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Sulaiman, C. J.

my mind, of very great importance. My conclusion would not have been different even if in the present deed that sentence had not found a place. In both the documents there was a provision that in case of a transfer to another person, the other executant would acquire the property on payment of a consideration at a fixed rate and not on payment of the price paid by the purchaser. But I agree with my learned brother that the Full Bench case cannot be treated as an authority for the proposition that section 10 does not apply to such cases, because the point was never argued by counsel before the learned Judges and there is nothing in the judgment to indicate that their attention was drawn to the contention. We cannot therefore presume from the mere fact of the similarity of the language of the two documents that this point was necessarily decided by the Full Bench. Looking at all the conditions entered in the document prohibiting transfer by mortgage, gift or sale to any one except the promisee and his heirs, and entitling the latter to recover it for Rs.175 only, no matter for how much more it may be sold, and even prohibiting an auction sale for more than Rs.175, and all this for all generations to come, there is no doubt that for all practical purposes there is an absolute restraint on alienation, and the conditions are void.

REVISIONAL CRIMINAL

Before Justice Sir Charles Kendall and Mr. Justice Bajpai

EMPEROR *v.* BANWARI LAL*

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January, 22

Criminal Procedure Code, sections 369, 561A—Review of judgment in criminal cases—Second application, through counsel, for revision after jail application for revision was dismissed—Jurisdiction—Whether the High Court has power to review its judgment in a criminal revision case, after it has been signed and sealed—Inherent powers.

Where a jail application for revision had already been dismissed on the merits, and a fresh application for revision was

*Criminal Revision No. 831 of 1934, from an order of Hari Har Prasad, Sessions Judge of Azamgarh, dated the 18th of July, 1934.

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filed through counsel: *Held*, that the High Court had no jurisdiction to entertain it.

Under section 369, as it now stands, of the Criminal Procedure Code the High Court can not review its judgment, after it has been signed, except to correct a clerical error. Section 561A of the Code does not modify section 369 so as to give a general and undefined power of review of judgment; nor was such a power inherent in the High Court.

Messrs. *S. B. Johari* and *B. S. Darbari*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

KENDALL and BAJPAI, JJ.:—These three applications for revision have been referred to us because they raise an important question of law as to which the learned referring Judge was in some doubt. Applications for the revision of the orders passed by the lower court had been already disposed of by him. They were applications made from jail, but although he had not the advantage of hearing counsel on behalf of the applicant, he had considered the applications on the merits and had dismissed them. On fresh applications being filed through counsel the question was raised of whether he had jurisdiction to review his own orders, and he ordered notice to be issued, and after hearing counsel passed the order under which the cases have been referred to us.

Section 369 of the Criminal Procedure Code, as it now stands, is as follows: "Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no court when it has signed its judgment shall alter or review the same, except to correct a clerical error." But Mr. *Johari* in dealing with this section has pointed out that although the general rule is against him, he may be saved by the expression "save as otherwise provided by this Code", for in section 561A of the Code it has been enacted that "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court

to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court, or otherwise to secure the ends of justice." It is argued that this modifies the provisions of section 369, and that even if the later section does not invest the Court with any fresh powers, it still recognizes the inherent power which the Court already possesses.

In order to support his argument Mr. *Johari* has referred us to several cases, only three of which, however, appear to be really germane to the present issue. In the case of *Sripat Narain Singh* v. *Gahbar Rai* (1), a single Judge of this Court had before him an application in revision which, as he remarked, was really "in effect an application in review", and although he finally rejected the application "on the ground that the matter has been decided, and that there was no flaw in the previous decision" there are some passages in his judgment which favour the present applicant. For instance, he remarked: "I am not prepared to say that a Judge of this Court cannot review his judgment or decision. But it appears to me very clear that the application for review must come before the Judge who passed the decision which is to be reviewed." This is evidently a reference to rule 8 of chapter I of the High Court Rules, to which the learned referring Judge has adverted, but the question we have now to decide is whether the same Judge who dealt with the earlier application for revision has any jurisdiction to review his own order; and in the decision from which we are now quoting it appears that Mr. Justice ASHWORTH was at any rate doubtful on that question. In the case of *King-Emperor* v. *Shiv Dat* (2) a single Judge of the Oudh Chief Court held that section 561 (sic) of the Code of Criminal Procedure is in no way limited or governed by section 369 of the same Code, and that the High Court had power to reconsider the question of sentence when the ends of justice required it. It should be remarked here that the learned Judge

(1) A.I.R., 1927 All., 724. (2) (1928) I.L.R., 3 Luck., 680.

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was following a decision of the Lahore High Court in *Mathra Das* v. *The Crown* (1), which has since been overruled by a Division Bench of the same court, as we shall presently show. The third case on which Mr. *Johari* relies is an unreported decision of a Bench of this Court in which the learned Judges had in revision enhanced the sentence passed against the accused, but subsequently found that notice had not been served on the accused, and they therefore reviewed the case and held that the order passed enhancing the sentence was without jurisdiction.

