

to summary dismissal as are appeals from appellate orders.

I would dismiss this petition with costs.

VARMA, J.—I agree.

Rule discharged.

1934.

MAHBU
SAHU
v.
KAMTA
PRASAD
SAHU.

COURTNEY
TERRELL,
C. J.

FULL BENCH.

Before Courtney Terrell, C.J., Khaja Mohamad Noor and Varma, JJ.

MURLI MANOHAR PRASAD

v.

KING-EMPEROR.*

1934.

March, 12,
19, 19.

Press (Emergency Powers) Act, 1931 (Act XXIII of 1931), sections 4(1), 7, 23 and 30—District Magistrate exercising functions under the Act, whether is a "Court"—Orders of District Magistrate, whether subject to appeal or revision—High Court—limited powers of interference—sections 23 and 30—Government of India Act (5 and 6 Geo. V. c. 61), section 107, applicability of.

The District Magistrate, when dealing with the Press (Emergency Powers) Act, 1931, or other similar Acts, is not a Court but an executive officer carrying out the functions on behalf of the executive Government and as such is not subject to the appellate jurisdiction of the High Court. That being so, the High Court has no jurisdiction under section 107 of the Government of India Act to interfere with the orders of the District Magistrate passed under the Press Act.

The powers of the High Court to interfere with the orders passed under that Act are restricted by sections 23 and 30 for the limited purpose of deciding whether the publication or article does or does not come within the purview of section 4(1) of the Act.

KHAJA MOHAMAD NOOR, J.—The petitioner Murli Manohar Prasad asks us to revise an order of the District Magistrate of Patna calling upon him to furnish security under the following circumstances.

* Miscellaneous Judicial Case no. 12 of 1932.

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NOOR, J.

The petitioner is the keeper of a press at Patna and publisher of a newspaper called "The Search-light". On 7th January, 1932, the local Government acting under the Indian Press (Emergency Powers) Act of 1931 issued two notices upon the petitioner: one under section 3(3) and another under section 7(3) of the Act calling upon him in each case to furnish security of Rs. 1,500 before the 18th of January, 1932. Section 3(3) authorises the local Government to require such security from the keeper of a press and section 7(3) gives them similar powers on the publisher of a newspaper. The reason for the issue of these notices was that in the opinion of the local Government a certain article published in the paper "The Search-light" came within the purview of sections 4(d) and 4(e) of the Act as amended by section 3 of the Emergency Powers Ordinance of 1932 which was in force then. The petitioner seems to have deposited one security as the keeper of the press, but did not deposit any security as the publisher of the news paper and stopped its publication. The effect of this failure was that under section 12(3) of the Act the declaration made by him under section 5 of the Press and Registration of Books Act, 1867, stood annulled and publication of the newspaper afterwards was liable to the penalties prescribed in the Act of 1867. Now the orders of the local Government were liable to be set aside by this Court on the ground that the article in question did not come within section 4(1) (d) and (e) of the Act, had an application been filed within two months of the order. No such application, however, was made to us within the time prescribed nor does the petitioner ask us to revise that order, and taking into consideration the plain words of section 30 of the Act we have now no jurisdiction to interfere with that order. It is not necessary to discuss the order of the local Government. The order is not sought to be revised by us now, nor under the law is the petitioner entitled to ask us to do so after the

expiry of two months from the date of the passing of that order.

I have said that the effect of failure to deposit security was the annulment of the declaration made under the Act of 1867. The petitioner later on, on the 3rd of January, 1933, made a fresh declaration under section 5 of the Press and Registration of Books Act of 1867 before the District Magistrate of Patna. It appears that later on somehow or other it was brought to the notice of the District Magistrate that the newspaper regarding which the declaration was made before him was the one in connection with which the local Government had called upon the publisher to furnish security. Thereupon on the 7th January, 1933, the District Magistrate called upon the petitioner to deposit at once a sum of Rs. 1,500 as publisher of "The Searchlight" newspaper.

It is not clear from the order whether the District Magistrate was acting under his own powers under section 7 of the Act, or whether he was enforcing the previous order of the local Government. Be that as it may, the petitioner deposited Rs. 1,500, and has moved this Court to set aside that order.

A preliminary objection has been raised by Mr. Jafar Imam, who appears on behalf of the Crown, that this Court has no jurisdiction to interfere with this order of the District Magistrate and, in my opinion, this objection must prevail. It is obvious that the Act under which the District Magistrate purported to act does not give us any jurisdiction against the order of the District Magistrate. Our power of interference is confined by sections 23 and 30 of the Act for a limited purpose to decide whether the publication or article does or does not come within the purview of section 4(1) of the Act. Mr. Baldeo Sahay urged that we have jurisdiction under section 107 of the Government of India Act. In my opinion section

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107 of the Government of India Act has no application. That section runs thus :

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" Each of the High Courts has superintendence over all Courts for the time being subject to its appellate jurisdiction, etc., etc."

The District Magistrate when dealing with the Press Act or other similar Acts is not a Court but an executive officer carrying out the functions on behalf of the executive Government and as such is not subject to our appellate jurisdiction. No appeal has been provided to us against the orders of a District Magistrate when he is carrying out his functions under these Acts. So far as the Press Act under consideration is concerned no appeal has been provided to us from his order. It was stated at the Bar that subsequent to the filing of the present application the petitioner asked the District Magistrate to refund the security under section 7 of the Act, but the District Magistrate refused to do so. That matter, however, is not before us and even that refusal is not appealable.

In my opinion this application is misconceived and must be dismissed with costs: hearing fee two gold mohurs.

COURTNEY TERRELL, C.J.—I agree.

VARMA, J.—I agree.

Application dismissed.

APPELLATE CIVIL.

Before Wort and Dhawle, JJ.

KAMLA PRASAD

v.

MURLI MANOHAR.*

Hindu Law—Mithila school—stridhan of married woman—succession—husband's sapinda, whether has preference to sister's son—Mithila law, whether is the law of Mitakshara—

* Appeal from Original Decree no. 90 of 1930, from a decision of Babu Rabindra Nath Ghosh, Subordinate Judge of Muzaffarpur, dated the 16th September, 1932.

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March, 23.