CRIMINAL MISCELLANEOUS

Before Kapur, J.

THE STATE,—*Petitioner*

versus

S. P. JAISWAL, MANAGING DIRECTOR, THE KARNAL DISTILLERY CO., LTD., KARNAL,—*Respondent*

Criminal Miscellaneous No. 263 of 1953

1953

August 7th.

Constitution of India—Article 134(1)(c)—Petition for leave to appeal to the Supreme Court—Period of Limitation for—Belated petition—Whether should be allowed—Principles to be observed while granting certificate of fitness in criminal cases stated.

S. P. Jaiswal made a petition under section 561-A, of the Code of Criminal Procedure for quashing certain criminal proceedings that were being taken against him. The petition was granted on 12th November 1952, and the proceedings were quashed. The State filed a petition for leave to appeal to the Supreme Court under Article 134 (1) (c) of the Constitution of India on 28th May 1953.

Held, that no period of limitation is prescribed for such applications made in criminal cases in the Limitation Act nor have any rules been made by the High Court prescribing any period for the filing of such applications. A belated application should not be allowed and a citizen of this State should not be harassed after the lapse of a long period of time.

Held further, that a certificate of fitness for appeal in criminal matters can be granted only where there has been an infringement of essential principles of justice. An obvious example would be a conviction following a trial,

where it could be seriously contended that there was a refusal to hear the case of the accused or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had not jurisdiction either to try the crime or to pass the sentence.

Mohammad Yunis v. *Tilok Chand* (1), *Mangu Lal* v. *Kandhai Lal* (2), *Amme Raham* v. *Zia Ahmed and others* (3), *Emperor* v. *Kesri Chand* (4), *King Emperor* v. *Ram Narain* (5), *Emperor* v. *Jagan Nath* (6), *In the matter of Khetra Mohan Giri* (7), *Bholanath Missir* v. *Bishan Prasad* (8), and *Muhammad Nawaz* alias *Nazu* v. *The King Emperor* (9), relied on.

Petition under Article 134 clause (c) of the Constitution of India, praying that the case may be certified to be fit for appeal to the Hon'ble Supreme Court of India at New Delhi.

K. S. CHAWLA, Assistant Advocate-General, for petitioner.

H. L. SARIN, for Respondent.

JUDGMENT

KAPUR, J. This is an application for leave to appeal to the Supreme Court under Article 134(1)(c) of the Constitution of India which in the heading of the application filed by the Advocate-General is wrongly described as an application under section 134(c) of the Constitution. Kapur, J.

A preliminary objection has been taken by the respondent that no leave should be given in this case because of the long delay after which the present petition has been filed. The order against

(1) 153 I.C. 1058
(2) I.L.R. 8 All. 475
(3) I.L.R. 13 All. 212
(4) I.L.R. 1945 All. 450
(5) A.I.R. 1926 All. 577
(6) I.L.R. 27 All. 468
(7) I.L.R. 43 Cal. 1029
(8) 152 I.C. 311
(9) I.L.R. (1942) 23 Lah. 36

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which this appeal is sought to be taken was made by this Court on the 12th November 1952. The application which has been filed in this Court is dated the 28th May 1953, i.e. 197 days after the judgment was delivered. In the Limitation Act no period of limitation is prescribed for such applications made in criminal cases nor have any rules been made by this Court prescribing any period for the filing of such applications. But in the Supreme Court Rules of 1950, in Order XXI, rule 1, at page 20 a period of 60 days is prescribed for applications under Article 134(1)(a) and (b) and 30 days under Article 132(1) and 134(1)(c). These rules have since been modified and the period has been curtailed to 30 days in both the cases. This rule was amended on the 25th April 1950. Thus there is no provision in any of the statutes or the rules prescribing a period for an application for the grant of leave to appeal.

