FEDERAL HIGH COURT

S. Kuppuswami Rao

Vs

The King

(Kania, C.J.)

17.12.1947

JUDGMENT

Kania, C.J.

1. This is an appeal from the decision of the High Court of Judicature at Madras in Criminal Revision case No. 1091 of 1946. The relevant facts are these.

2. In 1936 the appellant was the Taluq Head Accountant, Madura Sub-Treasury. By a notification dated 28th March 1931, and published in the local Government Gazette, amongst others, the Taluq Head Accountants in the Sub-Treasuries mentioned in Schedule 'A' thereto were appointed to exercise the powers and perform the functions of licensing officers under the Madras Motor Vehicles Taxation Act, 1931. Madura Sub-Treasury was mentioned in Schedule 'A'. A licensing Officer is defined in the said Act as an officer appointed by the Provincial Government to exercise the powers and perform the functions of a licensing officer under the Act The appellant, although not appointed specifically by name, was thus authorized to exercise the powers and perform the functions of a Licensing Officer.

3. It was alleged on behalf of the Crown that between 1st April 1936 and 14th October 1936, the appellant, along with two others, conspired to commit criminal breach of trust and cheat and defraud the Provincial Government of the revenues due to it by way of motor tax on certain vehicles belonging to the Jai "Vilas Motor Service, and in pursuance of that conspiracy committed criminal breach of trust by dishonestly issuing motor licences without collecting in full the amount of tax due on them and cheated and defrauded the Provincial Government of its revenues to the extent of L 3,942-4-0 by causing delivery of the licences on the false representation contained in the certificate of endorsement of payment of tax in the registration certificates of the vehicles concerned that full tax had been paid. The appellant was also charged with signing false certificates of payment of tax in the registration certificates and falsifying accounts by omitting to enter the particulars relating to such licences in the treasury accounts. On those allegations an information was filed charging the accused under Sections 120B, 420, 468,197, 409 and 477A, Penal Code. Thereafter 37 witnesses were examined before the Magistrate. After the proceedings thus went on for many days, two objections were put forward on behalf of the appellant. The first objection was on the ground that the consent of His Excellency the Governor was necessary under Section 270(1), Government of India Act, but was not obtained. On 28th February 1946, the Magistrate upheld the objection in respect of charges

under Sections 409, 420, 197 and 477A but held that no such consent was required in respect of the charge under Section 120B. He directed the trial to proceed on the charge under that section only. The second objection was that the proceedings were against Section 197, Criminal P.C. read with Section 271, Government of India Act, 1935. The argument was that as the appellant was appointed to perform the duties of a motor licensing officer, he was a Government servant whose services could not be dispensed with by the District Collector. The objection would succeed if two conditions were satisfied : (1) that the petitioner was a public servant who could not be removed by the District Collector but was removable from his office only with the sanction of the Provincial Government or some higher authority; (2) he must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. If either condition was not satisfied, the section would not apply. That contention was rejected. A petition to revise the order was filed before the High Court. When the petition came for hearing before Kuppuswami Iyer J., both parties agreed that evidence would be required to be taken on the contentions raised by the appellant and that the evidence was not on record. There was therefore a remand without deciding any of the questions raised in the petition. When the matter came again before the Magistrate, no fresh evidence was adduced and no new arguments were advanced. The Magistrate saw no ground for reconsidering the order already passed by him.

4. The appellant thereupon filed a petition in criminal Revision case No. 1091 of 1946. It was argued on his behalf that as consent of H.E. the Governor of Madras was not obtained, the prosecution could not be launched because the evidence, which was alleged to establish the charge of conspiracy, was the same evidence that would establish the charge of criminal breach of trust, etc., and as the latter charges could not be framed without the consent of the Governor, such consent was equally necessary for the charge under Section 120B, Penal Code. The further objection was under Section 197, Criminal P.C. Rajamannar J. overruled both the objections of the appellant and dismissed the petition. The result of that order is that the proceedings have to go on before the Magistrate. The learned Judge, however, granted a certificate under Section 205(1) of the Government of India Act, 1935. The appellant has thereupon filed this appeal.

