

THE
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CIVIL MISCELLANEOUS

Before Bhandari and Falshaw, JJ.

SAYED ABDUL ALIM, ETC.,—*Petitioners,*

versus

SH. MOHD. SAEED, ETC.,—*Respondents.*

1950

Nov. 16th

Civil Miscellaneous No. 68 of 1949

Certificate issued by High Court that appeal preferred to Privy Council or Supreme Court had not been effectually prosecuted—Whether order of High Court that appeal should be dismissed for non-prosecution can be reviewed under Order 47 or section 151 of the Code of Civil Procedure.

On April 10, 1946, the High Court certified the appellant's case to be a fit one for appeal to His Majesty in Council. The appellant failed to deposit the printing charges by the due date and on December 27, 1948, the Court passed an order dismissing the appeal and cancelling the certificate for leave to appeal. On March 16, 1949, the appellant presented an application in which he prayed that the delay in making the deposit be condoned, that the deposit be accepted and that the order dismissing the appeal be set aside.

Held, that in view of the provisions of section 112 (1) (b) of the Code of Civil Procedure, it is not within the power of the High Court to review its own order. It follows as a consequence that a certificate issued by a High Court that an appeal preferred to the Privy Council or the Supreme Court has not been effectually prosecuted cannot be cancelled or withdrawn by the said Court.

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Petition under section 151, Order 47, Rule 1, Civil Procedure Code, and Order XII, Rule 6, of the Federal Court's Rules, praying that the order dismissing the appeal be set aside, the deposit made accepted and the delay condoned.

(Original Suit No. 94 of 1940, decided by Shri Ahmad Khan, Senior Sub-Judge, Delhi, on 1st June 1943.)

K. S. THAPAR, for Petitioners.

DAYA KRISHAN MAHAJAN and D. N. AWASTHY, for Respondents.

THE ORDER OF THE HIGH COURT WAS DELIVERED BY :—

Bhandari J.

BHANDARI, J. The short point for decision in the present case is whether a certificate issued by this Court to the effect that an appeal preferred to the Privy Council or the Supreme Court has not been effectually prosecuted by the appellant can be cancelled or withdrawn by this Court.

On the 10th April 1946, the High Court at Lahore permitted Sayed Abdul Alim petitioner to prefer an appeal to the Privy Council and the petitioner deposited the printing charges for the preparation of the record. On the 24th July 1948, after this case had been transferred to this court after the partition of the Punjab, Mr Asa Ram Aggarwal, counsel for the petitioner, was asked to deposit a sum of Rs 1,783 on account of additional printing charges and a copy of the letter addressed to the counsel was forwarded to the petitioner under registered cover. No reply was received from the counsel, but on the 1st September the petitioner sent a communication to this Court in which he requested that the deposit of Rs 1,783 be accepted in monthly instalments of Rs 200 each. On the 18th September he was directed to move this Court by means of a stamped petition but no reply having been received from him, a learned Judge of this Court directed on the 27th October that the petitioner should be called upon to show cause why the appeal preferred by him should not be dismissed for non-prosecution on the ground that he had failed to show diligence in the preparation of the record. The case

came up for hearing before a Division Bench of this Court and on the 10th October 1948, the Court directed that the money should be deposited on or before the 17th December 1948, failing which the appeal would be deemed to be dismissed for want of prosecution. The money was deposited on the 20th December that is three days after the date on which it should have been deposited, and on the 27th December the Court dismissed the appeal and cancelled the certificate for leave to appeal.

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On the 16th March 1949, the petitioner presented the present application in which it was prayed that the order dismissing the appeal for non-prosecution be set aside, that the deposit made on the 20th December be accepted and that the delay in making the deposit be condoned.