But Mr. Sarin submits that stale claims should not be allowed to be brought even in criminal cases. He relies on a passage in *Mohammad Yunis* v. *Tilok Chand* (1), at page 161 where it is stated:—

> "It is to be remembered that public policy requires that there should be speedy decisions of disputes and adjustments of conflicting claims and that stale claims should, as far as possible, be discouraged. It is also of cardinal importance for the progress of a civilized society on healthy lines that title should not be left in doubt and the unsettling of apparently settled facts should not be the order of the day."

Reference may also be made to the statement of the law as given in Rustomji's Law of Limitation, 1938 edition, page 9, where it is stated:—

> "The law is founded on public policy, its aim being to secure the quiet of the

(1) 153 I.C. 1058

> community, to suppress fraud and perjury, to quicken diligence, and to prevent oppression..... The statute is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. These statutes are among the most beneficial to be found in our books. They rest upon sound policy and tend to the peace and welfare of society, and are essential to the security of all men. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable. It has been said by Join Voet, with singular felicity that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal."

Reference may also be made to the observations of Mahmood, J., in *Manqu Lal* v. *Kandhai Lal* (1), and to *Amme Raham* v. *Zia Ahmad* (2). Thus the object of refusing to allow stale claims to be brought into Court is that by this means we "take away all solid grounds of complaint."

Mr. Sarin has then relied on certain judgments where it was held that although there is no period of limitation prescribed, Courts will not entertain applications if they are made after an inordinately unexplained delay. In *Emperor* v. *Kesri Chand* (3), where the Provincial Government had applied for enhancement of the sentence, one of the grounds on which it was dismissed was its belated nature. Iqbal Ahmad, C. J., said at page 457:—

> "Further, this application in revision is a belated application and was filed more than six months after the appellate decision of the Sessions Judge."

(1) I.L.R. 8 All. 475 at p. 483
(2) I.L.R. 13 All. 282 at p. 287
(3) I.L.R. 1945 All. 450

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Daniels, J., in *King-Emperor* v. *Ram Narain* (1), referred to the practice of Allahabad High Court and held:—

> "Although there is no law of limitation applicable to revision applications, it is the settled practice of the Allahabad High Court not to admit them unless they are made within a reasonable time after the order complained of."

The order there was made on the 31st of August and the revision application was filed on the 26th of January of the following year. Similarly in an earlier Allahabad case, *Emperor* v. *Jagan Nath* (2), it was held:—

> "Unexplained delay in applying for revision of an order passed to the prejudice of the applicant is a reason for the High Court, in the exercise of its discretion, declining to interfere."

The Calcutta High Court has also taken the same view in *In the matter of Khetra Mohan Giri* (3), although in that case also the judgment was based on the practice of the High Court. It was argued that there was no provision in the Criminal Procedure Code or the Limitation Act for application under section 439, Criminal Procedure Code, but sixty days' limit had been fixed by analogy to criminal appeals and section 4 of the Limitation Act would apply for the same reason by analogy. This petition was dismissed because there was unexplained delay. The same rule has been followed in the Patna High Court: see *Bholanath Missir* v. *Bishun Prasad* (4). In all these cases established practice seems to have been that if an appeal had to be filed within sixty days a petition for revision could not until special circumstances were shown, be entertained after more than that period

(1) A.I.R. 1926 All. 577
(2) I.L.R. 27 All. 468
(3) I.L.R. 43 Cal. 1029
(4) 152 I.C. 311

On the analogy of these cases Mr. Sarin has advanced a two-fold argument. He submits that if the matter had fallen under Article 134(1)(a) and (b), the State would have had to appeal within a period of sixty days and after the amendment thirty days of the judgment and even in the High Court appeals by the State have to be filed within six months and the application of the State of Punjab in this case had been filed more than six months after the decision of this Court. And the second argument that he has raised in this connection is that in civil appeals the period of limitation prescribed is only ninety days and it cannot be that in the matter of leave to appeal in criminal matters the State can come up at any time without explaining the reason for the delay as they have not done in the present case. Taking the observation of Mahmood, J., founded on Story's Conflict of Laws as discussed in *Mangu Lal* v. *Kandhai Lal* (1), in my view the submissions of learned counsel are well-founded but I shall revert to this matter a little later.

