Coorg, and not this Court, that has jurisdiction in this matter. The preliminary objection is therefore upheld. The petition is dismissed.

V.V.C.

