(1866) 06 CAL CK 0001

Calcutta High Court

Case No: None

In Re: Bissumbhur Shaha — APPELLANT

Vs

RESPONDENT

Date of Decision: June 20, 1866

Judgement

Sir Barnes Peacock, Kt., C.J. and Kemp, J.

I do not think that there is any doubt in this case, when we read ss. 405 and 428 of the Code of Criminal Procedure together. There might have been some doubt if s. 405 stood alone. It says,-- "It shall be lawful for the Sudder Court to call for and examine the record of any case tried by any Court of Session." The words "any case tried by any Court of Session" might mean only a case tried by a Court of Session in the exercise of original jurisdiction. But when we read s. 428, all doubt is removed. It says,-- "except as provided in a 405 of this Act, sentences and orders passed by an Appellate Court upon appeal shall be final." When the Legislature refers to s. 405, we must construe the Act as meaning s. 405, and not s. 404.

2. If "s. 404" is in the original record of the Act, and "s. 405" is merely an error of the printer, the case would be different, but we do not think it likely that the words "s. 405" are a misprint.

3. We have not the original record here to compare it with the print.

4. Then if we read "405" as the section referred to in s. 428, s. 428 shows that the Court, under s. 405, may be an Appellate Court. If so, then the words "tried by any Court of Session" must mean a Court of Session sitting either as a Court of original or as a Court of appellate jurisdiction, and the case becomes perfectly clear.

5. If we look to the reason of the thing, I think it quite right and just that s. 405 should be read with the interpretation which I have put upon it. Suppose a man should be indicted before the Sessions Court for house-trespass in order to commit theft, under s. 451 of the

Penal Code, and that it should be proved that he was a starving man in Cuttack or Pooree who was passing by a godown where there was rice, and that he went in and stole a handful. He would be guilty of house-trespass for the purpose of committing theft, and would be liable to imprisonment for seven years and also to fine. Suppose the Sessions Judge should try him and sentence him for such an offence as that to three years'' rigorous imprisonment, this Court could call for the record and set the matter right by mitigating the sentence. But suppose another man were tried for a similar offence committed under similar circumstances not by the Court of Session, but by a subordinate Magistrate of the first class (as he might be) and should be sentenced to seven years'' rigorous imprisonment and to fine, and the Sessions Judge, on appeal, should mitigate the sentence by omitting the fine and leaving the seven years'' rigorous imprisonment. If this Court could not interfere in the latter case, this consequence would follow, that the Court could mitigate a similar three years'' rigorous imprisonment passed by a Court of Session as a Court of original jurisdiction, but that it could not mitigate a sentence of seven years'' rigorous imprisonment allowed by a Court of Session on appeal to stand for a similar offence. I think it very reasonable that whenever this Court is satisfied that a sentence is wrong in point of law, or is too severe for the offence proved, it should have the power of setting that sentence right. It could not do so upon appeal in a case tried originally by a lower Court and appealed to the Sessions Court. But I think that the Legislature intended that the highest Court should have the power to grant relief in a case in which a sentence affirmed by a Court of Session sitting as an Appellate Court, or altered by that Court on appeal, and therefore substantially passed by them, is either contrary to law, or improper as being too severe.

6. In a case heard by a Sessions Court in appeal, the relief cannot be obtained as a matter of course, but the High Court must have such a case made out as to induce it to call for and examine the record.

Seton-Karr, J.

7. I wish to add nothing to what has fallen from the learned Chief Justice, with whom I entirely concur, except that I always entertained doubt which I expressed in the case of Ramdhone Mundul 4 W.R., Cr., 15 adversely to the opinion of my colleagues, that I still entertained those doubts when I referred the case to a Full Bench with Macpherson, J., and that I am confirmed in the opinion I entertained on both occasions after hearing the arguments on both sides to-day, which have converted those doubts into certainties.

Campbell, J.

8. I also concur. I had a good deal of doubt in the case. It did not appear to me altogether so clear as it has been now put by the learned Chief Justice; still, on the whole, I agree in the opinion expressed by my learned colleagues.

9. Taking s. 405 alone, I should have been inclined to consider that the words "tried by any Court of Session" refer to the Court sitting as of Court of original jurisdiction, because looking at Chapter 25, there throughout, the word "trial" is used us referring to the proceedings in the Court of original jurisdiction, and to that kind of trial only. But us I think that the section admits of doubt, it may be construed by a reference to other sections.

10. S. 428 is clearly inconsistent with the construction that s. 405 is restricted to trials by Courts of Session in original jurisdiction. At the same time I should like to point out that, in any construction, there is some inconsistency in this part of the Code, because "where a subordinate Magistrate has passed a sentence which has been appealed to the Magistrate of the district, and the Magistrate of the district, in deciding that appeal has committed, it may be a gross illegality, in that case, under s. 404, this Court has the power to set the matter right as respects the point of law, whereas s. 428 would seem to provide that sentences or orders of an Appellate Court shall be final, except as provided in s. 405, making no reference to s. 404. There, it seems tome, must necessarily be some contradiction. But because there is one inconsistency, that is no reason why we must also another, and as I am not satisfied that in s. 428 the figure "405" is a misprint or mistake for "404," I think we must consider that "s. 405 " refers to the proceedings of an Appellate Court, vis., Court of Session, and that this Court has the power to interfere, as regards the decisions of a Court of Session sitting as an Appellate Court for the trial of criminal cases, to the full extent provided by s. 405.

Macpherson, J.

I remain of the same opinion as that which I have already expressed. Whatever inconsistencies there may be in the provisions of the Criminal Procedure Code, I think that, reading ss. 405 and 428 together, it is impossible to come to any other conclusion than that which has been arrived at to-day.

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[1]Act X of 1872, s. 297.