Rule 6 of Order XII of the Federal Court Rules, 1942, provides that where the appellant fails to make the deposit required under rule 2, 3, or 4 of the said Order, the High Court shall report the fact to the Federal Court and the appeal shall not proceed without further order of the said Court. The learned counsel for the petitioner contends that as his client failed to deposit the sum of Rs 1,783 as required by this Court, it was the duty of this Court to refer the matter to the Federal Court for orders and that this Court was not justified in dismissing the appeal and cancelling the certificate for leave to appeal without making this reference. I regret I am unable to concur in this contention. This rule was obviously intended to apply to an appeal of the nature mentioned in section 205 of the Government of India Act, that is, an appeal from a judgment, decree or final order of a High Court in regard to a case involving a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder. The help of this rule cannot be invoked in respect of an appeal from a judgment, decree or final order of a High Court in a civil case in which a direct appeal could have been brought before His

Sayed Abdul Majesty in Council prior to the enactment of the
 Alim, etc., Federal Court (Enlargement of Jurisdiction) Act,
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Again, it is argued that even if it was within the power of this Court to direct that the appeal should be dismissed for want of non-prosecution it is open to this Court, in exercise of the powers conferred by Order 47 or section 151 of the Civil Procedure Code, to review its own order. This contention too appears to me to be wholly devoid of force. Rule 12 of the Rules framed by His Majesty in Council concerning Privy Council appeals declares that where an appellant, whose appeal has been admitted, fails to show due diligence in taking all necessary steps in connection with the preparation of the Record, the Court may call upon the appellant to show cause why a certificate should not be issued that the appeal has not been affectually prosecuted by the appellant, and if the Court sees fit to issue such a certificate, the appeal shall be deemed as from the date of such certificate to stand dismissed for non-prosecution without express Order of His Majesty in Council. In the year 1948, the Central Legislature enacted a measure entitled "The Federal Court (Enlargement of Jurisdiction) Act, 1947," section 3 of which declares that as from the appointed day, (that is from the 1st February 1948), an appeal shall lie to the Federal Court from any judgment to which this Act applies, i.e., any judgment, decree or final order of a High Court in civil case from which a direct appeal could have been brought to His Majesty in Council either with or without special leave of the Privy Council. In other words, this Act enlarged the jurisdiction of the Federal Court by directing that the said Court shall be competent to hear not only appeals of the nature mentioned in section 205 of the Government of India Act, 1935, but also appeals from judgments, decrees or final orders in civil cases from which direct appeals could have been taken to His Majesty in Council. Section 4 of the enactment provides that all orders made and certificates granted by a High Court in connection with an appeal to His Majesty in Council shall, unless the records pertaining to such appeal had before the appointed day been

transmitted by the High Court concerned to His Majesty in Council, be deemed to be orders made, and certificates granted, in connection with the appeal to the Federal Court and shall have effect accordingly. Section 6 enacts that the provisions of the Code of Civil Procedure and of any other law in force immediately before the 1st day of February 1948, shall have effect in relation to an appeal to the Federal Court as if in the said provisions, for all references to His Majesty in Council, there had been substituted references to the Federal Court. Section 112 of the said Code, as amended by the adaptations of Laws Orders, 1950, declares in unambiguous language that nothing contained in the Code shall be deemed to interfere with any rules made by the Supreme Court for the presentation of appeals to that Court or their conduct before that Court. Article 135 of the Constitution provides that the jurisdiction and powers which were being exercised by the Federal Court immediately before the commencement of the constitution shall be exercised by the Supreme Court. In view of these provisions it seems to me that as the power of review conferred by the Civil Procedure Code, cannot be allowed to interfere with the rules made by the Supreme Court and as this Court has issued a certificate under the said rules that the appeal has not been effectually prosecuted, it is not within the competence of this Court to review that order.

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There is another aspect of the matter which needs to be considered. Section 4 of the Code of Civil Procedure declares that in the absence of any specific provision to the contrary, nothing in the Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. As the rules made by His Majesty in Council for appeals to the Privy Council must be deemed to be a special law in regard to the procedure which should be applied in the presentation and prosecution of appeals to the Privy Council it seems to me the provisions of the Code of Civil Procedure cannot apply to that special law. Indeed, the language

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of section 112 of the Code of Civil Procedure makes it quite clear that, as mentioned above, nothing contained in the Code shall be deemed to interfere with any rules made by the Judicial Committee of the Privy Council for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee. If this section is read in conjunction with section 6 of Act I of 1948, it is obvious that the help of this Code cannot be invoked for interfering with the rules made by the Federal Court either under Order 47, rule 1, or section 151 of the Code of Civil Procedure. I entertain no doubt whatever that it is not within the power of this Court to review its own order or to direct that the certificate that the appeal has not been effectually prosecuted shall be cancelled or withdrawn.