It was then submitted by Mr. Sarin that this case does not fall within the rule laid down by their Lordships of the Privy Council in regard to certificate of fitness in criminal matters. In a case which went from Lahore to the Privy Council *Muhammad Nawaz* alias *Nazu* v. *The King-Emperor* (2), the Lord Chancellor, Viscount Simon, laid down the principles in such cases. His Lordship there said:—

> "Broadly speaking the Judicial Committee will only interfere where there has been an infringement of essential principles of justice. An obvious example would be a conviction following a trial, where it could be seriously contended that there was a refusal to hear the case of the accused or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was

(1) I.L.R. 8 All. 475 at p. 483
(2) I.L.R. (1942) 23 Lah. 36

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shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had no jurisdiction either to try the crime, or to pass the sentence."

This application is made in a matter where in the peculiar circumstances of the case this Court quashed the proceedings under section 561-A of the Criminal Procedure Code. S. P. Jaiswal, the present opposite party, who is the only person against whom the present application is directed, although there were several others against whom prosecution had originally been started, was ordered to be arrested under sections 452 and 147 of the Indian Penal Code. He is the Managing Director of the Karnal Distillery Company and he had stated on oath that the case had been started against him because of the strained relations between him and the District Magistrate of Karnal. The incident out of which that case arose was dated the 11th September 1952. A report was made by one Mehta Mangal Sain at a Police Post but no names were mentioned. Assistant Sub-Inspector Barkat Ram started investigation on the same day and examined certain witnesses on that day as well as on the next when Jaiswal was interrogated. The Head Constable, who was the first person to reach the spot, neither mentioned Jaiswal nor his Manager B. L. Chopra having taken part in pulling down the house which was the subject-matter of the complaint. On the 12th after recording the statements of various witnesses and Jaiswal and others the Assistant Sub-Inspector, who was investigating, was not satisfied with the correctness of the case of the complainant. On the following day there was an attempt at compromise between the complainant and the Manager of the distillery, B. L. Chopra. Up to this stage the investigating officers were not satisfied as to what offence, if any, had been committed.

On the 15th from a letter of the Superintendent of Police, the number and particulars of which are given in the judgment of this Court, it was stated that the offence was of a technical nature and, therefore, the opinion of the Prosecuting Inspector and Public Prosecutor should be obtained and the investigation should be finished one way or the other within a week. After the investigation had been concluded the police was still of the opinion that the complainant was not proved to be in full possession of the house in dispute and that higher authorities should be consulted. This was on the 17th of September.

On the 18th at 10 a.m. the District Magistrate called the Sub-Inspector and at about 12 noon gave verbal orders to the Sub-Inspector to arrest S. P. Jaiswal, the opposite party, and others and present a "challan" to the Court on that very day and "at all costs."

And on the 19th September Jaiswal made an application to this Court for quashing of the proceedings making all kinds of allegations of high-handedness on the part of the District Magistrate and referred to the strained relations between him and the District Magistrate including the attempt to start proceedings as if he were an absconder and cancelling his gun licence, etc. In the judgment of this Court which is reported in *S. P. Jaiswal* v. *The State* (1), it was observed:—

> "The Superintendent of Police on the 15th September, presumably on some report made by Investigation Officer, was of the opinion that the offence was a technical one and that legal advice should be sought. It is incorrect to say, therefore, that the Police had not come to the conclusion that there was no case to go to the Court. It is true that the opinion of the Police is not binding on Courts, but at the stage of investigation it is the statutory duty of the police to make up their mind as to the sufficiency

(1) (1953) 55 P.L.R. 77 at p. 83

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or otherwise of the evidence for the purpose of sending the accused for being tried by a Magistrate or not."

