ALLAHABAD HIGH COURT

Sukhdeo Baiswar

Vs

Brij Bhushan Misra

Criminal Misc. Case No. 11 of 1950

(Dayal and Desai, JJ.)

21.02.1951

JUDGMENT

Desai, J.

1. On an appellant by Sukhdeo, applicant , notices were issued to the opposite-parties calling upon them to show cause why they should not be punished for contempt of the Ct. of Panchayati Adalat, Rampur Athiri. The opposite parties have appeared and we have heard their defence.

2. On 28 and 29.3.1950, two complaints were filed in the Panchayati Adalat of Rampur Athiri against the applicant on the allegations that several tenants had paid rent to the applicant , that he had not granted receipts to them saying that he was not dishonest and that he was in the habit of not issuing receipts. The Panchayati Adalat took cognisance of the complaints and summoned the applicant for trial under section 290, Indian Penal Code. In the complaints no law was quoted under which the applicant had rendered himself liable to prosecution and apparently the Panchayati Adalat thought that the allegations in them made out an offence punishable under section 290, Indian Penal Code. There was no quorum on 9.4.1950 and the cases were adjourned to 23.4.1950. The opposite-party No. 3, Kedar Nath is the Sarpanch of the Panchayati Adalat. On 12.4.1950, an article was published in a weekly paper known as Gramwasi, the gist of it is as follows :

> "Kedar Nath, Sarpanch of Rampur Athiri has informed us that Sukhdeo has told all tenants who had become Bhumidars that he would issue receipts to them only on their paying full rent to him. He has not issued receipts to those who paid only part of the rent and they are being pressed to pay the full rent. They are also being threatened that if they do not pay the full rent, they would be ejected from the land. In addition, Zamindars have stopped the tenants from taking wood; so the latter are finding great difficulty in constructing their houses. The district authorities should take immediate steps to remove this trouble of the Bhumidhars."

3. The Panehayati Adalat held proceedings in the cases on 23.4.1950 and 10.5.1950 and convicted the applicant under section 290, Indian Penal Code on 13.5.1950. The applicant filed

an appellant in revision against the judgment of the Panchayati Adalat and it is pending in the Ct. of the Sub-divisional Mag.

4. The opposite party No. 1 is the editor of the Gramwasi. The opposite party No. 2 was said to be its joint editor, but, in fact, is the sub-editor. The opposite party No. 1 is also a member of the Provincial Congress Committee and the opposite party No. 2 is the President of the District Congress Committee and member of the All India Congress Committee.

5. The case for the applicant is that the Gramwasi has a wide circulation in the district of Mirzapur including village Rampur Athiri and that the article contains falsehood and was calculated to incite prejudice against him so that he might not have a fair hearing in the Panchayati Adalat and in the Ct. of the Sub-divisional Mag. in revision He admitted that he had not granted receipts to his tenant and pleaded that printed receipt books, which are sold in the treasury, were out of stock and the tenants refused to accept manuscript receipts.

6. Opposite party No. 3 said in his reply that it was admitted by the applicant that he had not granted receipts, that the rest of the contents of the article did not refer to him in particular, that he had no intention of prejudicing the fair trial of the cases and that in case he was guilty of contempt he offered an "unqualified apology". The opposite parties 1 and 2 pleaded that they had no knowledge of any case pending before the Panchayati Adalat and that the article did not refer to any case; they also offered unqualified apology if they had unconsciously committed the offence of contempt of Ct.

7. Under Section 2, Contempt of Courts Act, this Ct. has the same jurisdiction, powers and authority "in respect of contempts of Cts. subordinate" to it as it has, and exercises, in respect of contempt of itself. The only condition is that where a contempt is an offence punishable under Penal Code, this Ct. cannot take cognisance of the contempt.