Even on merits, it seems to me that no case has been made out for the cancellation of the certificate. As stated above, the petitioner was permitted to prefer the appeal to the Privy Council as long ago as the 10th April 1946. It is true that he deposited the amounts which were required of him in the High Court at Lahore, but when the appeal was transferred to the East Punjab and he was required to deposit an additional sum of Rs 1,783 on account of additional printing fee he failed to comply with the orders. On the 1st September 1948, he requested that this amount should be accepted in monthly instalments of Rs. 200 each. He was directed to move this Court by a stamped application but he did not care to send a reply to this communication. The case was taken up by this Court on the 10th December 1948, and the petitioner was specially informed that the money should be deposited in Court on or before the 17th December at latest failing which the appeal would be deemed to be dismissed for default of prosecution. The money was not deposited by the due date and the only order that could be passed by this Court consistently with the order of the 10th December 1948, was that the appeal should be dismissed. In this application dated the 16th March 1949, the petitioner states as follows :—

“(5) That for the said purpose 10th of December, 1948, was fixed in the High Court of

Judicature for East Punjab at Simla and the petitioner was granted a week that the money be deposited up to the 17th December 1948.

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- (6) That the agent of the petitioner in Delhi received information of this order on the 16th of December 1948.
- (7) That the said agent informed the petitioner of the said order and under instructions from the petitioner the money was duly sent by telegraphic money order to the Registrar of the East Punjab High Court at Simla, which was received there on the 20th December 1948, 19th December 1948, being Sunday ”.

Bhandari J.

The application does not mention the circumstances which prevented the counsel for the petitioner who was present in Court on the 10th December, from communicating the order of this Court to the agent of the petitioner till the 16th December ; nor does it explain the circumstances which prevented the agent from sending a telegraphic money-order to this Court on the 16th. The petitioner has carefully refrained from stating the date on which the money-order was actually despatched. Had it been despatched on the 16th December, it would have reached this Court on the following day and the order of the Court would have been complied with. Unfortunately it does not appear to have been sent on the 16th December for it did not reach the Court till the 20th. Had the petitioner or his counsel satisfied this Court that the money was in fact deposited with the Post-Office in Delhi on the 16th December and that the said money could not be disbursed to the addressee till the 20th December there might have been some justification for condoning the delay. As it happens, it seems to me that there is no force whatsoever, in any of the grounds mentioned in the petition of the 16th March 1949. Considerable latitude has already been allowed to the

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petitioner to deposit the additional expenses but he has failed without reasonable cause to comply with the order of this Court. The petition must be dismissed with costs.

Bhandari J.

REVISIONAL CRIMINAL

Before Bhandari and Soni JJ.

JITU MAL,—Petitioner,

versus

KASTURI LAL, Sub-Inspector, Police,—Respondent.

1950

Criminal Revision No. 187 of 1950

Dec. 5th

Police Act (V of 1861) Sections 23, 42—Criminal Procedure Code (Act V of 1898) Section 200—Communication against a Sub-Inspector of Police to Inspector-General of Police and Deputy Commissioner—Whether it can be regarded as a complaint under section 200 of the Code of Criminal Procedure made to them in their capacity as Magistrates or as a representation made to them in their capacity as Executive Officers. Report by Sub-Inspector to his superior officers containing defamatory statements—Whether under the provisions of section 23 of the Police Act and governed by section 42 of the said Act.

On 24th March 1948 one Sarju lodged a formal complaint in the court of a magistrate in which he stated that he had been beaten by the police and kept in wrongful confinement for a period of three days. On 26th March he addressed a communication to the Inspector-General of Police, the Deputy Commissioner of Karnal and certain other persons complaining against the treatment that had been meted out to him. The Deputy Superintendent of Police forwarded this communication to the Station House Officer, Kaithal for report and on the 7th April the Station House Officer (Sub-Inspector Kasturi Lal) submitted a report which contained certain defamatory statements in regard to the character and antecedents of one Jitu Mal of Kaithal, the petitioner in the present case. On 11th February 1949, the petitioner filed a complaint under section 500 of the Penal Code, against Sub-Inspector Kasturi Lal and a question arose whether this complaint was barred by the provisions of section 42 of the Police Act, 1861 having been filed after the expiry of a period of three months from the date of the said report.

Held, that the complaint was barred by time as the communications addressed by Sarju to the Inspector-General of Police and the Deputy Commissioner of Kaithal could not be regarded as complaints made to them in their