

of the appeal. That would also appear to be the practice obtaining before the Income-tax Tribunal, as appears from the decisions cited before us, and that, in our opinion, is right. Similar considerations would apply to other objections of a preliminary character, such as one based on section 30, sub-section (3). We should be slow to adopt a construction which deprives parties of valuable rights. We are therefore of opinion that contentions relating to preliminary issues are open to consideration at the time of the hearing of the appeal, and that the jurisdiction of the Appellate Assistant Commissioner is not limited to the hearing of the appeal on the merits of the assessment only. In this view, the orders of the Appellate Assistant Commissioner holding that there were no sufficient reasons for excusing the delay and rejecting the appeals as time-barred would be orders passed under section 31 and would be open to appeal, and it would make no difference in the position whether the order of dismissal is made before or after the appeal is admitted.

The question referred must accordingly be answered in the affirmative. This appeal will therefore be allowed, and the order of the court below set aside. The appellant will have his costs here and in the court below.

REVISIONAL CRIMINAL

Before Bhandari, C.J.

BHARTU AND OTHERS,—Convicts-Petitioners.

versus

THE STATE,—Respondents.

Criminal Revision Case No: 1066 of 1955.

Criminal Trial—Jurisdiction—Magistrate enjoying powers under Section 30, Criminal Procedure Code, in one District transferred to another District by Notification to act

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Messrs Mela
Ram and Sons
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The Commis-
sioner of
Income-tax,
Punjab
—
Venkatarama
Ayyar, J.

as Magistrate of the 1st Class—No notification conferring powers under section 30, in the other District issued—Magistrate, whether enjoys powers under section 30, Criminal Procedure Code.

Held, that reinvesting Mr. Kalia with the powers of a Magistrate of the first class and by omitting to reinvest him with enhanced powers under section 30 of the Code of Criminal Procedure, the State Government impliedly ordered that they did not wish to reinvest him with enhanced powers.

Petition under sections 435|439 of the Criminal Procedure Code, for the revision of the order of Shri Rameshwar Dial, Additional Sessions Judge, Rohtak, at Gurgaon, dated the 23rd September, 1955, affirming that of Shri K. R. Kalia, Magistrate, Gurgaon, invested with powers under section 30 of the Code of Criminal Procedure, dated the 22nd July, 1955, convicting the petitioners.

P. C. PANDIT, for Petitioners.

SURINDER SINGH, for the Advocate-General, for Respondent.

JUDGMENT.

Bhandari, C.J. BHANDARI, C. J. This petition raises the question whether Mr. Kalia, a Magistrate of the First class at Gurgaon, was exercising powers under section 30 of the Code of Criminal Procedure on the 22nd July, 1955.

Mr. Kalia, a Magistrate of the first class in the Karnal District, was invested with enhanced powers under section 30 of the Code of Criminal Procedure on the 17th October, 1952. He was transferred to Gurgaon two years later and on the 30th December, 1954, the State Government issued a notification under section 12 of the Code of Criminal Procedure appointing him a Magistrate of the first class in the Gurgaon District. No notification was issued under section 30 of the Code of Criminal Procedure. On the

22nd July, 1955, Mr. Kalia convicted the petitioners in the present case under section 307|34 of the Penal Code and sentenced each one of them to four years' rigorous imprisonment. The question is whether by investing Mr. Kalia with powers of a Magistrate of the first class in the Gurgaon District and by omitting to invest him with enhanced powers under section 30 of the Code of Criminal Procedure the State Government can be said to have directed that he shall not exercise enhanced powers under section 30 of the Code of Criminal Procedure.

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The notification of the 17th October, 1952, does not define the limits within which powers under section 30 were to be exercised by Mr. Kalia and, in the absence of such definition, it must be assumed that his jurisdiction and powers were to extend only to the limits of the Karnal District [section 12(2)].

If the first class and section 30 powers conferred upon Mr. Kalia were to be exercised only within the limits of the Karnal District, then on his transfer to Gurgaon they could obviously be exercised within the limits of the Gurgaon District, for section 40 of the Code of Criminal Procedure declares that if a person is appointed to an equal or higher office of the same nature within a like local area under the same State Government he shall continue to exercise the same powers in the local area to which he is so appointed unless Government otherwise directs. Had Government issued no fresh notification in regard to Mr. Kalia there can be little doubt that on his transfer to Gurgaon he would have continued to exercise the powers of a Magistrate of the first class and enhanced powers under section 30 of the Code of Criminal Procedure. But Government adopted a somewhat unusual procedure which has given rise to a certain amount of difficulty. On the 30th December,

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1954, they issued a notification under section 12 appointing him a Magistrate of the first class in Gurgaon but refrained from issuing one under section 30. As the express mention of one thing implies the exclusion of another, the express mention of powers of a Magistrate of the first class implies the exclusion of the powers under section 30 of the Code of Criminal Procedure. By investing Mr. Kalia with the powers of a Magistrate of the first class in the Gurgaon District and by declining to reinvest him with powers under section 30 Government manifested an intention on their part that the section 30 powers exercised by Mr. Kalia in the Karnal District should not be exercised by him on his transfer to the Gurgaon District. It has been held in at least one decided case that powers may be withdrawn expressly as well as by implication (*In the matter of Pursooram Borooah* (1)).

For these reasons I am of the opinion that the conviction recorded by Mr. Kalia in the present case must be held to be in excess of the powers conferred upon him. I would accept the petition, set aside the orders of the Courts below and direct that the petitioners be tried afresh in accordance with the provisions of law.

REVISIONAL CIVIL.

Before Bhandari, C.J.

GULAB SINGH,—*Petitioner.*

versus

PRITAM SINGH, AND OTHERS,—*Respondents.*

Civil Revision Application No. 254 of 1954.

Gram Panchayat Act (IV of 1953)—Section 5(5) (c)—Whether the Tribunal constituted under the Gram Panchayat Act, could set aside the election of a dismissed Head

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(1) I.L.R. 2 Cal. 117