8. Panchayati Adalats have been constituted in this province under the U. P. Panchayat Raj Act (Act No. XXVI [26] of 1947). They have been given exclusive jurisdiction to try certain criminal cases, civil suits and cases under the Land Revenue Act; vide Sections 50 (3), 52, 64 and 70. They have been given the power under section 63 to bind down persons to keep the peace and to impose fines not exceeding Rs. 100. They have to maintain records, and have to follow certain rules of limitation. They have the power to issue summonses to witnesses and to punish those who disobey them. Section 83 permits them to receive such evidence in a suit, case or proceeding as the parties may adduce and empowers them to call for such further evidence as they may consider necessary. It is their duty to ascertain the facts of every suit, case or proceeding by every lawful means in their power and thereafter to make such decree or order as may seem to them just and legal. They have to follow the procedure prescribed by or under the Act and not that of the Civil or Criminal Procedure Code. They are not bound by the Indian Evidence Act. If there has been a miscarriage of justice or there is an apprehension of miscarriage of justice in any case, suit or proceeding pending before a Panchayati Adalat, the Sub-divisional Magistrate, the Munsif or the Sub-Divisional Officer respectively, is empowered by Section 85 to cancel the jurisdiction of the Panchayati Adalat with regard to the suit, case or proceeding, or quash any decree or order passed by it. Subject to this provision a decree or order of a Panchayati Adalat is final and not to be questioned in any Ct. see Section 85 (5). It is clear that Panchayati Adalats, as the name itself indicates, are "Courts" within the meaning of the

Contempt of Cts. Act. It was not contended before us that they are not "Courts."

9. The only contempt that may be made out against the opposite parties is that of interfering with or prejudicing parties litigant during litigation or of obstructing or interfering with the due course of justice. There is no question of other kinds of contempt; the Panchayati Adalat has not been scandalised, nor has it been disobeyed.

10. The publication of the article would certainly interfere with the due course of justice and prejudice, the applicant in the cases. The article made no reference to the cases pending and did not purport to be a record of the proceedings held in the Panchayati Adalat. As a matter of fact, nothing had been done in the cases before the publication. The questions whether the applicant had refused to grant receipts to his tenants and whether he was justified in doing so were under investigation before the Panchayati Adalat, but the article took them to be established facts and thus poisoned the atmosphere in which the trial was to take place. So also the reference to the demand for unpaid balance of rent and the threat to eject the tenants if they did not pay the balance. All these matters related to the applicant The allegation about the stopping of tenants from taking wood is made against all the zamindars, including the applicant Even if this matter is ignored on account of its being in relation to the zamindars in general and not to the applicant in particular, the publication of the other matters would interfere with the proper course of justice. The reason why the publication of articles like the one with which we have to deal is treated as a contempt of Ct. is : "because their tendency and sometimes their object is to deprive the Ct. of the power of doing that which is the end for which it exists namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the Ct. which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned. It is difficult to conceive an after description of such conduct than is conveyed by the expression 'contempt of Court'". (See Wills, J., in *Rex v. Parke*[1]*,*

Wills, J., stated in *Rex v. Davies*[2]*,*

> "Courts or the Administration of justice exist for the benefit of the people, that for the benefit of the people, their independence must be protected from unauthorised interference, and that the law provides effective means by which this end can be secured."

In Parke's case he was found guilty of contempt of Ct. for publishing in his paper 'The Star' statements with respect to the past life of Dougal who was at that time under trial for an offence of forgery. The statements

> "were unquestionably calculated to produce the impression that, apart from the charges then under enquiry, he was a man of bad and desolute character."

Davies also published in his paper certain articles reflecting upon the character and antecedents of Henrietta Hunter, who was being prosecuted for abandonment. They were "calculated to give an exceedingly unfavourable impression of the prisoner." Both the publications were held to tend to poison the stream of justice. Another case in which the publication of certain matter in a newspaper was found to amount to contempt of Ct. is the *King v. Editor of the Daily Mail : Ex parte Farnsworth*[3]*,* Farnsworth was tried before a Ct. martial on charges of desertion and loss of kit and was found guilty and sentenced. The findings and sentence of the Ct. martial were subject

to confirmation, but before the confirmation the Daily Mail published the article purporting to give some account of the proceedings at the Ct. martial. It contained some mis-statements of fact which conveyed a false impression as to the character of Farnsworth and which

> "might easily tend to prejudice his case and would be calculated seriously to thwart and interfere with the due administration of justice."

Another similar case is the *King v. Editor, Printers and Publishers of the Daily Herald, Ex parte the Bishop of Norwich*[4], in which during the investigation of charges brought by the Bishop of Norwich against the Rector of Stiffley under the Clergy Discipline Act, the Daily Herald published articles, one supposed to contain statements made by a woman with whom the rector was alleged to be on intimate terms, and the others containing statements by the rector himself about the charges against him. The publication was found to be contemptuous. The publication under consideration is similar to those publications.