At page 90, it was observed by this Court:—

"I note with regret that the Station House Officer Arjan Das has made a false affidavit when he says that the District Magistrate gave him advice that judicial pronouncement should be obtained in regard to the case. I have already mentioned that the District Magistrate ordered the arrest and prosecution of the accused. Why this Police Officer should tell an untruth is difficult for me to see unless it is to please the District Magistrate. It may be technically true that the Police had not come to the conclusion that no offence had been made out, but it is quite obvious that Barkat Ram did make a report in which it was stated that the complainant was not proved to be in full possession of the house and thereupon the District Superintendent of Police wrote saying that the offence appeared to be a technical one. I should not have expected officials of the State to twist facts and to state them in this Court in a straightforward manner or to keep back important documents which might help the accused."

The District Magistrate had in this case denied in his written statement the allegation made against him by Jaiswal. The written statement that he filed was not on solemn affirmation nor was there any affidavit in support of it, but an affidavit was made by Sub-Inspector Arjan Das which was not believed by this Court nor did this Court accept that the District Magistrate only gave advice. At page 90, it was finally held by this Court:—

"I would not like to say anything more excepting this that it is not a very pleasing chapter in the administration

of Karnal District, and officers of the Government would do well even where they feel strongly in regard to certain alleged offences to proceed in accordance with law. In the present case the authorities have allowed their exuberance and their belief in the guilt of the petitioner and his co-accused to get the better of their discretion and in a free State where a great deal depends upon the judicious use of judicial powers and exercising discretion in accordance with the established judicial precedents it gives the whole administration a bad name if actions taken by Magistrates have the look of malice."

On these findings Mr. Sarin submits that it is not a case which falls within the rule laid down by the Privy Council in *Muhammad Nawaz alias Nazu's case* (1). I agree with this submission and am of the opinion that the circumstances which were proved in this case show that it is not a case which I could certify as a case fit for appeal to their Lordships of the Supreme Court.

On these findings Mr. Sarin reverts to his submission that this belated application should not be allowed to go and a citizen of this State should not be harassed after the lapse of such a long period of time, a contention which I accept.

I would, therefore, dismiss this petition.

CIVIL MISCELLANEOUS

Before Falshaw and Kapur, JJ.

DIN DYAL,—*Petitioner*

versus

UNION OF INDIA AND THE STATE OF PUNJAB,—*Respondents*

Civil Miscellaneous No. 398 of 1952

1953

August 10th.

Code of Civil Procedure (V of 1908)—Section 24—Letters Patent of the Lahore High Court—Clause 9—Case withdrawn from trial court to be tried in its extraordinary jurisdiction by the High Court—Suit dismissed by trial

(1) I.L.R. (~~1924~~ 1942) 23 Lah. 36

Court before the order of withdrawal communicated to it—whether the decision of trial court dismissing the suit is with jurisdiction—Is there any difference if the order of withdrawal is made on application of the parties or is made suo moto.

Held, that the effect of the order of the High Court withdrawing the suit from the court of the Senior Sub-Judge was to take away his jurisdiction from trying that case and if the order was not conveyed to him the order still remains effective and it makes no difference whether the order is made on application of the parties or is made *suo moto* and the decree of the trial court was without jurisdiction.

Petition under section 24 of the Code of Civil Procedure praying that the case be ordered to be transferred to a court of competent jurisdiction outside the district of Karnal. In case this Hon'ble Court considers that it is not a fit case in which the transfer should be ordered from the district, the prayer is that the case may be transferred from the court of S. Sewa Singh, Sub-Judge, 1st Class, to another court of competent jurisdiction.

A. N. GROVER, for Petitioner.

S. M. SIKRI. Advocate-General, for Respondent.

ORDER

Kapur, J.

KAPUR, J. This is a plaintiff's application praying that this Court should proceed with the trial from the stage that it was at on the 11th of May 1953.

