

(1915) 02 AHC CK 0054
In the Allahabad High Court

Emperor Through Sessions Judge of Cawnpore	APPELLANT
Vs	
Abdul Razzak and Another	RESPONDENT

Date of Decision : 19-02-1915

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 193(2)

Citation : 28 Ind. Cas. 652

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—By an order, dated the 3rd of February 1915, the Sessions Judge of Cawnpore transferred two Criminal Appeals Nos. 7 of 1915 and No. 14 of 1915 pending in his Court to the Court of the Assistant Sessions Judge for trial. The section of the Code which he considered justified this procedure on his part was Section 193, Clause 2. This section provides that Assistant Sessions Judges shall try such cases only as the Sessions Judge of the division by general or special order may make over to them for trial. In the opinion of the learned Sessions Judge the word "case" as used in this clause is not defined, and he saw no reason why it should be confined to cases and not extend to appeals or other matters.

2. This Court has called for the records of the cases in question by the powers conferred upon it by Section 435 of the Code of Criminal Procedure. So far as I know the word "case" has never been defined in any General Clauses Act or in the Code of Criminal Procedure, nor am I aware that this particular point has come up to this Court for decision. In *Chattarpal Singh v. Raja Ram* (sic) Mr. Justice Mahmud held that so far as the CPC was concerned the word "case" should be understood in its broadest and most ordinary sense, including all adjudications which might constitute the subject of appeal or revision. With all due respect I think a safer rule is to consider the word in connection with the particular Code or law in which it is found. Under the present circumstances

there is considerable difficulty in assigning to the word such a broad meaning. The first difficulty will be found in Section 409 of the Code of Criminal Procedure. That section deals with appeals. The right of appeal is a creation of Statute. Without some particular provision authorizing an appeal no right of appeal is conferred. Even when a right of appeal has been conferred, the Court to which such appeal lies must also be specified. A right of appeal without any specification as to the Court to which such appeal should be preferred would be a useless right.

3. The appeals with which we are concerned in the present case are appeals created by Section 408 of the Code of Criminal Procedure. That section provides for persons convicted on trials mentioned therein and wishing to appeal can appeal to the Court of Session. To find out what a Court of Session is, we have to turn to Section 9 of the Code of Criminal Procedure and a liberal interpretation of Section 9 might bring within the words "Court of Session" not only Sessions Judges but also the Additional Sessions Judge and the Assistant Sessions Judge, if there be any such within the Sessions division. If such an interpretation could be adopted it might, therefore, be argued that the words "Court of Session" in this Section 408 were wide enough to include all these officers. I pass over the anomaly in such an interpretation of the Court of the Assistant Sessions Judge being a Court from which appeals lie to the Court of Session. Section 409 by providing that an appeal shall lie to the Court of Session or Sessions Judge and shall be heard by the Sessions Judge or by an Additional Sessions Judge, seems to make it clear that the Legislature intended that all appeals under the Code of Criminal Procedure lying to the Court of Session were to be heard only by the Sessions Judge or by an Additional Sessions Judge.

4. The Bombay High Court has had occasion to consider this question in more than one case. In the petition of Musa Asmal 9 B. 164, they had to deal with a similar provision contained in Sections 17 and 18 of Act X of 1872. Mr. Justice West held that Section 18 clearly was not meant to give a quasi-revisional power over the Magistrates of the District and at the same time no appellate jurisdiction. In a reference made by the Sessions Judge of Surat the same High Court held that a joint Sessions Judge could not try applications under Chapter 32 of the then current Code of Criminal Procedure. They endorsed the view stated by the Sessions Judge that the joint Sessions Judge was absolutely precluded from taking action under Chapter 82 of the Criminal Procedure Code, which relates to reference and revision.

5. There is another section in the present Code of Criminal Procedure which bears upon the point and that is Section 526. That section provides that the High Court can order "that any particular criminal case or appeal" be transferred from one Court to another. If the view taken by the learned Sessions Judge of Cawnpore be correct, the word "appeal" used in this section would be pure surplusage. But in Section 526 this phrase is used four times over and is again repeated in Section 527 of the Code of Criminal Procedure. It will be found that a

view similar to this has been taken where the words "case" and "appeal" are to be found in other laws. I will mention only one, Allah Dei Begam v. Kesri Mal 2 A.L.J. 576 : (1905) A.W.N. 199.

6. I entertain no doubt, therefore, that Section 193, Clause 2, confers on the Sessions Judge no power to transfer appeals to the Assistant Sessions Judge. I set aside the order passed as being an illegal order, and direct that the case of Abdul Razzak and Abdul Shakur be returned to the Sessions Court of Cawnpore for trial by the learned Sessions Judge or by the Additional Sessions Judge of Cawnpore, if there be such a Judge in existence at the present time.