

REVISIONAL CRIMINAL.*Before Harrison and Addison JJ.***SUKHDEV RAJ (ACCUSED) Petitioner***versus***THE CROWN, Respondent.****Criminal Revision No. 231 of 1932.**

Indian Prisons Act, IX of 1894, section 40: Order of Superintendent of Jail refusing prisoner's request to interview certain persons—Jurisdiction of Court of Commission or High Court—to interfere with Superintendent's order.

Petitioner, an under-trial prisoner, detained in the Lahore Jail under a warrant of the Court of the Commission appointed under Act IV of 1930, applied to the Superintendent for permission to interview certain persons. This was refused. He then moved the Commission to pass an order directing the Superintendent to grant his application. This was refused by the Commission and from its order a revision application was admitted in the High Court.

Held, that the jurisdiction of the Court is strictly limited by the Legislature and extends so far as the Prisons Act is concerned, to insistence on the due observance of the terms of any writ, which it may have issued in exercise of its legal powers.

Apart from such terms neither the High Court nor the Court of the Commission has any jurisdiction to go into the question of whether the Superintendent has disregarded or observed the provisions of section 40 of the Prisons Act. If his order was improper the prisoner's redress lay to the Superior executive authority.

Donald v. The Crown (1), relied on.

Kundan Lal v. The Crown (2), *In the matter of Kharaiti Ram, Approver* (3), and *In re Evans* (4), distinguished.

Sukh Dev Raj v. Emperor (5), referred to and disapproved in part.

(1) (1923) I. L. R. 4 Lah. 1.

(3) (1931) I. L. R. 12 Lah. 635.

(2) (1931) I. L. R. 12 Lah. 604.

(4) (1926) I. L. R. 50 Bom. 741.

(5) (1931) 133 I. C. 59.

Petition under Sections 439 and 561-A, Criminal Procedure Code, for revision of the order of the Court of the Commission appointed under Act IV of 1930, at Lahore, dated the 26th January, 1932, rejecting the petition for interview with certain persons

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SHAMAIR CHAND and SHAM LAL, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

HARRISON J.—One Sukh Dev Raj is an under-trial prisoner detained in the Lahore Central Jail under a warrant of the Court of the Commission appointed under Act IV of 1930. He applied to the Superintendent for permission to interview certain persons, and this permission was refused. He moved the Court, which had issued the warrant for his detention, to pass an order directing the Superintendent to grant his application. This was rejected by a majority of two members of the Commission to one, and from this order dismissing the petition a revision application has been admitted in this Court.

HARRISON J.

Two points arise for decision :—

(1) Whether the Court had jurisdiction to direct the Superintendent to allow the interview under section 40 of the Prisons Act (IX of 1894), and

(2) Whether on the facts it should have done so.

Section 40 of the Act runs as follows :—“ Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison, of persons with whom civil or unconvicted criminal prisoners may desire to communicate * * *.”

The conflicting views of the two members of that Court are to the effect that the word “ persons ” does not mean “ all persons ” but “ some persons,” and that

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“ persons ” means “ all persons. ” The President has imported the words “ a certain class ” into the section and has held that the passage means that due provision shall be made for the admission of “ a certain class of persons. ” Both officers have invoked the English Prisons Act, 1877 (40 and 41 Vic. Chap. 21) in support of their conflicting views. If the Courts have jurisdiction to enforce the observance of this section and it becomes necessary to interpret the words used, there can, I think, be no doubt that the view taken by Mr. Sleem is correct and the word “ persons ” can only mean “ all persons ” or “ any person ” and not “ a certain class of persons. ”

The question, however, would still remain of how the words “ due provision ” are to be understood and carried out, and it would be extremely interesting to speculate as to whether or no they cover the total or temporary exclusion of physically undesirable and dangerous persons such as those suffering from confluent small-pox or leprosy, and whether those who are mentally and morally dangerous can be excluded equally with those who are physically dangerous and physically diseased. This latter question, however, does not arise until it is proved that the Court has jurisdiction. It has almost been assumed by both the officers who wrote the orders that this necessary premiss has been proved. Counsel contends that *Kundan Lal v. The Crown* (1), *In the matter of Khairati Ram, Approver* (2), *In re Evans* (3) and *Sukh Dev Raj v. The Emperor* (4) establish that the jurisdiction exists. Neither of the rulings to be found in *Kundan Lal v. The Crown* (1) has anything whatever to do with the

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question. They merely decide whether an approver is an accused person or a witness, and what is the nature of the custody to which he is remanded. Similarly, *In the matter of Khairati Ram, Approver* (1) and *In re Evans* (2), applies section 561-A of the Code of Criminal Procedure read with section 340 to enforce the right of the under-trial prisoner to interview his counsel. The only ruling which does deal with the present question is *Sukh Der Raj v. The Emperor* (3), and there the view taken was that the Court had a right to lay down what action should be taken as to the separation in Jail of one accused person from the other under-trial prisoners in the same case. Counsel before us lays particular stress on the following passage :—

“ If the view taken by the Commissioners be correct it would mean that an under-trial prisoner in the position of the petitioner can get no redress from the Court and is practically without any remedy.”

