

(1912) 08 MAD CK 0015
In the Madras High Court
In Re: R. Nataraja Iyer

Date of Decision : 30-08-1912

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 476

Citation : (1913) ILR (Mad) 72 : 16 Ind. Cas. 755 : (1912) 23 MLJ 393

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

Bench : Division Bench

Judgement

Sundara Aiyar, J.—The proceedings, which led up to the two petitions before us, may be briefly stated as follows:

The petitioner, Nataraja Iyer, was assessed to Income Tax on an annual income of Rs. 4,400 for the official year 1910-11. He appealed against

the assessment to the Revenue Divisional Officer of Ariyalur, who was the Collector of Taxes under the Income Tax Act, II of 1886. At the

hearing of the appeal, a sworn statement was taken from the petitioner. The appeal was rejected on the 30th July 1910. On the 25th August 1910,

the Divisional Officer wrote to the Collector suggesting that sanction might be accorded for the prosecution of the petitioner for certain false

statements contained in his sworn statement. The Collector apparently did not consider it necessary to take any steps. On the 15th October 1910,

the Divisional Officer issued notice to the petitioner to show cause why an order u/s 476 of the Criminal Procedure Code should not be passed

directing his prosecution for making false statements. On the 1st November 1910, the Divisional Officer passed final orders u/s 476 directing the

prosecution of the petitioner. The petitioner made two previous infructuous attempts to avoid prosecution to which it is unnecessary to refer in

detail. Criminal Revision Case 509 of 1911 is an application to this Court u/s 435 of the Criminal Procedure Code to set aside the order of the

Divisional Officer.

2. The petition is obviously untenable. u/s 435, this Court has power to call for and examine only the record of a proceeding before an inferior

Criminal Court. The Divisional Officer certainly did not act as a Criminal Court in passing the order u/s 476. He apparently acted as a Revenue

Court. Whether he was in reality a Revenue Court and had power to pass the proceedings, are questions that will have to be subsequently dealt

with. But it is clear that the order was not passed by him as a Criminal Court. The petition must, therefore, be dismissed.

3. Criminal Miscellaneous Petition No. 320 of 1911, is an application asking this Court to quash the proceedings of the Divisional Officer on the

ground of absence of jurisdiction in him to pass the order. A writ of certiorari was applied for. This Court issued the writ and the record of the

proceedings of the Divisional Officer has been sent up to this Court. The petitioner's contention is that the Divisional Officer, in determining an

appeal under the Income Tax Act, did not act as a Court; and he had, therefore, no jurisdiction to pass an order u/s 476 of the Criminal Procedure

Code; secondly, that even if he was a Court, he had no jurisdiction to pass an order directing a prosecution long after the proceedings in the

Income Tax appeal had been closed.

4. The learned Public Prosecutor, on the other hand, contends, first, that we have no jurisdiction to issue a writ of certiorari on an officer beyond

the original, civil and criminal, jurisdiction of this Court; secondly, that this will not quash the proceedings on certiorari as the petitioner had other

remedy open to him, because the Divisional Officer was a Revenue Court in hearing appeals under the Income Tax Act and the order was one

which could be set aside by the Revenue Board to whom the Divisional Officer was subordinate; thirdly, that assuming that this Court has

jurisdiction to quash an order of a Divisional Officer passed as a Revenue Court, there was no such defect of jurisdiction as to call for our

interference and the case is not a fit one for the exercise by this Court of its discretionary power to quash the proceedings on certiorari.

5. The questions for our decision are:

(1) Has this Court jurisdiction to issue a writ of certiorari on an officer beyond the limits of its original jurisdiction?

(2) Was the Divisional Officer a Court, in hearing appeals under the Income Tax Act?

(3) If he was a Court, should the petitioner have appealed to the Revenue Board to get the Divisional Officer's order set aside?

(4) Was the order of the Divisional Officer bad for want of jurisdiction on the ground that it was passed long after the close of the Income Tax proceedings?

(5) Is this a proper case for the exercise of our discretion to quash the Divisional Officer's proceedings on certiorari?

6. On the first question, after hearing the elaborate arguments on both sides, I have come to the conclusion that this Court has no power to issue

the writ on an officer outside Madras. Section 9 of 24 and 25 Vic. Chapter 104, known as the High Courts Charter Act; provides that the High

Court shall have and exercise "all such Civil, Criminal, Admiralty, and Vice-Admiralty Testamentary, Intestate and Matrimonial jurisdiction, original

and appellate, and all such powers and authority for, and in relation to, the administration of Justice in the Presidency," as Her Majesty may by

Letters Patent grant and direct, and it further provides that "the High Court to be established in each Presidency shall have and exercise all

jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act

at the time of the abolition of such last mentioned Courts." The old Supreme Court and the Court of Sudder Dewany Adawlut and Foujdarry

Adawlat were abolished by the establishment of the High Court (Section 8). Neither the Charter Act nor the Letters Patent of the High Court

expressly conferred on it the power to issue a writ of certiorari outside the limits of its original jurisdiction. The question is, whether it has such

power u/s 9 of the Charter Act in consequence of its having been possessed by the Supreme Court or by the Sudder Court.

