

PRIVY COUNCIL

Bhagwan Das

Vs.

The King

P.C.A No. 63 of 1947

(Lord Oaksey, Sir Madhavan Nair, Sir John Beaumont and Sir Malcolm Macnaghten
JJ.)

06.04.1949

JUDGMENT

LORD OAKSEY J.

1. Special leave to appeal was granted in this case without their Lordships being acquainted with the necessary documents, which were no doubt not available. Leave was granted limited to the question of whether or not the proceedings were valid having regard to the fact that the appeal was signed and filed in the High Court by the Advocate- General and not by the Public Prosecutor.
2. The relevant documents have now been produced before their Lordships, and the facts are as follows :
3. By the Government of India Act, 1935, it was provided by Section 55, that every Province was to have an Advocate-General. On 1st April 1937, the Government of India Act, came into force. On 3rd April 1937, a notification in the Gazette provided that in exercise of the powers conferred on him by section 492, Criminal Procedure Code 1898, the Governor of the Punjab is pleased to appoint the Advocate-General of the Punjab to be a Public Prosecutor generally for the Punjab. On 5th April 1937, two days later, Mr. Ram Lall was appointed Advocate-General. On 9th February 1938, he was appointed a Judge. On 11th February 1938, Mr. Sleem, the officer who filed the appeal to the High Court in these proceedings, was appointed Advocate-General.
4. In their Lordships' view, by his appointment as Advocate-General, he became a Public Prosecutor under the provisions of the notification in the Gazette of 3rd April 1937.

5. In 1940 Mr. Basant Kishen was appointed an assistant to Mr. Sleem as Advocate-General, and by a notification in the Gazette on 11th November 1940, he was appointed a Public Prosecutor.

6. Those are the relevant documents. In those circumstances, it appears clear to their Lordships that Mr. Sleem, the Advocate-General, was a Public Prosecutor and was entitled to file this appeal.

7. It was submitted on behalf of the appellant that under section 492, Criminal Procedure Code sub-section (1), which provides that "The Provincial Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors," the Governor of the Punjab had no power to appoint the Advocate-General to be a Public Prosecutor under that section because the Governor was not the Provincial Government for that purpose.

8. The attention of counsel for the appellant was drawn to Section 49, Government of India Act, 1935. He submitted that it was no part of the executive authority of a Province to appoint Public Prosecutors within the meaning of Section 492 Criminal Procedure Code and that, therefore, the Governor had no power under the provisions of Section 49 Government of India Act, to make this appointment.

9. Their Lordships are unable to accept this argument. It appears to them that it was a part of the executive authority of the Province to make appointments to the post of Public Prosecutor and that, the executive authority of the Province being vested by Section 49, Government of India Act, in the Governor, he was entitled to appoint the Advocate-General a Public Prosecutor.

10. For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.