
(1913) 04 MAD CK 0004
In the Madras High Court
In Re: R. Nataraja Aiyar

Date of Decision : 25-04-1913

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435
Penal Code, 1860 (IPC) — Section 193

Citation : (1913) 25 MLJ 565

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sundara Aiyar, J.—This is an application asking us to declare under Clause 39 of the Letters Patent that an order passed by us refusing to

set aside an order made by a Deputy Collector as an Income Tax Officer directing that the petitioner be prosecuted for an offence u/s 193 of the

Indian Penal Code is a fit one for appeal to His Majesty in Council. Against the order of the Deputy Collector two proceedings were taken in this

Court one to set it aside under Sections 435 and 439 Cr.P.C. and the other to quash the proceedings of the Deputy Collector by a writ of

certiorari.

2. We dismissed both the petitions.

3. The present application for leave to appeal to His Majesty is made in the application to quash the Deputy Collector's order by a writ of

certiorari. The application is made u/s 39 of the Letters Patent. According to that section an appeal lies to His Majesty in Council only when the

matter to which the judgment or order of this Court relates is not one of criminal jurisdiction. No authority has been cited to show that the Deputy

Collector in directing the prosecution of the petitioner was not exercising criminal jurisdiction. It is no doubt true as observed by Dr. S.

Swaminadhan that the main function of the Deputy Collector was to collect Income Tax, but it does not follow that he was not exercising criminal jurisdiction when he directed the prosecution of the petitioner. Our order also must of course be taken to be of the same character as that of the Deputy Collector whose proceedings were called up by a writ of certiorari. It conceded that when an order u/s 476 is made by a court, the Criminal Court to which the accused is sent would be bound to investigate the question whether the accused is guilty or not guilty of the offence for which he has been directed to be prosecuted. No further complaint of any one is required, the order itself standing in the place of a complaint which the Criminal Court is bound to inquire into and thus constituting the beginning of the criminal proceedings. It follows from this that the Deputy Collector exercised criminal jurisdiction in passing the order and we in refusing to set aside his order also exercised criminal jurisdiction. Cases deciding that an order granting sanction to prosecute a person does not fall within the purview of Section 15 of the Letters Patent are not in point, for that section refers to a judgment or order in a criminal trial. This Court has held that an order granting sanction is not part of a criminal trial but one antecedent to and necessary for the commencement of a criminal trial; an order u/s 476 however starts the criminal trial itself and it seems clear that the order must be taken as one relating to criminal jurisdiction. The petitioner is not therefore entitled to appeal to the Privy Council under Clause 39 of the Letters Patent. This petition must be dismissed.

Sadasiva Aiyar, J.

4. I agree that this petition must be dismissed on the ground that our order was passed in a matter which appertains to criminal jurisdiction but I wish to add that even if the matter was not one relating to criminal jurisdiction Section 39 of the Letters Patent would not apply. The first part of Section 39 relates to appeals from final judgments, decrees or orders made on appeal and from final judgments decrees or orders made in the exercise of original jurisdiction no appeal lies to two or more judges under the provisions of the 15th section of the Letters Patent. Then the latter portion of Section 39 says that from any final judgment decree or order involving property of the value of not less than Rs. 10,000 or from any other final judgment, decree or order made either on appeal or otherwise as a

fore said if the High Court shall declare that the case is a fit one for appeal to the Privy Council, the appeal may lie. It seems to me that the words "" or otherwise"" relate to final judgments, decrees or orders made in the exercise of the original jurisdiction from which appeals do not lie to the High Court itself under the provisions contained in the 15th Clause

Section 40 therefore does not, it seems to me, apply to orders passed by us on an application to exercise our high prerogative of issuing a writ of certiorari. It is not an order passed on appeal, though the order may be said to have been passed under our appellate jurisdiction. It is not an order passed in the exercise of original jurisdiction as Clauses 11,12 and 13 of the Letters Patent show, what is meant by the original civil jurisdiction of the High Court. On this ground also I think that this application cannot stand and I therefore dismiss it.

5. For the same reason C.M.P.2265 is also dismissed.