The original suit 'Din Dayal *v.* Union of India' was pending in the Court of Mr. Sewa Singh, Subordinate Judge, 1st Class, Karnal, and by my order, dated 29th December 1952, I transferred it to the Court of the Senior Subordinate Judge for trial. Subsequently on the 11th May 1953, I passed the following order withdrawing the case from the Court of the Senior Subordinate Judge to be tried in the extraordinary jurisdiction of this Court:—

> "In my opinion this case is of some importance and I, therefore, order that the original suit Din Dyal *v.* The Union of India and another be withdrawn from the Senior Subordinate Judge's Court and be tried in the Extraordinary Original Jurisdiction of this Court. As

soon as the record is received papers will be submitted to the Hon'ble Chief Justice for its being sent to a learned Single Judge."

Unfortunately due to something that happened in this office, the order was not sent to the trial Court till the 6th of June 1953, and meanwhile on the 18th of May 1953, the suit of the plaintiff was dismissed.

Mr. Amar Nath Grover submits that as soon as the order of this Court withdrawing the case from the file of the Senior Subordinate Judge was passed the Karnal Judge no longer had any jurisdiction to go on with the case and, therefore, any judgment or order passed after the order of this Court, i.e., after the 11th of May 1953, is without jurisdiction. This submission, is, in my opinion, well founded. There are two provisions by which the High Court can withdraw a case pending in a Subordinate Judge's Court to itself. One is section 24 of the Code of Civil Procedure by which the High Court on its own motion without notice to any party may at any stage withdraw any suit, etc., the other is para. 9 of the Letters Patent which provides:—

> "And we do further ordain that the High Court of Judicature at Lahore shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence when the said High Court may think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

In section 24 the word used is 'withdraw' and in para 9 of the Letters Patent the word used is 'remove'. Now both these are strong words and Mr. Grover submits that as soon as an order is passed for withdrawing the case from the Court of a Subordinate Judge or for removing it for being tried

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in the High Court as a Court of extraordinary original jurisdiction the order becomes operative automatically and puts an end to the jurisdiction of the Court where the case is pending.

Counsel relies on a judgment of the Calcutta High Court in *Hukum Chand Boid* v. *Kamalanand Singh* (1), where an order was passed by the High Court ordering the stay of delivery of possession in execution of a decree. Effect of this order was discussed by Sir Asutosh Mookerjee, J., at page 944 where he said:—

> "As was pointed out by Baldwin, J., in delivering the judgment of the Supreme Court of California in *Buffandeau* v. *Edmondson* (2), injunction by an Appellate Court for stay of execution operates as a supersedeas to the execution as soon as it is made. The legal authority to proceed with the execution is withdrawn by the act of a competent Court, and there is no more legal justification for the execution after the order for stay than there would be for execution after the proceedings have been quashed. The learned Judge further added that no doubt could exist that the order would be effectual without any previous notice to the authority carrying on the execution, because the order for stay has direct effect upon the process itself, although if proceedings are taken to punish the person, who has carried on execution after it had been stayed, it is necessary to show that he had notice of the Order, because, it is only after such notice that his act would be in defiance of law and in contempt of the Court. The rule is laid down in similar terms in Spelling on Injunctions, Vol. I, sections 173—178. The learned author points out that the effect of an injunction upon an execution sale is to stop

(1) I.L.R. 33 Cal. 927
(2) (1851) 17 California 436

the proceedings, where they are, but the injunction does not operate to kill the execution; the sale is arrested by the injunction, but the seizure is not released and the property remains in legal custody pending the injunction, and, if the injunction is subsequently resolved, the parties are restored to the same position, which they occupied before it was granted, *Duckett* v. *Dalrymple* (1), *Lamorer* v. *Cox* (2). The same learned author further points out (Vol. 11, section 1122) that if it is sought, however, to subject a party to punishment in contempt proceedings, it is necessary that it be shown that he has had notice of the contents of the restraining order or writ of injunction, at least to the extent of imparting to him the knowledge that the acts imputed to him were prohibited therein. But that an order takes effect, generally speaking from the time it is made, is amply shown by the cases of *Jones* v. *Roberts* (3), *Aberdeen* v. *Watkinson* (4); *Verlander* v. *Codd* (5), and *Exp. Hookey* (6), see also the observations of Lord Esher, M. R. in *Holtby* v. *Hodgson* (7),"

He was of the opinion that the order takes effect from the time it is made.

