Before Sir Shah Muhammad Sulaiman, Chief Justice and Mr. Justice Bennet

1935 *February*, 11

KAPILDEVA MALAVIYA AND OTHERS (APPLICANTS) *v.* JUDGES OF THE HIGH COURT AT ALLAHABAD (OPPOSITE PARTIES)*

Appeal to Privy Council—Contempt of High Court—Order to pay fine and costs—Jurisdiction of a criminal nature, and not a civil proceeding—Misdescription as "Civil Jurisdiction" in notice to show cause immaterial—Jurisdiction exclusive—No appeal lies.

Proceedings for contempt of the High Court were taken by the High Court against the writer of a newspaper article containing the contempt, and also against the editor and the printer and publisher of the newspaper. Notices were issued to them to show cause why they should not be convicted and punished for the offence of contempt of the High Court; the notices were written out on a printed form which had the heading "Civil Side Jurisdiction" printed on it. The proceedings terminated in an order sentencing the writer to a fine and all of them to pay costs. An application, purporting to be under section 109 of the Civil Procedure Code, was made for leave to appeal to His Majesty in Council against this order:

Held, that proceedings for contempt of the High Court are not in the nature of a civil proceeding and no appeal can lie under the Civil Procedure Code to His Majesty in Council from the sentence passed in such proceedings. The trivial misdescription in the notice issued by the office did not cause any misapprehension as to the true character of the proceeding and could not, in any sense, make the proceeding one of a civil nature. The proceedings were in the exercise of the inherent jurisdiction of the High Court as a Court of Record, and of a criminal nature. Such jurisdiction was an exclusive jurisdiction, and the order was final.

Sir *Tej Bahadur Sapru* and Messrs. *P. N. Sapru, M. N. Raina, G. S. Pathak* and *S. N. Verma*, for the applicants.

Mr. *Muhammad Ismail* (Government Advocate), for the opposite parties.

SULAIMAN, C.J., and BENNET, J.:—This is an application for leave to appeal to His Majesty in Council from

*Application No. 88 of 1934, for leave to appeal to His Majesty in Council.

an order convicting the applicants, an advocate, an editor, and a printer and publisher, of the offence of contempt of court and sentencing the advocate to a fine of Rs.150 and ordering each of the three persons to pay Rs.100 as costs. The offence is found to have been committed on account of the publication of an article by him headed "A Scandalous Situation" in the newspaper, "Leader". The learned counsel for the applicant contends that his application for leave falls under section 109 of the Civil Procedure Code, and urges before us that the order of the High Court has been passed in the exercise of its civil jurisdiction, particularly as the original notice issued to him was headed "Civil Side, Revisional Jurisdiction". The learned Government Advocate takes a preliminary objection that no application for leave to appeal lies inasmuch as (1) contempt is a criminal matter and the punishment is in the exercise of the criminal jurisdiction of the High Court, and (2) that the inherent jurisdiction exercised by this Court as a Court of Record is exclusive and the order passed is final.

The first question for consideration is whether proceedings for contempt of the High Court are at all in the nature of a civil proceeding. A Division Bench of this Court took cognizance of contempt committed by the publication of the advocate's article. The Bench ordered notices to be issued to the advocate as well as the editor and the printer and publisher of the paper "to show cause why they should not be convicted and punished for the offence of contempt of this Court". In the order itself as signed by the Judges there was no suggestion that the notice was being issued in the exercise of any civil jurisdiction. On the other hand, as the opposite party were called upon to show cause why they should not be convicted and punished for the offence of contempt, the order was, *prima facie,* in the exercise of the criminal jurisdiction or the inherent

