1915

WASI-UZ-ZAMAN KHAN v. FAIZA BIBI.

substance resembles the authority given in the present case, if indeed it is not stronger, the agent could do any act which he deemed proper for the purpose of the conduct of the suit. The acts of the agent are acts of the parties. Act X of 1873 enables a party to make the offer which was made in the case before us. That is a step in a suit which, however rare in its occurrence, may arise as an incident in a suit. I see no reason why an agent authorized to conduct a suit is not authorized to take the step provided by Act X of 1873. The reasons given by the Bombay High Court, as my learned brother has pointed out, appear to be directed to questions relating to the person who takes the oath and not to the person who makes the offer. It is for this reason that I feel less hesitation in differing from the Bombay High Court. In my opinion the offer made here is contemplated by and included in the authority given by the plaintiff to her husband, by whose acts in the suit the plaintiff is bound.

BY THE COURT.—The appeal is allowed. The order of the court below is set aside and the decree of the first court is restored with costs in all courts.

Appeal allowed.

REVISIONAL CRIMINAL.

1915
December, 8, 21.

Before Mr. Justice Tudball and Mr. Justice Walsh.

EMPEROR *v.* GOBIND SAHAI. *

Criminal Procedure Code, section 369—Review of judgement—Power of High Court to review its orders on the criminal side—Rules of Court, chapter VII, rule 8—Finality of order.

Held, that the High Court has no power to review an order dismissing an application for revision made by an accused person. *In the matter of the petition of F. W. Gibbons* (1) and *Queen-Empress* v. *Durga Charan* (2) followed.

But so long as an order is not sealed as required by chapter VII, rule 8, of the Rules of Court, it is not final, and it is open to the Judge who passed it to alter it. *Queen-Empress* v. *Lalit Tiwari* (3) and *Emperor* v. *Kallu* (4) followed.

THE fact of this case were as follows :—

The applicant Gobind Sahai was called upon by a Magistrate of the first class to show cause why he should not be bound over

* Criminal Revision No. 1136 of 1915.

(1) (1886) I. L. R., 14 Calc., 42.
(2) (1885) I. L. R., 7 All., 672.
(3) (1899) I. L. R., 21 All., 177.
(4) (1904) I. L. R., 27 All., 92.

1915

EMPEROR v. GOBIND SAHAI.

to be of good behaviour. An order was passed against him and he was directed to furnish security. He appealed to the District Magistrate, but his appeal was dismissed. He then applied in revision to the High Court on the 26th of June, 1915. On the 2nd of July, 1915, Mr. Justice BANERJI sitting singly after hearing Counsel on his behalf passed an order rejecting the application. That order was signed by Mr. Justice BANERJI, but was not sealed. On the 6th of September, 1915, the applicant presented an application to the learned Chief Justice on which the following order was passed—"Lay before Mr. Justice BANERJI and let this man be informed of the date fixed for hearing."

On the application being laid before Mr. Justice BANERJI, he referred it to a Bench of two Judges on the question whether such an application would lie.

Babu *Sailanath Mukerji*, for the applicant :—

According to section 369 of the Code of Criminal Procedure a High Court has power to review its own judgement. The wording of the section is clear and shows that the High Court only can review its own judgement though no other court can. If it was the intention of the Legislature that no court should be allowed to review its own judgement then it would have said so in clear terms and made no exception. Section 369 as originally introduced in the Criminal Procedure Code Bill of 1881 reads :— "No court when it has signed its judgement shall alter or review the same, except as provided in section 395 or to correct a clerical error." It will be observed that when the Bill was passed into law an exception was made in the case of High Courts, and this must have been done intentionally. The powers of the highest tribunal in the land should not be restricted in any way. Suppose a man has been convicted of murder and the conviction has been upheld by the High Court and then the murdered man turns up, what will happen to the accused if the court cannot revise its orders ? Such cases are rare, but have occurred. If the only remedy is remission of the sentence by the Government, that is not the same thing as an acquittal. The accused will always have a conviction against him for an offence which he never committed. Section 464 of the Code of Criminal Procedure of 1872, paragraph 1, read :—"When a judgement or final order has

1915

EMPEROR v. GOBIND SAHAI.

been so signed it cannot be altered or reviewed by the court which gives such judgement or order." The alteration is suggestive and clearly indicates the intention of the Legislature. The cases *In the matter of the petition of F. W. Gibbons* (1) and *Queen-Empress* v. *Durga Charan* (2) are not good law. In any case in the present case the order to be reviewed was not sealed and as such it is not a complete order and such an order can certainly be reconsidered ; *Emperor* v. *Kallu* (3), and *Queen-Empress* v. *Lalit Tiwari* (4). The last line of the last cited ruling shows that a review of judgement is contemplated.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown :—

The ruling in 14 Calcutta is a Full Bench ruling and it and the Allahabad case have been followed for the last 30 years. There is no apparent reason why the law as laid down in those cases should now be altered. The rules of the High Court do not contemplate the sealing of an order which is written by the Judge himself. Only orders which are dictated require sealing.

