

REVISIONAL CIVIL.

Before Addison J.

THE CROWN (COMPLAINANT) Petitioner.

versus

GHANI (ACCUSED) Respondent.

1937

Feb. 9.

Civil Revision No. 347 of 1936.

Civil Procedure Code (Act V of 1908) S. 115 : Scope of — Revision — whether competent against conclusions of law or fact — where no questions of jurisdiction are involved.

Held, that s. 115 of the Civil Procedure Code, is not directed against conclusions of law or fact in which questions of jurisdiction are not involved. The mere fact that a conclusion erroneous in law or fact had been arrived at, did not enable the petitioner to move the High Court in revision on the plea that the lower Court had acted in the exercise of its jurisdiction illegally or with material irregularity: for Courts have jurisdiction to decide wrong as well as right.

Balakrishna Udayar v. Vasudeva Ayyar (1), and Sant Singh v. Mubarak Singh (2), relied upon.

Petition for revision of the order of Lala Shankar Lal, Senior Subordinate Judge, Ferozepore, dated 13th February, 1936, reversing that of Sardar Balwant Singh Kalkat, Subordinate Judge, 4th Class, Muktsar, dated 31st October, 1935, and cancelling the order of fine against the respondent.

DEWAN RAM LAL, Government Advocate, for Petitioner.

AMAR NATH CHONA, for Respondent.

ADDISON J.—This order will dispose of civil revisions Nos. 347 and 348 of 1936, preferred by the Crown under section 115 of the Code of Civil Procedure. Two witnesses, Nawab and Ghani, were served to appear as such on the 25th January, 1935, before a

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(1) I.L.R. (1917) 40 Mad. 798. 799 (P.C.). (2) I. L. R. (1928) 9 Lah. 308.

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Subordinate Judge, 4th Class, and failed to do so. They also failed to satisfy the Court under Order 16, rule 11 of the Code and the Court, therefore, fined them Rs. 200 each under the provisions of Order 16, rule 12, Code of Civil Procedure. There were appeals to the Senior Subordinate Judge. He accepted the appeals on the ground that no fine could be imposed until warrants of attachment were first issued. For this reason the order of the Court was set aside in both cases. It is these orders of the Senior Subordinate Judge passed in appeal that are attacked in these civil revision petitions.

A preliminary objection is taken that the petitions are incompetent and reliance is placed in this respect upon *Balakrishna Udayar v. Vasudeva Ayyar* (1) and *Sant Singh v. Mubarak Singh* (2). It is said by their Lordships of the Privy Council that section 115 applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which questions of jurisdiction are not involved. Similarly in *Sant Singh v. Mubarak Singh* (2) it was held that the mere fact that a conclusion erroneous in law or fact had been arrived at did not enable the petitioner to move the High Court in revision under section 115 (c) of the Civil Procedure Code, on the plea that the lower Court had acted in the exercise of its jurisdiction illegally or with material irregularity: for Courts have jurisdiction to decide wrong as well as right.

As regards the decisions passed in appeal by the Senior Subordinate Judge there are conflicting authorities. Though I am of opinion that the Senior Subordinate Judge erred in law in coming to the findings

(1) I. L. R. (1917) 40 Mad. 793 (P. C.). (2) I. L. R. (1928) 9 Lah. 308.

which he did, yet the fact that he erred in law does not render these petitions competent as already pointed out.

For these reasons I am constrained to dismiss these petitions but make no order as to costs.

P. S.

Petition dismissed.

REVISIONAL CRIMINAL.

Before Addison J.

BHAG SINGH AND OTHERS (ACCUSED) Petitioners,
versus
THE CROWN—Respondent.

Criminal Revision No. 1710 of 1936.

Criminal Procedure Code (Act V of 1898) S. 403 —
Autrefois acquit.

B. and four other accused were tried under sections 325/147, Indian Penal Code, by a Magistrate, 2nd class, who acquitted B. and convicted the four other accused. On revision the Additional District Magistrate found that the proper charge against B. would have been one under s. 324, Indian Penal Code, and as he had not been charged under that section, he ordered that B. should be tried under it. B. applied for revision to the High Court.

Held, that the case was covered by illustration (e) to s. 403 of the Criminal Procedure Code, and the Additional District Magistrate had no power to order that the accused be retried under s. 324, Indian Penal Code, as that charge could also have been framed by the Magistrate, 2nd class.

Revision from the order of Mr. Bishambar Dyal Singh, Additional District Magistrate, Hissar, dated 3rd November, 1936, reversing that of Mir Ahmad Hussain, Tahsildar, exercising the powers of a Magistrate, 2nd Class, at Hissar, dated 7th September,

(See also *Fatteh Muhammad v. Crown* I. L. R. (1927) 8 Lah. 52 Ed.)

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