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jurisdiction of this Court. The office numbered the case as "Miscellaneous Case No. 435 of 1934", and on the Day's List also the case was shown simply as "Miscellaneous Case No. 435 of 1934", without mentioning that it was a Miscellaneous Civil case. But the notice that was issued by the office to the advocate was written out on a printed form which had the words "Civil Side Jurisdiction" printed on it. The notice was issued under the signature of the Deputy Registrar, and the printed words were not struck out, but the word "Revisional" was added. The contents of the notice however warned the advocate to appear personally to show cause why he should not be convicted and punished for the offence of contempt of the High Court committed by the publication. The advocate could not possibly have been misled by the issue of the notice on a printed form used for notices on the civil side. No particular form of the notice is prescribed by the rules of this Court. The advocate had been called upon to appear in order that he may have an opportunity to show cause. We are, therefore, unable to hold that a mere misdescription in the notice issued by the office could, in any sense, make the proceeding one of a civil nature. The advocate could not have been under any misapprehension as to the true character of the proceeding. We are of opinion that the form used for the notice is wholly immaterial for the purposes of deciding what the nature of the jurisdiction exercised was, and that the misdescription was of too trivial a nature and cannot possibly confer civil jurisdiction on the High Court.

We have not the least doubt in our minds that the proceedings were in the exercise of the inherent jurisdiction of this Court and of a criminal nature. We would not say that merely because the advocate was an officer of this Court the proceeding against him was of an administrative character. The conviction and the

fine imposed are themselves sufficient to show at least that the proceeding was not of a civil nature.

In *In re Pollard* (1), their Lordships clearly laid down that the contempt of court was a "criminal offence".

In *In the matter of a Special Reference from the Bahama Islands* (2) the last two paragraphs of the report of their Lordships at page 149 indicate that the sentences passed amounted in effect to a general committal for contempt and was of a punitive character.

This view has, of course, been followed in India: *Legal Remembrancer* v. *Matilal Ghose* (3). It has been held by a Full Bench of this Court that the proceedings to punish contempt of court is in the exercise of the inherent jurisdiction vested in a Court of Record, and the procedure is summary: *In re Abdul Hasan Jauhar* (4). In the Contempt of Courts Act, 1926, express power has been conferred to punish contempt of subordinate courts, but no necessity has been felt to confer any jurisdiction for punishing contempt of the High Court, which has always been assumed to exist.

It is, therefore, clear that section 110 of the Civil Procedure Code has no application to such a case. As defined in section 2 of the Civil Procedure Code a "decree" is the formal expression of an adjudication which conclusively determines the rights of the parties and an "order" is a decision of a civil court. Not only, therefore, section 109 is in terms inapplicable, but section 112, sub-section (2) expressly makes the Code inapplicable to matters of criminal jurisdiction.

We also agree with the learned Government Advocate that the matter was of an exclusive jurisdiction, and the order is final.

In the case of *Smith* v. *Justices of Sierre Leone* (5). their Lordships expressed the opinion that "they can make no order respecting the fine imposed by the court

(1) (1868) 5 Moo. P.C., N.S., 110. (2) [1893] A.C., 138.
(3) (1913) I.L.R., 41 Cal., 173(252). (4) (1926) I.L.R., 48 All., 711.
(5) (1841) 3 Moo. P.C., 361.

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below upon Mr. Smith." But their Lordships rescinded the order for striking him off the rolls.

In the case of *Rainy* v. *Justices of Sierra Leone* (1) their Lordships of the Privy Council laid down as the opinion not only of the members of the committee who heard the petition, but also of the other members who usually attended, that they could not interfere with such a subject and remarked: "In this country every Court of Record is the sole and exclusive Judge of what amounts to a contempt of court. It is within the competency of the court to impose fines for contempt, and, unless there exists a difference in the constitution of the Recorder's court at Sierra Leone, the same power must be conceded to be inherent in that court. . . . . we are of opinion that it is a Court of Record, and that the law must be considered the same there as in this country; and, therefore, that the orders made by the court in the exercise of its discretion imposing these fines for contempts, are conclusive, and cannot be questioned by another court, and we do not consider that there is any remedy by petition to the Judicial Committee to review the propriety of such orders. All we can say is, that we have no jurisdiction to entertain such a petition impugning the propriety of such orders and praying the remission of the fines."