5. On behalf of the respondent, a preliminary objection was taken to the maintainability of the appeal. It is recognised that having regard to the certificate this Court will not question that a dispute on the interpretation of the Government of India Act had arisen in the matter. But in order to determine that this Court has jurisdiction under the provisions of Section 205(1), Government of India Act, 1935, it is necessary for us to ascertain whether the appeal is really from a judgment, decree or final order of the High Court. The certificate granted by the High Court does not preclude us from considering that point. Section 205(1), Government of India Act, 1935, runs as follows:

> An appeal shall He to the Federal Court from any judgment decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

6. The question then is what is the meaning of "judgment, decree or final order of a High Court"

in this section? The expression "final order" has been judicially interpreted and its meaning is now well settled. In *Salaman v. Warner*[1], Lord Esher, M.R. discussed the meaning of the expression, "final order" in these terms:

> If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I "think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. Fry, L.J. remarked as follows:
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> I conceive that an order is 'final' only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is 'interlocutory' where it cannot be affirmed that in either event the action will be determined.

Lopes, L.J. said as follows:

> I think that a judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties.

In *Bozson v. The Altrincham Urban*[2] Lord Alverstone, C.J. held that the real test for determining the question was:

> Does the judgment or order, as made, finally dispose of the rights of the parties?

7. In *Ramchand Manjimal v. Goverdhandas Vishandas Ratanchand*[3], the question was in respect of a stay granted under Section 19, Arbitration Act, IX of 1899. The trial Judge granted a stay, but on appeal the Court of the Judicial Commissioner of Sind reversed the order The Judicial Commissioner granted a certificate under Section 109, Civil Procedure Code on the footing that the order passed by him was a final order. On appeal the Judicial Committee of the Privy Council pointed out that the order in question was not a final order and the preliminary objection against the sustenance of the appeal was upheld. Viscount Cave, in delivering the judgment of the Board, observed as follows:

> The question as to what is a final order was considered by the Court of Appeal in the case of *Salaman v. Warner, (1891) 1 QB. 734(Suupra)*, *Bozson v. The Altrincham Urban, District Council No. (J) (1903) 1 K.B. 547(Supra)* and *Issacs v. Salbestien,*[4] The effect of these and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way.
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> These observations show that the Judicial Committee considered that the words used in the abovementioned three English decisions gave the same meaning to the expression " final order", and adopted the definition as given by Lord Esher M.R. in Salaman's case (1891) 1 Q.B. 734. The Judicial Committee further held that when the effect of the order was to leave the rights to be determined by the Court in the ordinary way, the order was

not a final order.

8. In *Abdul Rahman v. D.K. Cassim & Sons*[5], Sir George Lowndes, in delivering the judgment of the Judicial Committee, stated that the test of finality was whether the order finally disposed of the rights of the parties. Referring to Ramchand Manjimal's case A.I.R. (7) 1920 P.C. 86 he observed as follows:

> Lord Cave in delivering the judgment of the Board laid down, as the result of an examination of certain cases decided in the English Courts, that the test of finality is whether the order 'finally disposes of the rights of the parties', and he held that the order then under appeal did not finally dispose of those rights, but left them 'to be determined by the Courts in the ordinary way'. It should be noted that the Appellate Court in India was of opinion that the order it had made 'went to the root of the suit, namely the jurisdiction of the Court to entertain it', and it was for this reason that the order was thought to be final and the certificate granted. But this was not sufficient. The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it under Section 109(a) of the Code.

Sir George Lowndes further added:

> In their Lordships' opinion it is impossible to distinguish the present case from that upon which Lord Cave pronounced. The effect of the order from which it is here sought to appeal was not to dispose finally of the rights of the parties. It no doubt decided an important, and even a vital, issue in the case, but it left the suit alive, and provided for its trial in the ordinary way.

9. In *Hori Ram Singh v. The Grown*[6], it was contended that Section 205, was limited to appeals in civil cases only. The Court rejected that contention. Sulaiman J., after rejecting the contention, further considered the meaning of the words " judgment, decree and final order" in Section 205(1), Constitution Act. The words "final order" were used in Section 109, Civil Procedure Code That section prescribes conditions under which an appeal lies to the Judicial Committee of the Privy Council from a decree or final order passed on appeal by a High Court. It was noticed that the words "final order" were used in contrast with interlocutory order. The learned Judge took the view that in cases in which the decision of the point in dispute either way did not result in finally disposing of the matter before the Court, the decision did not amount to a final order. In that case, as noted in the judgment of Varada-chariar J. no objection was taken on behalf of the Crown to the maintainability of the appeal and the majority of the Judges therefore dealt with the case on the assumption that an appeal was competent.