11. I do not think that the fact that the Panchayati Adalat had the power to receive any evidence which it thought necessary and that it was its duty to ascertain facts of the cases by every lawful means in its power, makes, the publication no contempt. The Panchayati Adalat could ascertain the facts by lawful means. It would not be lawful to ascertain them from an article published in a paper. It could not convict a man simply because somebody wrote an article in a paper that he had committed the offence with which he was charged. Reading an article on a certain matter in a newspaper does not amount to ascertaining the facts of the matter. Moreover, administration of justice is prejudiced not only by poisoning the mind of the Ct. but also by poisoning the atmosphere in which the trial is held, on account of which persons may not readily come forth to give true evidence. In the present case there was likelihood of the danger that nobody would depose in favour of the applicant

12. If a landlord habitually does not grant receipts to a tenant he is liable to be punished under section 239, of the United Provinces Tenancy Act, 1939. An offence punishable under section 239, U.P.T. Act is not made cognizable by a Panchayati Adalat. It is not mentioned among the offences which are within its jurisdiction and we were not referred to any Govt. notfn. which might have conferred jurisdiction upon a Panchayati Adalat to try such a case. The Panchayati Adalat itself did not purport to try the applicant under section 239, U.P. Tenancy Act, and has not convicted him under it. It assumed the jurisdiction over the cases on the supposition that the offence committed by the applicant is one punishable under section 290 Indian Penal Code. The fact, however, is that it consideration that the applicant was guilty under section 290, Indian Penal Code and proceeded to try him for that offence. Once it assumed jurisdiction, nobody could prejudice mankind against the applicant before the cause was heard. It was likely that ultimately the Panchayat would hold that no offence under section 290, Indian Penal Code was made out and that the only offence made out was that punishable under section 239, U.P. Tenancy Act and quash the proceedings or return the complaints to the complainants to present them before a competent Ct. An offence of contempt by prejudicing the mankind against the persons before the cause is heard can be committed not only when the cause is actually being heard but also just before it is taken to a Ct. provided that its being taken to the Ct. is imminent. In the present case even if it be said that the proceedings before the Panchayati Adalat were without jurisdiction and hence void and that the particular kind of contempt could not be committed against the Ct. of the Panchayati Adalat, the contempt would certainly be committed

of the Ct. which would ultimately have jurisdiction over the complaints and to which they would be transferred by the Panchayati Adalat itself or presented by the complainants on receiving them back from Panchayati Adalat. The fact that the Panchayati Adalat erroneously took cognisance of the complaints will not prevent its being contemned in this particular manner.

13. This Ct. has superintendence over the Panchayati Adalat. But it can punish a contempt of it only if it is subordinate to this Ct. within the meaning of Section 2, Contempt of Courts Act. In *State v. Brahma Prakash*[5], a FB of this Ct. has expressed its view that the subordination contemplated by Section 2 of the Act is judicial subordination. The F.B. had to deal with contempt of the Cts. of a Judicial Mag. and a Revenue Officer. Judgments of Judicial Mags. and Revenue Officers come before this Ct. in appeal and revision and consequently the Ct. of a Judicial Mag. and a Revenue Officer were held to be subordinate to this Ct. within the meaning of Section 2. It is not possible to say the same thing in respect of a Panchayati Adalat because its judgments and orders would never come before this Ct. in appeal or revision As I said earlier, no appeal is provided from a decision of a Panchayati Adalat at all. The only remedy of a person aggrieved by it is to apply in revision to the Sub-divisional Mag., the Munsif or the Sub-divisional Officer as the case may be and he has no further or additional remedy. Learned counsel for the applicant reld. upon Article 227, Constitution Ind. as making a Panchayati Adalat judicially subordinate to this Ct. Under the article "Every H.C. shall have superintendence over all Cts. and tribunals"; without prejudice to the generality of that provision, the H. C. may call for returns, make and issue general rules, prescribe forms and settle tables of fees. We have to see as to what is the meaning of "superintendence". The word has been borrowed from the English Law and for the proper understanding of its meaning one would have to go through the history of English Law.

