

# BOMBAY HIGH COURT

P.J. Rogers

Vs

Shrinivas Gopal Kawale

(John Beaumont, Kt., C.J. Sen, J.)

31.01.1940

## JUDGMENT

### **John Beaumont, Kt., C.J.**

1. This is an application purporting to be made under Section 561A of the Criminal Procedure Code, the object of which is to induce the Court to expunge certain observations criticising a witness made by the Additional Sessions Judge of Poona in a criminal appeal which came before him. There has been no application in revision against the decision of the Additional Sessions Judge, and of course no appeal lies; nor has the Court thought fit on its own motion to call for the record, and in granting a rule, this Court queried whether there was jurisdiction to entertain an application to expunge words from a judgment, when the Court is not called upon to pronounce upon the merits of the decision itself. It is obvious that, if the jurisdiction exists, its exercise must place the Court in an anomalous position. The Court must go through the record of a case in which it is not called upon to act judicially at the instance of a party who is not aggrieved by the decision, and it may well be that the Court will have to come to a conclusion upon matters not in issue in the proceedings.

2. It was held in the year 1922 in *Emperor v. C. Dunn*<sup>1</sup> that if the Court had such jurisdiction as is claimed in this case, it must be conferred by the Criminal Procedure Code, and the Court came to the conclusion that no such jurisdiction was conferred by the Code. This High Court in *Emperor v. Sidramayd* had also expressed the opinion that it was very doubtful whether this jurisdiction existed in the High Court. In the year 1923 the Criminal Procedure Code was amended by the addition of Section 561A, and we are told by the learned Government Pleader as an interesting historical fact, but not I am sure with a view to influencing us in any way, that the objects and reasons for that amendment disclosed that the legislature intended to confer this very power. However that may be, we have to consider whether the Section does confer such a power. It has been held in certain cases to do so, particularly by Mr. Justice Sulaiman, as he then was, in *Panchamm Banerji v. Upendra Nath Bhattaeharji*<sup>2</sup> and by Mr. Justice Tek Chand in *In the matter of Daly* (1927) I.L.R. 9 Lah. 269 although both those learned Judges held that the jurisdiction

should be exercised very sparingly. With all respect to the learned Judges who have taken a different view, I am quite unable to see how Section 561A affects the question. That Section provides that nothing in the Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. So that all that the Section does is to preserve the inherent powers of the High Court without conferring any additional power. In my opinion no Court can claim inherent power to alter the judgment of another Court. All powers in appeal and revision are statutory, and not inherent in the superior Court. When once a matter is duly brought before a superior Court, then no doubt inherent powers may be called in aid to enable the Court to do complete justice, but the power to bring a matter in appeal or revision before a superior Court must be conferred by statute or some enactment having statutory effect.

3. Now, the only statute which can be said to confer this power is, in my opinion, the Criminal Procedure Code. The power of superintendence conferred upon High Courts by Section 224 of the Government of India Act over Courts subordinate to it clearly does not include power to correct a judgment, see particularly sub-cl. (2). If the power in question exists, it must be because it falls within the powers of revision conferred upon High Courts by the Criminal Procedure Code. Under Section 435 of the Criminal Procedure Code a High Court may call for the record of any proceeding before an inferior Criminal Court in order to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court. It seems to me impossible to say that there is anything incorrect or illegal or improper in the finding, sentence or order of the learned Additional Sessions Judge. Nor do I think it possible to say that the proceedings before him were in any sense irregular. Those proceedings have been completed, and the decision arrived at has not been challenged. In my opinion, there is nothing which this Court can correct under the powers conferred by Section 435.

4. Then we have to consider Section 439 of the Criminal Procedure Code which provides that in the case of any proceeding the record of which has been called for by itself (i.e. under Section 435) or which has been reported for orders (i.e. under Section 438), or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 423, 426, 427 and 428. Now the only power conferred by those Sections, which might possibly be held to cover such a case as this, is Section 423 (d), which was discussed by the Court in *Emperor v. C. Dunn*. That Sub-section provides that the Court of Appeal may make any amendment or any consequential or incidental order that may be just or proper. But that, in my opinion, means merely an amendment or a consequential or incidental order in respect of the order under appeal. Where the High Court is hearing an application in appeal or revision, the whole matter is before it and it can make any order consequential or incidental to the order under review, and, in my opinion, in such a case the Court is entitled to expunge any remarks in the lower Court's judgment which it thinks ought not to have been made. But it seems to me impossible to say that expunging passages from a judgment giving reasons for

an order which is not under appeal invokes anything consequential or incidental to the matter in appeal. If the Court thinks that any such action is called for, it can itself send for the record and act regularly in revision.

5. In my opinion, the judgment in Emperor v. C. Dunn was right and has not been altered by the introduction of Section 561A of the Criminal Procedure Code, and the High Court has no jurisdiction to expunge passages from the judgment of an inferior Court which has not been brought before it in regular appeal or revision. We must, therefore, reject this application.

**Sen, J.**

6. I agree.

Cases Referred.

1(1922) I.L.R. 44 All. 401

2(1926) I.L.R. 49 All. 254