10. In *Venugopala Reddiar and Anr. v. Krishnaswami Reddiar and Anr*[7]., a suit was filed in Trichinopoly (South India) for recovery of properties some of which were situate in Burma and some in South India. On 1st April 1937, Burma ceased to be a part of British India. The suit, when instituted, was permissible under Section 17, Civil Procedure Code After the separation of Burma, it was contended by the defendant that the Court ceased to have jurisdiction in respect of

lands which were situate in Burma. The contention was negatived. On appeal to the Federal Court, the decision of the lower Court was confirmed but the Federal Court reserved its pinion on the question whether the order of the High Court holding that the lower Court had jurisdiction to try the suit and directing it to proceed with the trial, was a judgment so as to be appealable under Section 205(1), Constitution Act. Again in that case, as no objection as to the maintainability of the appeal was taken, the Court decided the appeal on merits.

11. In the present case, a preliminary objection has been taken and we have therefore to decide the point urged before us. The Government of India Act, 1935, being a statute of the Imperial Parliament, the words "judgment, decree or order" used therein would have the meaning given to them in the Interpretation Act, 1889: (52-53 Vic. Ch. 63), if they were defined there. That Act, however, contains no definition of any of those words. The inclusive definitions of judgment and decree in the Supreme Court of Judicature Act of 1878, are not helpful, as those definitions are for the purposes of that Act alone. We have therefore to ascertain the meaning of those words otherwise. We have noticed above the meaning given to the expression "final order" by the English and Indian Courts. Those decisions were in civil cases. We think that the same meaning should be given to that expression in criminal cases also, that is to say, it must be an order which finally determines the points in dispute and brings the ease to an end.

12. It is next necessary to ascertain the meaning of the words "judgment and decree". In England, in civil actions a decree is understood to be the same as a judgment. If so, as there may be a preliminary decree, there may be a preliminary judgment. In *Maori King Cargo Owners v. Allen*[8], Lord Esher M.R. stated that an order declaring rights is equivalent to a judgment. It may be either a final or a preliminary and therefore interlocutory judgment. In *Onslow v. Land Revenue Commissioners*[9], Lord Esher, M.R. stated that a judgment is considered a decision in an action of a previously existing liability and every other decision of a Court is an order. These and other English decisions make it clear that in. England when the word judgment or decree is used, whether it is preliminary or final, it means the declaration or final determination of the rights of the parties in the matter brought before the Court. In criminal proceedings, an examination of the discussion in paras 260-64 of vol. IX of Halsbury's Laws of England (Hailsham Edition) shows that the word "judgment" is intended to indicate the final order in a trial terminating in the conviction or acquittal of the accused. The word "decree" is of course out of place in a criminal proceeding.

13. In India, for civil suits, the words judgment and decree are defined in Section 2, Civil Procedure Code 1908. A judgment means the statement given by the Judge of the grounds of a decree or order passed by the Court. A decree is defined "as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final." As a judgment is only the grounds for an order, it is not the order, and this distinction is maintained by omitting the word judgment from. Section 109, Civil Procedure Code, which deals with the right of appeal to the Judicial Committee from the High Court. In that section a right of appeal is given against the decree or final order only. The definitions given in the Code are, however, for the purposes of the Code only. In our opinion, the decisions of the Courts in India show that the word "judgment", as in England, means the determination of the rights of the parties in the matter brought before the Court.

14. In India, in the Criminal Procedure Code, the word "judgment" is used to indicate the termination of the case by an order of conviction or acquittal of the accused. The word is not defined in the Criminal Procedure Code but that interpretation was put on the word in a criminal proceeding in *Emperor v. Maheswara Kondaya*[10], That view appears to have been approved by Sulaiman J. in Hori Ram Singh's case A.I.R. (26) 1939 F.C. 43.

15. Our attention was called to Clause 39, Letters Patent of the High Courts of Calcutta, Bombay and Madras which provides for appeals to His Majesty-in-Council from "any final judgment, decree or order" and it was urged that in the absence of the qualifying word, "judgment" in Section 205(1), Constitution Act, must be held to include a preliminary or interlocutory judgment and that the order now under appeal fell under that category. We are unable to accede to this view. In our opinion, the term "judgment" itself indicates a judicial decision given on the merits of the dispute brought before the Court. In a criminal case it cannot cover a preliminary or interlocutory order.