These cases were quoted with approval by their Lordships of the Privy Council in *Surendra Nath Banerjee* v. *Judges of the High Court, Bengal* (2).

Nor have we any power to certify this case as being otherwise a fit one for appeal to His Majesty in Council. The question for consideration was not so much of jurisdiction as of an interpretation of the passage objected to. The Bench in construing its implications took into consideration the various circumstances attending its publication. The article had been written by an advocate of standing and repute practising in the High

(1) (1853) 8 Moo., P.C., 47(54). (2) (1883) I.L.R., 10 Cal., 109.

Court; special importance and significance would be attached to it by the public reading the article; the "Leader" had a wide circulation in this country, and the article would have been widely read; the affidavit filed by the advocate was considered by the Bench not to be so candid as that of the others; there was no apology or expression of regret, and it was not suggested in the advocate's explanation that the reference was not to the present members of the High Court Bench. They took into account the fact that the article was written in connection with the elections to the Bar Council under this very High Court, and came to the conclusion that the assertion that the raising to the Bench of a "comparatively undeserving" lawyer "is a fairly frequent occurrence in our judicial history" amounted to an unwarranted defamation of the High Court likely to lower its prestige in the eyes of the public and to shake their confidence in its capacity to administer justice, and did not agree that the repetition of the alleged claim of the members of the Bar to select Judges "with better results" was innocent. The Bench remarked: "We have given careful consideration to all that learned counsel has urged in defence of his clients, and with some knowledge of the conditions which exist and of the effect that such an article is likely to produce in the minds of the public we are clearly of opinion that the passage in respect of which notice to the opposite parties has been issued constitutes a contempt of court, of which the High Court in the interests of the administration is bound to take cognizance." They held that "We are clearly of opinion that the words in the passage convey unwarranted and defamatory aspersion on the character and ability of a number of Judges of the High Court who have recently been elevated to the Bench. . . . . We are of opinion that it tends to lower the High Court in the eyes of the public."

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In our opinion, on the question whether the allegation amounted to a contempt of court or not the Division Bench had exclusive jurisdiction and its order is final. We must, therefore, decline to grant leave to appeal to His Majesty in Council. The application is dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

1935 *February*, 13

MUNICIPAL BOARD, BENARES (DEFENDANT) *v.* KRISHNA AND COMPANY (PLAINTIFF)*

Municipalities Act (Local Act II of 1916), *sections* 128, 160, 164 *—Octroi—Assessment to octroi charge—Civil suit challenging liability of the goods to pay octroi—Jurisdiction of civil court barred—Municipal Account Code, rule* 132, *class* (14)*—Machinery to be worked by electric power—Electric ceiling fans—Practice and pleading—Question of jurisdiction raised in Letters Patent appeal.*

A plea of want of jurisdiction to try the suit can be raised in Letters Patent appeal, although not pressed before the single Judge.

No suit for a refund of an octroi charge, which has been assessed and levied by a municipality, lies in a civil court on the ground that the goods were not in fact assessable to octroi duty or that the amount of assessment was excessive. The language of section 164 of the Municipalities Act, together with its marginal note, emphatically bars the jurisdiction of the civil court in such matters of assessment to taxes, which include octroi charges; the only remedy being that prescribed by section 160 of the Act.

Electric ceiling fans, being machinery to be worked by electric power, come under class (14) of rule 132 of the Municipal Account Code and are therefore exempt from octroi duty.

Mr. *A. M. Khwaja,* for the appellant.

Dr. *K. N. Katju* and Mr. *B. Malik,* for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is an appeal by the Municipal Board of Benares arising out of a suit brought by the plaintiff company for refund of certain octroi duty charged on certain ceiling fans imported into the municipal limits. The goods were detained at the

*Appeal No. 37 of 1934, under section 10 of the Letters Patent.