On the other side, the learned Assistant Government Advocate has called our attention to a good many authorities which are very much to the point. In the case of *Queen-Empress* v. *Durga Charan* (2) a Bench of this Court held that the High Court has no power under section 369 of the Criminal Procedure Code to review an order dismissing an application for revision, and the only remedy is by an appeal to the prerogative of the Crown as exercised by the Local Government. This decision is dated 1885, and we must point out that section 369 of the Criminal Procedure Code as it stood at that time has since been amended, but the decision of the Bench is authority for showing that at that time the High Court had no power to review such an order. In the case of *Emperor* v. *Gobind Sahai* (3), a similar opinion was expressed by a Bench of two Judges of this Court in 1915; and in 1922 a single Judge held that the High Court had no power to review its own order dismissing a criminal appeal, *Emperor* v. *Kale* (4). The most recent decision of this Court to which we have been referred is that of Mr. Justice BENNET in the case of *Emperor* v. *Kunji Lal* (5), in which after a comprehensive survey of the decisions of various High Courts, including that of the Oudh Chief Court to which we have referred, the learned Judge held that the High

(1) A.I.R., 1927 Lah., 139.
(2) (1885) I.L.R., 7 All., 672.
(3) (1915) I.L.R., 38 All., 134.
(4) (1922) I.L.R., 45 All., 143.
(5) (1934) I.L.R., 56 All., 990.

Court has no power under section 561A of the Criminal Procedure Code to review its judgment in a criminal revision when once it has been pronounced and signed. He noticed the fact that section 369 of the Code had been amended in 1923. Before that date the section read in the Criminal Procedure Code of 1898: "No court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in sections 395 and 484 or to correct a clerical error." But it is clear from the earlier decisions of the Allahabad High Court to which we have referred that this section and also the similar section in the Criminal Procedure Code of 1882 were not interpreted to mean that the High Court had an inherent right of reviewing an order passed by itself in revision. It follows therefore that when the section was amended in 1923 in such a way as to show that the High Court had no power of altering or reviewing a judgment, except to correct a clerical error, the legislature did not attempt or intend to deprive the High Court of any inherent power which it had hitherto possessed. This point is of importance when we consider the application of section 561A, which was also introduced into the Code in 1923. That section does not in terms invest the court with any powers which it did not possess before. But it does refer to an inherent power of which the High Court is already in possession. We have given above the authority for holding that the High Court possessed no inherent power to review its judgment before the amendments of 1923. Consequently it cannot be said that section 561A either modifies the provisions of section 369 or clothes the Court with any fresh power.

The matter has been recently considered by a Bench of the Lahore High Court in the case of *Raju* v. *The Crown* (1). This decision overrules a previous decision of a single Judge in *Mathra Das* v. *The Crown* (2), on which the Oudh decision in the case of *King-Emperor*

(1) (1928) I.L.R., 10 Lah., 1. (2) A.I.R., 1927 Lah., 139.

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v. *Shiv Dat* (1) on which the applicant has relied, was based. In discussing the effect of section 369 the learned Judges remarked: "This does not affect any powers inherent in the court, as there never has been any inherent power in the High Court to alter or review its own judgment in a criminal case once it has been pronounced and signed, except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits. With this view all the courts in India are in accord, and it is not disputed that this was the law prior to the addition of section 561A to the Code of Criminal Procedure by the Act of 1923." It was however contended before the Bench that the introduction of 561A had altered the law and given to the High Court power to do something which it could not do before. But this contention was not accepted by the Bench, who pointed out that the High Court is not given nor did it ever possess any unrestricted and undefined power to make any order which it might please to consider was in the interests of justice. In this connection we may refer to a recent unreported decision of a Bench of this Court, namely Criminal Appeal No. 134 of 1932. In this case eight persons had been convicted by the lower appellate court and they all made applications in revision to the High Court from jail. Some of these applications were summarily rejected by a Judge of this Court, but as counsel appeared in support of the others the case was argued fully and the Bench after hearing counsel allowed these applications. It refused however to consider those applications which had already been dismissed and in which the circumstances were similar, evidently because it considered that it had no jurisdiction to do so.

There is another point of view from which the matter might be considered, which is that there is really no right of revision, but the High Court and certain other courts have power to call for and examine the records of the

(1) (1928) I.L.R., 3 Luck., 680.

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proceedings before an inferior criminal court in order to satisfy themselves of the correctness and the legality or the propriety of any finding, sentence or order, and may then proceed in the manner prescribed by section 435 and the following sections of the Code. It may be argued therefore that there is nothing that prevents a Judge of the High Court from sending for the record of an inferior criminal court and revising an order passed by it. The revisional sections, however, do not in themselves give the High Court power to revise an order of its own, and although it may be open to it to call for the record of a case which has already been dealt with in revision, there is no power to pass any order which would have the effect of setting aside or modifying an order passed in revision by itself.

We are therefore of opinion that the Court has no jurisdiction to entertain the present applications and we direct that they be dismissed.

FULL BENCH

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

BENARES BANK, LIMITED (PLAINTIFF) *v.* RAJNATH KUNZRU AND OTHERS (DEFENDANTS)*

1935 *January*, 24

Civil Procedure Code, section 110—*Suit for money decreed in part—Cross-appeals—One appeal allowed and the other dismissed—Separate decrees—Appeal to Privy Council—Affirmance of "decision".*

A suit for money claimed in respect of two distinct items was decreed in part, namely fully as regards the first item and partially as regards the second. The parties thereupon filed cross-appeals in the High Court. They were heard together and disposed of by one judgment, but two separate decrees were prepared in the two appeals; the defendant's appeal was allowed and the plaintiff's appeal was dismissed: *Held* that, in the absence of a substantial question of law, the plaintiff was not entitled to appeal to His Majesty in Council as of right,

*Application No. 18 of 1934, for leave to appeal to His Majesty in Council.