16. On behalf of the appellant, it was contended that the observation of Sir Maurice Gwyer in *Hori Ram Singh's case, A.I.R. (26) 1939 F.C. 43(Supra)* that the words judgment, decree or final order ought to receive no narrow interpretation is against the contentions of the respondents. It was urged that in *King-Emperor v. Shibnath Banerji*[11], the Judicial Committee of the Privy Council had approved of that observation. It was argued that this approval amounted to a disapproval of the view of Sulaiman J. expressed in his judgment in *Hon Ram Singh's case A.I.R. (26) 1939 P.C. 43(Supra)*. In our opinion this whole argument is based on reading the observations in the judgments detached from their context. What Sir Maurice Gwyer C.J. stated in *Hori Ram Singh's case, A.I.R. (26) 1939 P.C. 43(supra)* was only to emphasize that the words "any judgment, decree or final order of a High Court" covered a criminal case and also a civil case. The learned Chief Justice was not considering whether the order in question before the Bench was a final order or not and whether on that ground the appeal was competent or not. This point is made clear in the judgment of Varadachariar J., which Sir Maurice Gwyer C.J. had adopted in his judgment. The observations in *King-Emperor v. Shibnath Banerji, A.I.R. (32) 1945 P.C. 156(Supra)* were also intended to uphold the position that Section 205(1), Constitution Act, gave the Federal Court appellate jurisdiction both in civil and criminal matters and that the jurisdiction was not limited to civil matters only. It was also in that connection that their Lordships emphasized the width of the language used in the section. We are unable to read those observations as disapproving in any manner the view of Sulaiman J. in *Hori Ram Singh's case, A.I.R. (26) 1939 P.C. 43(Supra)* about the true meaning of the words judgment or final order in Section 205(1), Constitution Act.

17. It was argued on behalf of the appellant that the words judgment or final order should be given a wider interpretation so as to enable the Court to entertain appeals like the present in criminal matters in any event. We are unable to accept this contention. The words are used in Section 205(1), Constitution Act, and impart jurisdiction to the Federal Court to entertain appeals both in civil and criminal matters. As the same words give jurisdiction to the Court in both classes of cases, it will be improper to construe them in a certain way when applicable to appeals in civil matters and give them a wider meaning when considered in connection with appeals from criminal proceedings. The words judgment and final order, in connection with civil appeals, have received a definite judicial interpretation. In connection with civil appeals to this Court therefore that interpretation has to be accepted. If so, the same interpretation has to be accepted in case of

appeals from criminal proceedings brought to this Court under Section 205(1), Constitution Act. In our opinion, this argument of the appellant is against all well-recognised canons of construction.

18. It was argued on behalf of the appellant that the words "of a High Court" in Section 205(1) have a material bearing on the point. It was contended that the order made on the revision application is the final order of the High Court and therefore the appeal is competent. In our opinion, that is not a correct reading of Section 205(1) Constitution Act. The words "of a High Court" are used to indicate that the appeal can be brought only from the judgment, decree or final order of a High Court as contrasted with the judgment, decree or final order of a District or any other Court. To put it in other words, the word "final" controls the word "order" and it is an order of that nature against which an appeal could be brought to the Federal Court.

19. The question then is whether in the present criminal case the order is a "judgment, decree or final order' of the High Court"? It is clearly not a decree. It is also not a judgment, as it is only an interlocutory, order made on a preliminary objection in the course of a criminal trial. It is also not a final order, as the order is not on a point which, decided either way, would terminate the matter before the Court finally. In the words of Sir George Lowndes to constitute, a final order it is not sufficient merely to decide an important or even a vital issue in the case, but the decision must not keep the matter alive and provide for its trial in the ordinary way. It is therefore clear that the order made on the criminal revision application by the Madras High Court is not a final order of judgment within the meaning of Section 205(1), Constitution Act. Indeed, if "judgment" were to mean or include an interlocutory order, the words "final order" in Section 205(1), Government of India. Act, 1935, will be superfluous. The preliminary objection is therefore upheld and the appeal is dismissed.

Cases Referred.

1(1891) 1 Q.B. 734
2District Council No. (1) (1903) 1 K.B. 547
3A.I.R. (7) 1920 P.C. 86
4(1916) 2 K.B. 139
5A.I.R. (20) 1933 P.C. 58
6A.I.R. (26) 1939 F.C. 43
7A.I.R. (30) 1943 F.C. 24
8(1895) 1 com. cas. 104
9(1890) 25 Q. B.D. 465
1031 Mad. 543 at p, 545
11A.I.R. (32) 1945 P.C. 156