

THE INDIAN LAW REPORTS.

LAHORE SERIES.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Abdul Raof and Mr. Justice Harrison.

DONALD—PETITIONER,

versus

THE CROWN—RESPONDENT.

Criminal Miscellaneous No. 41 of 1922.

*Indian Lunacy Act, IV of 1912, section 14 proviso (2)—
Whether the orders passed by a District Magistrate under part II
of the Act are purely executive and whether such orders are sub-
ject to revision by the High Court.*

Held, that orders passed by a District Magistrate under part II of the Indian Lunacy Act, with respect to the reception, care and treatment of lunatics are purely executive and cannot form the subject matter of an application for revision to the High Court.

Any person considering himself aggrieved by such an order may apply under part III for a regular inquisition conducted by a judicial officer. The result of such inquisition is conclusive and overrides and overrules any order which may have been passed summarily by the executive authority.

Usesh Chandra v. Emperor (1), referred to.

Application to set aside the order of the District Magistrate, Lahore, dated the 30th March 1922.

The application came up for hearing in the first instance before Mr. Justice Abdul Raof, who made the following order of reference to a Division Bench, dated 18th May 1922.

ABDUL RAOOF J.—This is an application presented by Mr. W. B. O'Connor, Barrister-at-Law, on behalf of Mr. Douglas Donald, and Mr. William Henry Donald under the circumstances summarised below invoking the powers of revision and superintendence possessed by the High Court under the Civil and Criminal Law and under the Charter Act:—

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Mr. Douglas Donald is married to the daughter of one Mrs. Mercer. The husband and wife have been living separately for many years. Mr. Douglas Donald has, however, been making an allowance for his wife's maintenance through Mr. Alexander Mercer of Lahore, which he is said to have stopped lately. He is under the impression that his wife is dead, and that this fact is being kept concealed from him by Mr. and Mrs. Mercer. On the 23rd of March 1922, he wrote a threatening letter to Mr. Mercer, and this letter was sent by the latter to Major Ferrar, District Magistrate of Lahore, with a covering letter dated the 26th March 1922, complaining of the behaviour of Mr. Douglas Donald towards him and his wife, expressing apprehension of violence from him and asking for protection. The matter was at once placed in the hands of Lieutenant Colonel Gregson, Senior Superintendent of Police, Lahore, who, after taking necessary steps, the details of which need not be given, took action under section 13 of the Lunacy Act, IV of 1912, and, believing Mr. Douglas Donald to be a dangerous person by reason of lunacy, produced him before Major Ferrar, the District Magistrate of Lahore. The District Magistrate on the 30th March 1922 proceeded to deal with the matter under section 14 of the Lunacy Act, IV of 1912. He examined Mr. Douglas Donald and, being of opinion that there were grounds for proceeding further, caused him to be examined by Major Cox, Superintendent of the Lunatic Asylum, Lahore. Being satisfied that Mr. Douglas Donald was a dangerous lunatic and a proper person to be detained he obtained a certificate from Major Cox, and was prepared to make an order for the admission for Mr. Douglas Donald in the Lunatic Asylum, when Mr. William Henry Donald, the brother of the alleged lunatic, entered into a bond undertaking that the lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others. The Magistrate, instead of making a reception order, made over Mr. Douglas Donald to the care of his brother. Three medical certificates testifying to the lunacy of Mr. Douglas Donald have been placed on the record: (1) one dated the 30th March 1922, given by Major Cox, (2) another certificate by the same medical gentleman dated the 31st March 1922, and (3) a certificate dated the 31st March 1922, by Lieutenant Colonel S. M. Davidson, Civil Surgeon, Lahore.

Against the order of the District Magistrate, dated the 30th March 1922, the present petition has been presented. On the petition being called on for hearing Mr. Jai Lal, the learned Government Advocate, appearing on behalf of the Crown, raised a preliminary objection to the hearing of the petition on the ground that the proceeding taken by the learned District Magistrate was not a judicial proceeding, and that the order passed being of a purely executive character an application for its revision cannot be entertained by the High Court.

The Act is divided into four parts. Part I deals with "Preliminary matters". Part II deals with "Reception, Care and Treatment of Lunatics." Chapter II in this part deals with "Reception of Lunatics," and Chapter III provides for the "Care and Treatment". Part III provides for "Judicial Inquisition as to lunacy." Chapter IV in this part lays down "Rules for the conduct of proceedings in lunacy in Presidency towns." Under this chapter is laid down the procedure relating to the "inquisition" and "rules for the exercise of judicial powers over person and estates of lunatics", "management and administration of such estates, etc., etc." Chapter V lays down the "proceedings in lunacy outside Presidency towns." Part IV deals with certain miscellaneous matters.

From the above summary of the provisions of the Act, it appears that the legislature intended to make a clear distinction between the proceedings which are of a judicial character, and those of a purely executive nature. The order passed by the District Magistrate in this case, therefore, *prima facie*, does not appear to be of a judicial character. It is, therefore, doubtful whether the High Court can interfere with it in the exercise of its revisional powers. Mr. O'Connor has vehemently contended that where there is a wrong there ought to be a remedy for it, and that this High Court, being the highest Court in this Province, must be possessed of some authority to remedy the wrong done to his clients. He has relied on the provisions of section 151 of the Civil Procedure Code and has contended that under this section the High Court has full powers to entertain this petition for revision. It is clear, however, that this section does not empower the High Court to deal with an order passed by a Magistrate.

