

HIMACHAL PRADESH HIGH COURT

Ishwar Singh

Vs.

Ram Piari

Letters Patent Appeal (Criminal) No. 1 of 1974

(T.U. Mehta, and C.R. Thakur, JJ.)

16.08.1977

JUDGMENT

T.U. Mehta, J.

1. This appeal is preferred against the judgment and order recorded by our learned brother Mr. Justice Lal sitting singly in C. M. P. (M) No. 26 of the 1973 on 30-11-1973. A preliminary objection is raised on behalf of the respondent No. 1 by her learned Advocate Shri Sud, that this Letters Patent Appeal is not maintainable under Clause 10 of the Letters Patent constituting the High Court of Judicature at Lahore, dated 21-3-1919. It is an admitted position that these Letters Patent of the Lahore High Court are applicable to the procedure adopted by this Court also.

2. Following are the short facts which constitute the background of this appeal. The respondent No. 1 Ram Piari is the wife of the present appellant Ishwar Singh and she filed an application for maintenance under Section 488 of the Criminal Procedure Code of 1898. The respondent No. 1 was awarded maintenance in the amount of Rs. 75/- per month. The said order was originally passed by the concerned Nayay Panchayat. Against that order an appeal was preferred to the Full Bench of the Nayay Panchayat but the same was also dismissed on 18-8-1970. Against that order a revision application was preferred to the Divisional Magistrate, Rahru. The appellant failed even in that revision application with the result that the appellant invoked the jurisdiction of this Court under Article 227 of the Constitution. The learned single Judge who decided this application under Article 227 of the Constitution dismissed the petition and confirmed the order of maintenance after deciding various contentions which were raised on behalf of the present appellant before him. It is against this order passed by the learned single Judge that the present Letters Patent Appeal is preferred.

3. The preliminary objection which is raised by Shri Sud is twofold viz. (1) According to him the learned single Judge has exercised his jurisdiction in a criminal matter and since appeal arising out of the orders passed in the exercise of criminal jurisdiction is specifically excepted by Clause 10 of the Letters Patent, this appeal cannot lie. (2) At any rate, even if it is believed that the learned single Judge has not exercised any criminal jurisdiction under Article 227, he has obviously passed an order in exercise of the power of superintendence under Article 227 of the

Constitution and, therefore, also Letters Patent Appeal against that order is barred by Clause 10 of the Letters Patent.

4. Clause 10 of the Letters Patent is in the following terms:-

"10. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything, hereinbefore provided an appeal shall lie to the said High Court from a Judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the First day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the Judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us. Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided." It is apparent from this clause that four classes of cases are excepted from the Letters Patent jurisdiction of this Court. These four classes are shown in the parenthesis clause and they can be stated as under:-

1. Judgments passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to the jurisdiction of the High Court.
2. An order made in exercise of the revisional jurisdiction.
3. A sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act.
4. The orders passed in exercise of criminal jurisdiction.

5. Shri Sud wants to take this case under the above referred exceptions Nos. 3 and 4. But as against this Shri Thakur the learned Advocate of the appellant contends that the order of maintenance passed under Section 488 of the Criminal Procedure Code is not an order passed in exercise of criminal jurisdiction and, therefore, the 4th of the four exceptions mentioned above would have no application. For this proposition he has put reliance upon some observations made by the Supreme Court in *Jagir Kaur v. Jaswant Singh reported in¹* and other cases. In this Supreme Court decision the Court has observed that proceedings under Section 488 of the Criminal Procedure Code are in nature of civil proceedings. Relying upon these observations it is contended by Shri Thakur that the learned single Judge had not exercised any criminal jurisdiction while disposing of the

matter under Article 227 of the Constitution.

¹ AIR 1963 SC 1521

6. We find that it is not necessary for us to determine the question whether the learned single Judge has exercised criminal jurisdiction in this matter or not, because we are of the opinion that the matter squarely falls within the third exception which speaks about the sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act.

7. Section 107 of the Government of India Act, to which reference is made in Clause 10 of the Letters Patent, is of the Government of India Act, 1915. That section provided for the superintendence of the High Court. This section was replaced by Section 224 of the Government of India Act, 1935 which, in its turn, is replaced by Article 227 of the present Constitution. Therefore, the question is whether the above referred exception (3) contemplated by Clause 10 of the Letters patent would apply even to the matters covered by Article 227 of the present Constitution. In this connection reference should be made to the provisions contained in Section 8 of the General Clauses Act, 1897 which is in the following terms:-

"8. Construction of references to repealed enactments- (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and reenacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Resolution or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

We find that if we apply the above referred provisions of Section 8 of the General Clauses Act, it must follow that Article 227 of the Constitution of India, which replaces the previous similar provisions giving power of superintendence to the High Court in the repealed enactments, namely the Government of India Act, 1915 and 1935, would apply to the facts of the present case. Article 227 of the Constitution prescribes the power of superintendence of the High Court over the Subordinate Courts and tribunals and, therefore, the exercise of jurisdiction by the High Court under Article 227 of the Constitution would be the same jurisdiction which is contemplated by Section 107 of the Government of India Act, 1915.

8. The view which we are taking on this question is taken by various decisions to which a short reference would be necessary. In the Madras case of *Srinivasa Reddiar v. Krishnaswami Redidrar reported in*² a similar question arose with reference to Letters Patent (Madras) Clause 15 which is quite similar to Letters Patent (Lahore) Clause 10, with which we are concerned in this case. In that case the order was passed by a Magistrate on an application under Section 87 of the Madras Hindu Religious and Charitable Endowments Act and a revision under Sections 435 and 439 of the Criminal Procedure Code was filed before the High Court. The single Judge of the High Court against whose order the Letters Patent Appeal was filed set aside that order of the

² AIR 1955 Mad 72

Magistrate. The question which arose was whether the matter fell within any of the categories of cases excepted from the purview of the Letters Patent Appeal by Clause 15 of the Madras Letters Patent. Dealing with this question the learned Judges of the Division Bench of Madras High Court who decided such preliminary objection have observed as under (at p. 74):-

"In our opinion, the order of Soma-sundaram J., would in any event fall within the category of orders passed in the exercise of the power of superintendence under Article 227 of the Constitution which corresponds to Section 107, Government of India Act, mentioned in Clause 15, Letters Patent."

Similar view is taken by Calcutta High Court in *Sukhendu v. Hare Krishna reported in*³ The discussion contained in para. 11 of the reported judgment shows that the High Court applied the provisions of Section 8 of the General Clauses Act while considering whether the matter decided under Article 227 of the Constitution would be covered by the exception with regard to the matters decided under Section 107 of the Government of India Act, 1915 in the relevant Letters Patent Clause 15 of Calcutta High Court. The learned Judges who decided the case held that Clause 15 of the Letters Patent of Calcutta High Court excluded a judgment pronounced by single Judge in exercise of the powers of superintendence under Article 227 of the Constitution. The same view is taken by the Punjab High Court with regard to this very clause of Letters Patent of Lahore High Court in *Raj Kishan v. Tulsi Dass reported in*⁴

9. In view of this, we find that the preliminary objection as to the maintainability of this Letters Patent Appeal taken by Shri Sud on behalf of the first respondent should prevail.

10. In view of this, we do not find it necessary to go into the merits of the matter. This Letters Patent Appeal is, therefore, found to be incompetent and the same is dismissed without any order as to costs. The order of stay, if any, is vacated.

Appeal dismissed.

³ AIR 1953 Cal 636

⁴ AIR 1959 Pun 291