TUDBALL and WALSH, JJ. :—The facts before us are as follows :—The applicant Gobind Sahai was called upon by a Magistrate of the first class to show cause why he should not be bound over to be of good behaviour. An order was passed against him and he was directed to furnish security. He appealed to the District Magistrate, but his appeal was dismissed. He then applied in revision to this Court on the 26th of June, 1915. On the 2nd of July, 1915, Mr. Justice BANERJI sitting singly, after hearing counsel on his behalf, passed an order rejecting the application. That order was signed by Mr. Justice BANERJI, but was not sealed. On the 6th of September, 1915, the applicant presented an application to the learned Chief Justice on which the following order was passed :—"Lay before Mr. Justice BANERJI and let this man be informed of the date fixed for hearing." On the 10th of November, 1915, Mr. Justice BANERJI passed an order referring the question to this Court as to whether or not an application for review can lie in the circumstances of the case. He appears to have been in doubt as to the exact nature of the

(1) (1886) I. L. R., 14 Calc., 42.
(2) (1885) I. L. R., 7 All., 672.
(3) (1904) I. L. R., 27 All., 92.
(4) (1889) I. L. R., 21 All., 177.

application, as he remarks in the course of his order that "it is difficult to say whether this last application is a fresh one for revision or an application for review of judgement." He referred the case, however, to a Bench of two Judges with a view to a decision on the question we have mentioned above pointing out that a Full Bench of the Calcutta High Court had in *In the matter of the petition of F. W. Gibbons* (1) held that no review could lie. Apparently it was not brought to Mr. Justice BANERJI'S notice that the point is one which is already covered by a decision of two Judges of this Court. In the case of *Queen-Empress* v. *Durga Charan* (2) a Division Bench of this Court held that the High Court has no power under section 369 of the Code of Criminal Procedure to review an order dismissing an application for revision made by an accused person, and the only remedy is by an appeal to the prerogative of the Crown as exercised by the Local Government. The Code of Criminal Procedure of 1882 was then in force and in this respect does not differ from the present Code. It is, moreover, in full agreement with the decision mentioned above reported in I. L. R., 14 Calc., 42. No dissent has ever been expressed from this decision in this Court and we can see no reason whatsoever, when the Legislature has not in express terms given this Court statutory power to review its judgement in criminal cases, to differ from the abovementioned ruling. We, therefore, are clearly of opinion that an application for review in the present matter cannot lie. But we have also been pressed with the decisions of this Court in the cases of *Queen-Empress* v. *Lalit Tiwari* (3) and of *Emperor* v. *Kallu* (4), and it is urged before us that, the order of Mr. Justice BANERJI not having been sealed, it is still open to the applicant to come to this Court with the present application. On behalf of the Crown it was urged that the order did not require sealing in view of the language of the rules 5 and 8 of chapter VII of the rules of this Court. It is clear from the office report that such orders are not usually sealed; but in our opinion the rules mentioned above clearly direct that such orders should be sealed. This being so, the two rulings mentioned above do apply to the circumstances of

(1) (1886) I. L. R., 14 Calc., 42.
(2) (1885) I. L. R., 7 All., 672.
(3) (1899) I. L. R., 21 All., 177.
(4) (1904) I. L. R., 27 All., 92.

1915

EMPEROR v. GOBIND SAHAI.

the present case. But in accordance with those two rulings it is only the Judge concerned who can deal with this matter. It will be open, therefore, to the present applicant to make any such application as he deems fit to Mr. Justice BANERJI in view of those two rulings. It is not possible for us to deal with this matter. In so far as it is an application for review, the present application must fail and we reject it. In so far as it is an application contemplated by the two rulings mentioned above, it must be dealt with by Mr. Justice BANERJI. For this purpose it must be sent back to Mr. Justice BANERJI, and it will be open to him to pass any such order as he may deem fit.

The case coming back to Mr. Justice BANERJI his Lordship passed the following order.

BANERJI, J.—A Bench of this Court has held that as the order passed by me on the 22nd of July, 1915, was not sealed, this application for revision must be deemed to be still pending. I have heard the learned vakil, who has now appeared for the applicant and who has addressed the Court at considerable length. I see no reason, in view of the findings of the courts below, to admit this application. I accordingly reject it.

Application rejected.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tudball and Mr. Justice Piggott.

1915
December, 11.

JAI KISHAN JOSHI (PLAINTIFF) *v.* BUDHANAND JOSHI AND ANOTHER (DEFENDANTS).*

Act No IX of 1908 (*Indian Limitation Act*), *schedule I, articles* 134, 144—*Suit for redemption by co-mortgagor—Property already redeemed re-mortgaged and finally sold to second mortgagee—Limitation—Act No. IV of* 1882, (*Transfer of Property Act*), *section* 95.

In 1860 the father of a family of four sons mortgaged some of the family property. In 1877, after the death of the father, one of the sons again mortgaged the property and with the money borrowed on the second mortgage paid off the first mortgage. The second mortgagee or his son remained in possession of the property as mortgagee until 1898, when the second mortgagor sold it to the son of the second mortgagee. In 1912, a grandson of the original mortgagor sued for redemption of the mortgage of 1860.

* Civil Miscellaneous No. 86 of 1915.