
(1866) 02 CAL CK 0006

Calcutta High Court

Case No: None

In Re: Ramprasad Hazra

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 12, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

I am of opinion that, if, in the course of hearing a suit, a Civil Court commits a party to the suit for trial on a charge of perjury or forgery, or directs that the case be made over to a Magistrate for investigation of such a charge, this Court cannot, in the event of a regular or special appeal being lodged against the decision of the lower Court, interfere to stay the criminal proceedings until the appeal shall have been heard and determined. As the question propounded is somewhat ambiguous, and it is doubtful whether the referring Judges in using the words "this Court" intended the Division Bench of which they were the Judges or the High Court generally, we have heard the question argued with reference to the power of the High Court generally, as well as with reference to the power of a Division Court in the exercise of either Civil or Criminal Jurisdiction.

2. The order, if treated as an order in a civil case, is not appealable under Act VIII of 1859. Act VIII of 1859, s. 365, gives an appeal against orders as to fines, or as to imprisonment under the Act, and an appeal is also given by the Code of Criminal Procedure in similar cases by s. 413. But no appeal is given either by the Code of Criminal or Civil Procedure against orders which are left to the discretion of the Civil Court, either granting or withholding sanction to a criminal prosecution under ss. 169 or 170, or against an order sending a case for investigation before a Magistrate under s. 171 of the Code of Criminal Procedure. S. 414 of that Code enacts that "unless otherwise provided by this Act, or by any other law for the time being in force, no appeal shall lie from any order or sentence of a Criminal Court." There is no special provision made by the Code for cases of sanction under ss. 169 or 170, or of orders for investigation under s. 171. I am of opinion, therefore, that this Court cannot, either in the exercise of Civil or Criminal Jurisdiction, entertain an appeal

against any such sanction or order. It cannot, as a Court of Revision, reverse such sanction or order upon the ground that it was not warranted by the facts, for, as a Court of Revision, it cannot reverse an order except for error in law. In the present case, the application was not by way of appeal, but merely by way of motion to postpone the committal. If the Court, as a Court of Appeal or as a Court of Revision, cannot reverse or alter such an order, I cannot see any inherent authority which it has to stay proceedings. I remark that, in some of the cases cited, the question as to reversing such sanctions was brought before the Court by motion. I asked how the case came before the Court by motion. The answer was that the motion was in the nature of a petition of appeal. But I am clearly of opinion that, in cases in which no appeal lies to this Court, relief cannot be given indirectly by motion in the nature of an appeal. If the Full Court cannot exercise such a power, it follows that a Division Court cannot do so.

3. The, question propounded by the Judges will, therefore, be answered in the negative.

Bayley, J.

4. I am of the same opinion. Although I find that in some cases the power has been exercised as an inherent power, I can find, and am shown, nothing in the law constituting the late Sudder Court, or in the Code of Criminal Procedure, to show that the Court has such a power.

Seton-Karr, J.

5. I am inclined to the opinion that the Judges who referred the case to a Full Bench intended to refer the question with reference to the power of a Divisional Bench of the High Court on the Civil Side to grant such an order. I am glad, however, that the case has been argued with reference to the power of the Court both on the Civil and Criminal Sides. We have carefully looked over all the cases, and heard all the arguments on both sides; and I agree with the Chief Justice that we have not by any law the power, either on the Civil or Criminal Side, to pass an order suspending the proceedings of the Magistrate till the civil appeal be decreed; and that we have no inherent power to supply any defect in the law by laying down new rules on the subject.

Pundit, J.

6. I concur in the judgment delivered by the Chief Justice.

Macpherson, J.

I agree entirely in what has fallen from the Chief Justice. I may add that, considering the Legislature has thought fit to empower Courts, in their discretion, to direct the criminal prosecution of persons, who commit certain offences in the course of proceedings before those Courts, it would, as it seems to me, almost amount to an

absurdity if a prosecution, so ordered to be had, were to be suspended merely because an appeal is pending from the decree made in the suit, in the course of which the act or omission which is the subject of the prosecution was committed.