This view of the Calcutta High Court was adopted by a Full Bench of the Lahore High Court in *Karam Ali* v. *Raja* (8), where an order was made under Order XLI, Rule 5, staying the execution of a decree and it was held that it operates from the time that the order is made and not from the time that it is communicated. In paragraph 17 the learned Chief Justice has discussed the effect

(1) (1845) 1 Rich. 143
(2) (1880) 32 La. An. 246
(3) (1825) McCle and Yo. 567
(4) (1833) 6 Sim. 146
(5) (1822) 1 Sim. and St. 94
(6) (1862) 4 DeG.F. and J. 456
(7) (1889) 24 Q.B.D. 103, 107
(8) A.I.R. 1949 Lah. 108

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of an order passed by a Court and has approved of the opinion of Mookerjee, J. He has also given the instance of a notification withdrawing the powers of a Second Class Magistrate of recording confessions which in my opinion is very apt. If a Magistrate's powers are duly withdrawn, merely because the fact does not come to the notice of the Magistrate, he cannot make an order which would be beyond his jurisdiction. I would here like to quote from the judgment of Munir, C. J.:—

> "If a sale of property is stayed, a sale during the stay is void,—(*vide* 3 Corpus Juris 1273 and 23 Corpus Juris 533). The American case *Buffandeau* v. *Edmondson* (1), relied on by Mookerjee, J., in *Hukum Chand Boid* v. *Kamalanand Singh* (2), was a case from California where the rule is that the mere perfecting (preferring) of an appeal does not operate as a supersedeas unless so ordered by the appellate Court."

These observations fully apply to the facts of this case and I respectfully adopt them.

The learned Advocate-General submitted that as this order was passed *suo motu* there was no publication of it and it could not become effective before it was communicated and he has relied on an analogy of what was decided by the Supreme Court in *Harla* v. *The State of Rajasthan* (3), where it was held in regard to an order of Jaipur Darbar that it was ineffective because it was not promulgated or published in the Gazette, and he particularly relies upon the observations at page 469, where Bose, J., said:—

> "for, it is inconceivable that a representative of His Britannic Majesty could have contemplated the creation of a body which could wield powers so abhorrent to the fundamental principles of natural justice which all freedom-loving peoples share."

(1) (1851) 17 California 436
(2) 33 Cal. 927 (3 C.L.J. 67)
(3) A.I.R. 1951 S.C. 467

But I do not think this case has any application to the facts of the present case. An order was made by this Court and was effectuated as soon as it was made which is quite clear from rule 3 of Chapter 4-G of the 5th Volume of the Rules and Orders of this Court. As a matter of fact a judgment takes effect as soon as it is announced. See Volume 19 of Halsbury's Laws of England, Second Edition, page 245. It is not necessary to refer to the other cases which were cited by the Advocate-General because in my opinion they do not give much assistance.

In my opinion the effect of the order of this Court was to take away the jurisdiction of the Senior Subordinate Judge from trying that case and if the order was not conveyed to that learned Judge the order still remains effective and it makes no difference whether the order is made on the application of the parties or is made *suo motu*. The result is that the decree of the trial Court was without jurisdiction and I, therefore, direct that the record of the case may be sent for and be put for decision before a Division Bench of this Court. I also direct that when the record is received the parties' Advocates should be informed and in the manner provided for the printing of first appeals all documents and record be printed. The papers will be placed before the learned Chief Justice for constituting a Division Bench.

FALSHAW, J.—I agree.