14. Disobedience to the King's writ was a contempt of the King and from an early period the offender could be attached summarily. The power to imprison and fine those guilty of contempt seems to have been originally used, firstly, to punish direct disobedience to the process of the Ct. and secondly, to punish all kinds of irregularities and misfeasances of officials of the Ct. Later Cts. started punishing others for contempts in their presence, on the theory that

> "the offence being done in the face of the Ct. the very view of the Ct. is a conviction in law." See Holdsworth's "A History of English Law", Edn. 5, Vol. 3 pp. 391 and 392.

The King's council and later the Star Chamber possessed for long a jurisdiction over contempts committed against any Ct. On the abolition of the Star Chamber and the jurisdiction of the Council in 1641 the King's Bench assumed that jurisdiction :

> "It was then able the more easily to do so because it could be represented as a supplement to and a corollary of its powers to correct 'misdemeanours extra-judicial' committed by or occurring in all inferior Cts. and as a consequence of the fact that it had inherited from the Star Chamber the position of custos morum of all the subjects of the realm." See Holdsworth's History of English Law, *Vol. III, p. 3939, citing R. v. Davies* and *R. v. Daily Mail,*

Wills, J., observed in *R. v. Parke at p. 442*;

> "This Ct. exercises a vigilant watch over the proceedings of inferior Cts., and successfully prevents them from usurping powers which they do not possess, or otherwise acting contrary to law. It would seem almost a natural corollary that it should possess correlative powers of guarding them against unlawful attacks and interferences with their independence on the part of others".

Powers grew and Cts. started punishing contempt summarily without having recourse to an indictment and to a verdict of the jury. This development was partly due to statutes which gave the Cts. in certain cases power to inflict punishment after examination without a trial by jury and partly to the example of the Council and of the Star Chamber.

15. The superior Cts. of Common law were the three Cts. of the Queen's Bench, Common Pleas and Exchequer which sat at Westminster. They were called "superior" in contradistinction to inferior Cts. which, among other incidents, had only a limited and local jurisdiction, could not grant a new trial on merits and were liable to have their proceedings removed into, and reviewed by, the superior Cts. (See Blackstone's Commentaries by Warren, p. 514.) The Ct. of Queen's Bench was the S.C. of Common law in the kingdom exercising a high and transcendent authority,

> "keeping all inferior jurisdictions within their due bounds and removing their proceeding where it may be deemed necessary, to be determined by itself, or prohibiting their progress below." (Warren, p. 522).

It also superintended all civil corporations, commanded Mags. and others to do what their duty required in every case where there was no specific remedy and protected the liberty of the subject by speedy and summary interposition. Wills, J., observed at p. 38 in *Rex v. Davies* that very great trust was reposed in the Ct. of King's Bench in respect of its control and superintendence of all inferior Cts. and that it was in a special manner the guardian and protector of public justice through out the kingdom. He repeated at p. 43 that it was its peculiar function to exercise superintendence over the inferior Cts. and confine them to their proper duties. In the words of Cockburn, C.J., in *The Queen v. Lefroy*[6], the superior Cts

> "were originally carved out of the one S.C., and are all divisions of the aula Regis, where it is said the King in person dispensed justice, and their power of committing for contempt was an emanation of the royal authority, for any contempt of Ct. would be a contempt of the sovereign."

16. The distinction between Cts. of record and Cts. that are not of record goes back to very early times when the King asserted that his own word as to all that had taken place in his presence was incontestable. He communicated this privilege to his own special Ct.; his testimony as to all that had been before it was conclusive. Thus the formal records of the King's Ct. cannot be disputed and herein it differs from inferior Cts. which keep no such formal records. It is the infallibility of its formal record which is the earliest mark of a Ct. of record. Gradually the Cts. of record developed other characteristics. The method of questioning decisions was a writ of error, while the method of questioning decisions of Cts. not of record was a writ of false judgment. It alone could fine and imprison. (See Holdworth's History of English Law, vol. 5, pp. 157-158). All Cts.

of record have the power to fine and imprison for any contempt committed in the face of the Ct., because the power is necessary for the due administration of justice to prevent the Ct. being interrupted. But it is quite another thing to say that every inferior Ct. of record shall have the power to fine and imprison for contempt of Ct. when that contempt is committed out of Ct. Only a superior Ct. of record has this power of punishing contempt committed out of Ct. That is why in *The Queen v. Lefroy*, the county Ct. was held to have no power to punish contempt committed ex facie :

> "The present King's Bench Division of the H.C. stands in the place of the three ancient Superior Cts. of Common Law, and besides representing the powers and exercising the authority of the Cts. of Pleas and Exchequer inherits all the jurisdiction and powers of the Ct. of King's Bench." (Wills, J., in *Rex v. Davies at p. 37*.)