The learned Counsel has, in the alternative, contended that the High Court can deal with this matter on its original side, and can institute a judicial inquisition as to the alleged lunacy of the petitioner, Douglas Donald, under section 12 of the Letters Patent. The said section provides as follows:—

"And we do further ordain that the High Court of Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab immediately before the publication of these presents."

The learned Counsel, however, has failed to show that the Chief Court of the Punjab used to exercise original jurisdiction in matters of lunacy. In any case it cannot be conceived that the Chief Court could have exercised or this High Court can exercise such power and authority in disregard of the provisions of the Lunacy Act. Section 12 of the Letters Patent relating to the Allahabad High Court lays down almost a similar rule on the sub-

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ject, but it was held in *In the matter of the Petition of Jaundha Kaur v. The Court of Wards* (1), that the High Court had not, under section 12 of the Charter, any original jurisdiction in respect of the persons and estates of lunatics, who are natives of India. The learned Judges of the Division Bench, who decided the case, refrained from expressing any opinion respecting their jurisdiction over persons and estates of lunatics who were European British subjects. The section, as it stands, however, does not profess to make any distinction in this respect between the cases of persons who are natives of India, and those who may be European British subjects. It was laid down in that case that under Act XXXV of 1858 the principal Civil Court in the district had jurisdiction to deal with such matters. Under the present Act only the High Court in the Presidency towns are empowered to exercise original jurisdiction in matter of lunacy (see Chapter IV of the Act), and proceedings in lunacy outside Presidency towns under Chapter V of the Act are provided to be taken in District Courts. Section 83 of the Act gives a right of appeal to a High Court from an order made by District Courts under Chapter III. Clause (2) of section 65 provides that—

“ Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs, or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.”

This is exactly what the petitioners want this Court to hold. Mr. William Henry Donald may present this application to the District Judge within whose jurisdiction Mr. Douglas Donald, the alleged lunatic, resides and ask him to hold a judicial inquisition under Chapter V. He can then apply for the discharge of the lunatic under section 34, which provides that—

“ If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.”

I take it that the same rule will apply to a case where a lunatic is placed in charge of a friend or a relative under the provisions of section 14 of the Act. The proper course to adopt in this case is to return the petition of Mr. O'Connor so that he may present it to the proper Court. The other alternative which suggests itself to me is that I should refer this case to a larger Bench for decision as the questions raised are of great importance and their

decision may have a far reaching effect on the practice of this Court. Having regard to the fact that there appears to be no decided case on this point, I adopt the latter course and direct that the papers be laid before the learned Chief Justice with a view that a Bench be constituted to hear the case.

O'CONNOR, for Petitioner.

JAI LAL, Government Advocate, for Respondent.

The order of the Division Bench was delivered by--

HARRISON J.—After hearing Mr. O'Connor for the petitioner and *Rai Bahadur Jai Lal*, Government Advocate, for the Crown, I entirely agree with the view taken by my learned brother in his order of reference. The Act, as pointed out in that order, deals specifically and under separate headings with the two branches of proceedings, executive and judicial. Any person considering himself aggrieved by an executive order passed by the District Magistrate may apply under Part III for a regular inquisition conducted by a judicial officer. The result of such inquisition is conclusive and overrides and overrules any order which may have been passed summarily by the executive authority. This being so it is useless to contend, as has been done, that no remedy is provided against an incorrect or improper executive order, and the position is made even clearer by section 2 of the Act, which expressly provides that nothing in Part II, *i. e.*, that portion which deals with executive orders, shall be deemed to affect the powers of the High Court under Part III. Had the High Court any power of revision of the orders passed under Part II this section would be wholly meaningless and superfluous. Mr. O'Connor has relied on the analogy of the English Law on the subject and has referred us to Halsbury's Laws of England, Volume XIX (*passim*). In the English Act on which the Indian is based, the executive authority is described as the judicial authority, an even more unfortunate title than that of District Magistrate for designating an executive officer. This 'judicial authority' is a justice of the peace and it is his duty to exercise powers similar to those entrusted in this country to the District Magistrate. The machinery for a judicial inquisition is provided in exactly the same way as in the Indian Act and provision is made for quashing a finding on an inquisition just as an appeal

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to the High Court is allowed from an order passed by a District Judge in India, but as in India, so in England, no provision is made for any sort of appeal or revision to the High Court from an executive or summary order. Beyond showing therefore that the executive authority is as unsuitably described in England as in India the English Act assists the petitioner not at all.

It might appear at first sight that all acts of a District Magistrate as such must be open to the revision of the High Court, and that, when it is desired to exclude such jurisdiction, the officer in question would be described as "Collector" or as "Deputy Commissioner" in a non-regulation province. This, however, is not the general practice as is shown by the Police Act, the Arms Act, Explosives Act and many others, and the position with regard to the Police Act is explained in *Usesh Chandra v. Emperor* (1). Under this Act also the orders passed by the District Magistrate under Part II are purely executive and cannot form the subject matter of a revision application to this Court.

The petition is therefore dismissed and the petitioner is directed to seek his remedy, if he wishes to do so, by application to the District Judge under Part III.

A. N. C.

Petition dismissed.

(1) (1906) 10 Cal. W. N. 322.