He ignores the whole of the machinery of Government which functions through Executive Officers, and would have us hold that it is impossible to obtain redress of any grievance or the enforcement of rules or the exercise of statutory privileges except by coming to a Court and representing the facts through a duly authorised pleader. It is contended that the effect of that ruling is to decide that because the officer in charge of a prison is bound to receive and detain under section 3 of the Prisoners Act (III of 1900), all persons duly committed to his custody by any Court according to the exigency of any writ, warrant or order, the Court has jurisdiction to go into all questions dealt with in the Prisons Act and to redress any grievance which any prisoner may have, covering the wide field

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of food, clothing, bedding, employment, health, visits, etc. etc. Counsel wishes to draw a distinction in this respect between under-trial and convicted prisoners, but section 3 of the Act draws no such distinction; and while it is doubtless the duty of the Court to see that its writ is obeyed—a point dealt with in *Kundan Lal v. The Crown* (1) and *In the matter of Khairati Ram, Approver* (2)—no authority has been quoted to us for the proposition that apart from the enforcement of the writ the Court has any power of supervision over the administration of a prison. Indeed, it appears to me that it would be just as reasonable to say that the despatch of letters or the entrusting of prisoners to a railway for conveyance to a different place, clothes a Court with a right to supervise and control the administration of the railway or the post office as apart from the right which every customer of these institutions has to insist that the rules laid down for his protection shall be duly observed. It is, of course, obvious that a prisoner committed to the prison under a writ of the Court is entitled to all the privileges and rights safeguarded and provided in the Prisons Act. If he has any grievance, so far from his being practically without any remedy, he can appeal to the authority immediately superior to the Superintendent of the Jail. This, I understand, is the Inspector General of Prisons. The position is not, as counsel contends, that a tyrannical and irresponsible despot in the shape of the Superintendent of a Jail can pass unjust and improper orders, can ignore the provisions of the Act, and, unless the Court interferes, there is nobody from whom the prisoner can obtain redress and that nobody is interested in seeing that the provisions of the Act are observed. Nor can it be held, as he

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would have us hold, that this Court has some sort of inherent power to supervise the administration of every law on the Statute Book and that Executive Officials only function subject to the authority of a Court. The position is not dissimilar from that which exists under the Lunacy Act, the scheme of which is as follows :—

The first Chapter deals with definitions and jurisdiction; the second and third, which are called part II deal with the reception, care and treatment of prisoners, appointment of visitors, discharge of lunatics, etc. etc. Part III, Chapters IV and V deal with judicial inquisitions as to lunacy in Presidency Towns and outside them. The jurisdiction of the Court is strictly limited to those persons who invoke its assistance and its first duty is to decide whether or no the person in question is a lunatic. If it be found that he is, certain powers can be exercised over his person and estate, and these powers include an order directing the Collector, with the previous consent of such Collector, to take charge of the person and estate of the lunatic. If the Collector does so, he is subject not to the Court but to the Local Government or any such authority as it may appoint. The important point is that the Court has no power to interfere and no jurisdiction regarding the matters dealt with in part II and this is clearly explained in *Donald v. The Crown* (1) Fortunately the jurisdiction of the Court is strictly limited by the Legislature, and, in my opinion, it only extends, so far as the Prisons Act is concerned, to insistence on the due observance of the terms of the writ which it has issued in exercise of its legal powers. The terms of the writ are limited by

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the contents which say nothing about visits, medical treatment, clothing, bedding, nor the taking of such disciplinary action as may be necessary during the confinement of the prisoner.

I would, therefore, hold that neither this Court nor the Court of the Commission has any jurisdiction to go into the question of whether the Superintendent had or had not disregarded or observed the provisions of section 40 and that, presuming the order was improper, the prisoner's redress lay to the Superior executive authority.

I would, therefore, dismiss the application for revision.

ADDISON J.

ADDISON J.—I agree.

N. F. E.

Revision dismissed.

APPELLATE CIVIL.

Before Tek Chand J.

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 July 1.

HARBHAJAN SINGH-SOHAN SINGH

(PLAINTIFFS) Appellants

versus

SIRI GOPAL AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 2393 of 1928.

Indian Contract Act, IX of 1872, Section 264: Partnership Firm—implied agency of partners—whether still in force after firm has ceased to be a going concern.

In December 1925 one A, Defendant No. 2, purporting to act on behalf of the Firm B A, executed a Hundi for Rs. 1,200 in favour of Plaintiffs-Appellants who, in a suit for recovery of the amount due thereunder, impleaded B as well as A as defendants. The latter admitted the claim, but B denied liability on the ground that he had ceased to be a partner in the firm of B A in 1921 and that that firm was not a going concern at the time when the Hundi was executed by A. It