The King's Bench Division has the power to punish contempt of inferior Cts. see the cases of Davies, Parke, the Daily Mail and the Daily Herald. I have already mentioned the two-fold basis of this jurisdiction.

18. A brief account and history of Cts. in India is given by G.N. Das, J., in *Jahnabi Prosad v. Basudeo Paul*[7], The East India Co. established a Mayor's Ct. in 1726 and it administered English Law. When the Co. obtained a grant of the Dewany of the then provinces of Bengal, Bihar and Orissa in 1765 it took over the administration of the Civil and Revenue justice in the territory and established provincial Cts. in 1772. Appeals from these Cts. lay to the Sudder Dewany Adalat consisting of the Governor-General and members of his Council. In 1773, a S.C. as a Ct. of Record was established in supersession of the Mayor's Ct. After the mutiny of 1857, the Govt. of India Act (21 and 22 Vict. Cap. 106) was enacted. All the Co.'s powers vested in the British Crown. The first Civil Procedure Code was enacted in 1859. In 1861 the Charter Act (24 and 25 Vict. Cap. 104) was enacted; it established H.Cs. which received their Letters Patent. In 1862 the H.Cs. superseded the old Sudder Dewany, Nizamat Adalat and S.Cs. at Bombay, Madras and Calcutta. Up to 1861 the Cts. had no statutory power of revision over inferior Cts. Under Section 9, Charter Act, the H.Cs. were invested with jurisdiction and all powers and authority which were possessed by the abolished Cts. Section 15 laid down that each of the three H.Cs. established under the Act had "superintendence over all Cts. which may be subject to its appellate jurisdiction" and had power to call for returns and direct the transfer of any suit or appeal from one Ct. to another. The Charter Act was repealed by the Govt. of India Act 1915. Section 106 of it laid down that the H. Cs. were established as Cts. of record, and would have jurisdiction and powers and authority in accordance with Letters Patent and subject to the provisions of the Letters Patent would have all powers and authority which were vested in them at the commencement of the Act. Section 107 laid down that each of the H. Cs. had superintendence over all Cts. for the time being subject to its appellate jurisdiction. Then came the Govt. of India Act, 1935. Section 224 of it provided that every H.C. would have superintendence over all Cts. for the time being subject to its appellate jurisdiction, but made it clear that no H.C. would have any jurisdiction to question any judgment of any inferior Ct. which was not otherwise subject to appeal or revision. This restriction on the H.Cs.' power of superintendence did not exist in the previous Govt. of India Acts and does not exist in the present Constitution. The constitution was in force when the contempt was committed. Article 227 reads as follows :

> (1) "Every H. C. shall have superintendence over all Cts. and tribunals . . . ."

(2) Without prejudice to the generality of the foregoing provision, the H.C. may (a) call for returns from such Cts.;

* * *

(3) The H.C. may also settle tables of fees ....

(4) Nothing in this article shall be deemed to confer on a H.C. powers of superintendence over any Ct. or tribunal .... relating to the armed forces."

19. It would be seen that up to 1915, a H.C. had all the powers which were exercised by the S.C. and the Sadar Diwani and Nizamat Adalats, and also had superintendence over all Cts. subject to its appellate jurisdiction. In exercise of these powers, a H.C. could set aside an inferior Ct.'s order that was ultra vires or without jurisdiction or could compel it to do its duty and exercise jurisdiction where it had failed to do so; see *Anand Chand v. Carr Stephen*[8], *Tej Ram v. Harsukh*[9], *Girdhari Singh v. Hurdeo Narain*[10], *Mohammad Sulaiman Khan v. Fatima*[11], *Shiva Nathaji v. Joma Kashi Nath*[12], FB., *Abdullah v. Salaru*[13], and *Nilmoney Singh Deo v. Tara Nath*[14], In Anand Chand Bhuttacharjee's case, the H.C. of Calcutta, exercising its power of superintendence, set aside a District Mag.'s order ostensibly passed under section 144, Criminal Procedure Code as ultra vires. In Tej Ram's case it was pointed out that the Sadar Diwani Adalat had no power to exercise judicial functions in any case in which its right of interference was not declared by any law and that no power of revision was conferred even by the Letters Patent; it was consequently held that a H.C. had no revisional power to interfere with or set aside judicial proceedings of a subordinate Ct. and that Section 15, Charter Act, conferred administrative authority and not judicial powers. But it was made clear that a H.C. was competent in the exercise of its power of superintendence to direct a subordinate Ct. to do its duty or to abstain from taking action in matters of which it had no cognisance, though it could not interfere and set right orders on the ground that they proceeded on an error of law or fact. This case was relied upon, though not without some criticism, in Mohammad Sulaiman Khan's case. Edge, C.J., did not limit the power of a H.C. to cases in which a subordinate Ct. had declined to hear or determine a suit or appellant within its jurisdiction and preferred not to use the words "administrative authority" or "judicial superintendence." Straight, J., was of the opinion that the word "superintendence" contemplated and included powers of a judicial or quasi-judicial character apart from those conferred by Section 622, Civil Procedure Code; at the same time he consideration that Section 622 might be accepted as enacting the extent to which the H.C. should ordinarily interfere with a subordinate Ct.'s findings. In Girdhari Singh's case the Judicial Committee upheld the issue by a H.C. of a writ of mandamus to a subordinate Ct. to do what it ought to have done (namely, to confirm an auction sale). The H.C. of Bombay discussed the superintending jurisdiction of a H.C. in detail in Shiv Nathaji's case. The learned Judges observed at p. 371 :

"The visitatorial or superintending powers of a S.C. is so necessary, and almost indispensable in a statute withdrawing cases under the statute from its control. When such a statute has been made a mere pretext, or has been wholly misapplied, the case should be treated as one not really arising under the statute, but on an evasion or perversion of the statute, and as such, subject to the general control of the Ct. by which a rational appellant is to be secured to both the positive and the negative provisions of the law."

They pointed out that the superintending jurisdiction was established in a manner analogous to that of the Queen's Bench, that the H.C.'s interference was limited to "grave and patent error not otherwise to be remedied", and that the superintending function was to compel the exercise of judicial authority on the subject by the elements composing it, and by reference to the prescribed, or intended, external conditions; and to exact obedience to the law of procedure in gathering materials for adjudication, and in giving effect to them. They referred to the exercise by the Queens Bench of its superintending and visitatorial jurisdiction through the issue of writs of certiorari (to withdraw to itself the proceedings in which some illegality or irregularity requires its interference to prevent a defeat of justice), mandamus (to enforce the use of powers improperly declined), and prohibition (to check an assumption or excess of jurisdiction). In ***Abdullah v. Salaru***, Knox and Aikman, JJ., said that the power of superintendence was different from that of appeal or revision and was exercised regardless of statutory provisions re (sic) appeal or revision as a third kind of interference, that it was derived from English Law which did not recognise any revisional power and conferred upon the King's Bench the power of superintendence to correct judgments of lower Cts. Their Lordships of the Judicial Committee decided in the case of Nilmoney Singh Deo that an unauthorised assumption of jurisdiction by a subordinate Ct. could be revised by the H.C. under section 15 of the Charter Act. It is clear from these authorities that the power of superintendence was not merely administrative and included the power to interfere with judicial orders of subordinate Cts. though only in a limited manner, that is, only to check the assumption, or excess, of jurisdiction or to compel the exercise of jurisdiction wrongfully declined, and not to substitute own judgment, whether on a question of fact or on a question of law, in place of the subordinate Ct's.

20. The Govt. of India Act of 1915 made no change in the powers of a H.C.; it recognised its power of superintendence over all Cts. subject to its appellate jurisdiction without any restriction. *Sundar Nath v. Emperor*[15], *Vedappan Servai v. Perianan Servai*[16], *Piggot v. Ali Mohammad*[17], *Emperor v. Balkrishna Govind*[18], *Chaturbhuj v. Emperor*[19], *Balkrishna Hari v. Emperor*[20], and *Firm Ganesh Das Shankar Lal v. Firm Asa Anand Radhe Shyam*[21], decided that the power of superintendence could be used to set aside an order passed without jurisdiction or in excess of jurisdiction or to compel the subordinate Ct. to do its duty. Section 435 (1), Criminal Procedure Code absolutely prohibits a H.C.'s sending for the record in a proceeding under chap. XII, but Walsh, J., observed in Sundar Nath's case, at p. 190 that the H.C. could interfere with a Mag.'s order in a proceeding under Chap. XII, if it was totally without legal foundation or legislative authority or if the provisions of the Chapter had not been complied with. In Balkrishna Govind Kulkurni's case, Macleod, C.J., pointed out at p. 612 that the H.C. had responsibility for the administration of justice not only by itself but also by all inferior Cts. and that it was its duty to see that they did not exceed their powers. In Piggot's case the H.C. of Calcutta, in exercise of the power of superinterdence, issued a consequential direction in a case under section 145, Criminal Procedure Code. This Ct. revised a subordinate Ct.'s order passed under section 36 of the Legal Practitioners' Act in *Chaturbhuj v. E.* According to the Special Bench, which decided the case of Balkrishna Hari Phansalker, the power of superintendence included that of superintendence not only on the administrative but also on the judicial side. The Special Bench went to the length of saying that under that power of superintendence a H.C. could correct any error in a judgment. In the case of Firm Ganesh Das Shankar Lal, the H.C. of Lahore set aside an interlocutory order on the ground of its causing grave and irreparable injustice. Other cases which decided that the power of superintendence could be used to rectify an error which was so manifest as to amount to injustice are *Venkatarangabushanam, v. Ramaswami*[22], *Mst. Maharoop Kuer v. Mahabir*

Singh[23]*, Mehdunnissa Begum v. Sewak Ram*[24]*,* and *In re Kadhori*[25]*,* Wort, J., in exercise of his power of superintendence, granted temporary injunction which was refused by a Munsif in the case of Mt. Maharoop Kuer. The relevant observation, at p. 164, in the case of Mehdunnissa Begum seems to be obiter dictum. In Kadhori's case, Walsh, J., exercised his power of superintendence and set aside, what he termed "a perfectly childish" order of a Munsif issuing notice to a litigant to show cause why he should not be committed for contempt of his Ct. by using objectionable language in an appellant for restoration of a suit. In *Adya Saran Singh v. Jagannath, 46 All 323*, a Dist. J. returned a memorandum of appeal on the ground that the appeal lay not in his Ct. but in that of the Comr.; the Tenancy Act provided no appeal from such an order and this Ct., though it reld. on *Mohammad Sulaiman Khan v. Fatima*, refused to interfere with it in exercise of its power of superintendence. With great respect to the learned Judge, I think that *Mohammad Sulaiman Khan v. Fatima*, did not prevent his directing the Dist. J. to entertain and hear the appeal, if he thought that he had jurisdiction which he had declined. Of course a H.C., in exercise of its power of superintendence, cannot correct a judicial order on the ground of a mistake even of law, which does not go to the root of the jurisdiction, but it does not mean that it cannot interfere with any judicial order at all. An order assuming jurisdiction where none exists or declining jurisdiction where it does exist, is also a judicial order and can be revised by a H.C. under its superintending power. I find that whatever power of superintendence a H.C. had up to 1915 continued up to 1935.

21. The Govt. of India Act of 1935 undoubtedly effected a change in the power of superintendence by providing that it could not question an inferior Ct.'s judgment that was not otherwise subject to appeal or revision That explains why one comes across no case after 1935 deciding that a H.C. can prohibit the assumption, or excess, of jurisdiction, or direct the exercise of jurisdiction, under its superintending power. *Pashupati Bharti v. Secretary of State*[26]*,* contains an authoritative interpretation of Section 224, Govt. of India Act. A H.C. refused to grant a certificate of fitness of appeal and the aggrieved party applied to the F.C. to revise the H.C.'s order. The F.C. rejected the appellant saying that there was no provision for such revn.; when its inherent powers were invoked, it replied :

> "We know of no authority for the proposition that a Ct. by the exercise of its inherent powers can extend its appellate jurisdiction or increase its revisional authority over other Cts. Nor is any support for the theory of an inherent power to be found in the analogy of the revisional and supervisory jurisdiction of the H.Cs. in British India. That jurisdiction is entirely a creature of statute, e. g. Section 234 of the Act of 1935 and Section 115, Civil Procedure Code. Outside the statutory provisions no H.C. has any inherent powers of revision over subordinate Cts. within its jurisdiction, such for example as the Ct. of King's Bench in England has for centuries exercised over Cts. inferior to itself; and if there have been during recent years tentative efforts on the part of one or two H.Cs. to assert such powers, they have now been decisively negatived by Sub-Section 2 of Section 224 of the Act of 1935."

In *Bhagaban Dayal v. Chandulal*[27]*,* it was laid down that Section 224 has no application of itself to legal proceedings. When a deft., aggrieved by an order of a civil Judge refusing to decide the question of jurisdiction first as a preliminary issue, came to this Ct. invoking its power of superintendence, Ismail, J., refused, observing that :

> "It is not the function of this Ct. under section 224 of the Govt. of India Act to interfere with the judicial orders of the subordinate Cts."; see *The Lakshmi Iron and Steel Manufacturing Co. Ltd. v. Radhey Lal Manni La[28]l,*."

In *Mulji Sicka and Co. v. Municipal Commissioner of Bombay, AIR 1939 Bombay 471* it was recognised that the power of superintendence included the power to revise subordinate Ct.s' orders but pointed out that in view of Sub-Section (2) of Section 224 a H.C. could not then revise a subordinate Ct.'s order under its power of superintendence. It was because of this restriction on the power to revise a subordinate Ct.'s order that the power of superintendence was interpreted to mean only administrative power. Bose and Sen, JJ., observed in *Balkrishna Narain v. Colonel N.S. Jatar[29],*

> "The H.C. possesses a general power of superintendence over the actions of Cts. subordinate to it. On its administrative side the power is known as the power of superintendence. On the judicial side it is known as the duty of revn."

This observation also is based on Sub-Section (2) of Section 224. In Jahnabi's case G.N. Das, J., said at p. 542 that the change made in Section 224 shows that "the section is confined to the administrative functions of H.Cs. and does not give the H.Cs. any right of judicial interference."

22. In the present case we are governed by Article 227 of the Constitution. There is no such restriction on the power of superintendence as was imposed by Sub-Section (2) of Section 224 by the Govt. of India Act of 1935, and now the power of superintendence is exactly what it was up to 1935. The Constituent Assembly, when it removed the restriction, must have done so with full knowledge of the interpretation placed upon the power of superintendence conferred by the Charter Act and the Govt. of India Act of 1915. The Constituent Assembly must be taken to have approved of that interpretation when it restored the statutory law that existed prior to 1935. The case of Jahnabi Prasad was decided before the present Constitution came into force and is of no assistance except in so far as it interprets the previous law. My finding is that this Ct. has now the same power of superintendence which it had up to the passing of the Govt. of India Act of 1935. In exercise of it can check the assumption or excess of jurisdiction by Panchayati Adalats or compel them to exercise their jurisdiction and do their duty. They are, therefore, judicially subordinate to this Ct.

23. In view of the apologies tendered by all the three opposite parties I do not think it necessary to take any severe action against any of them. The main responsibility lies on opposite party No. 1 who got the matter published in the paper and he should be saddled with the costs of these proceedings including fee of the learned Govt. Advocate which may be assessed at Rs. 160. Subject to this the apologies may be accepted.

Dayal, J.

24. I agree.

25. BY THE COURT :- We accept the apology of J.N. Wilson and Kedar Nath Tiwari and cancel the notice issued against them. We find Brij Bhushan Misra guilty of contempt of Ct., but, in view of his apology, pass no order against him except that he should pay the costs of the

applicant assessed at Rs. 200 and also the Govt. Advocate his fee, which we assess at Rs. 160.

Order accordingly.

Cases Referred.

1(1903) 2 KB 432 at p. 437)
2(1906) 1 KB 32 at p. 42
3(1921) 2 KB 733
4 (1932) 2 KB 402
51950 ALJ 458
6(1872-73) 8 QB 134 at p. 137
7AIR 1950 Cal 536
819 Cal 127
91 All 101 (FB)
103 IA 230
119 All 104 FB
127 Bom 341
1318 All 4
149 IA 174
1516 ALJ 189
16AIR 1928 Mad 1108
1748 Cal 522
1846 Bom 592
19AIR 1930 Lah 889
20AIR 1933 Bom 1
21AIR 1933 Lah 259
2245 MLJ 78
23AIR 1928 Pat 111
24AIR 1933 Pat 161
25(42 All 26)
26AIR 1938 FC 1
27AIR 1938 Cal 23
281938 ALJ 911
29AIR 1945 Nag 33 at p. 49