7. It is admitted that the Sudder Court possessed no such power, although it apparently possessed some powers of superintendence over the

Courts subordinate to it. See Cowell's "Courts and Legislative Authorities in India," page 109. But it is contended that the Supreme Court had the

power. The powers of the Supreme Court were regulated by 39 and 40 Geo. III. Chapter 79, which authorized His Majesty the King of England

to constitute Supreme Courts" for Madras and Bombay by Charter or by Letters Patent and Letters Patent were issued on the 26th December

1801 in pursuance of the Statute. In addition to the powers expressly given by that Statute and the Letters Patent, Supreme Court was to have all

the powers possessed by the Recorder's Court which was then abolished. See Clauses 4 and 55 of the Letters Patent. The Recorder's Court,

again, which was established by 37 Geo. III, Chapter 142, inherited all the powers possessed by the Mayor's Court established by 26, Geo. III,

Chapter 57. But none of these Courts had, in my opinion, the power to issue a writ of certiorari in cases of this sort. The Mayor's Court had Civil

as well as Criminal Jurisdiction ""over all British subjects whatsoever who now reside or shall hereafter reside within any of the ports, factories,

towns, lands or territories in the possession of the said United Company on the Coast of Coromandel, or in any other part of the Carnatic or in the

five Northern Circars including those parts of the said Circars which lie within the Kingdom or Province of Orissa, or within any of the dominions

or territories of the Soubah of the Deccan, the Nabob of Arcot or the Rajah of Tanjore."" (See Section 30 of 26, Geo. III c. 57). It will be

observed that the jurisdiction of the Court was confined to British subjects. There can be no doubt that the expression ""British subjects"" was

intended to include only European British subjects, that is, a Native or a descendant of a Native of Great Britain. The jurisdiction of the Recorder's

Court was laid down in Sections 10 and 11 of 37, Geo. III, c. 142. Section 10, which extended to all ""British subjects"" residing within any of the

territories, subject to or dependent on the Government of Madras, provided that the Court shall have full power and authority to hear and

determine complaints against any of His Majesty's subjects (that is British subjects) for any crimes, misde-menours and oppressions and also all

suits and actions whatsoever against them arising in territories subject to or dependent on the Government of Madras or within any of the

dominions of the Native Princes of India in alliance with that Government, or against any person who at the time when the cause of action arose

was employed by or was directly or indirectly in the service of the United Company or any British subject. Section 11 enacted that the Recorder's

Court should have power to try all suits and actions, either civil or criminal, which by the authority of any Act of Parliament, might at the date of the

Act be tried by the Mayor's Court at Madras or by the Courts of Oyer and Terminer and Gaol Delivery there, and all powers vested in the Mayor's Court or the Court of Oyer and Terminer were conferred on the Recorder's Court. Here, again, it will be noted that the jurisdiction of the Court was confined to British subjects, to persons in the employ of the Company or of a British subject within the territories subject to or dependent on the Government of Madras.

8. The jurisdiction of the Supreme Court is laid down in various clauses of the Letters Patent. Clauses 21 and 22 refer to civil jurisdiction. Clause 31 confers all the equitable powers of the Court of Chancery in England within the limits of the Court's jurisdiction. Clause 32 confers jurisdiction over lunatics and infants. Clauses 33 and 34 confer criminal jurisdiction. Clause 37 gives the Court Ecclesiastical jurisdiction including matters relating to Probates of Wills and Letters of Administration. Clauses 41 and 42 confer admiralty jurisdiction. Under Clause 21, the civil jurisdiction embraced the power to hear and determine suits and actions against British subjects in territories subject to or dependent on the Government of Madras or within the dominions of Native Princes in alliance with that Government or against employees of the Government or of any British subject. Clause 22 gave power to try suits against the inhabitants of Madras. Under Clause 33, the criminal jurisdiction was confined to the town of Madras and the factories subordinate to it.

9. I must now refer to Clause 8 on which much reliance was placed by the learned Counsel for the petitioner. It provides: "The said Chief Justice and the said Puisne Judges shall severally and respectively be, and they are, all and every one of them, hereby appointed to be, Justices and Conservators of the Peace and Coroners within and throughout the settlement of Fort Saint George and the town of Madras and the limits thereof and the factories subordinate thereto and all the territories which now are, or hereafter may be, subject to or dependent upon the Government of Madras aforesaid and to have such jurisdiction and authority as our Justices of our Court of King's Bench have and may lawfully exercise within that part of Great Britain called England as far as circumstances will admit." It is contended that, notwithstanding the provisions of Clauses 21, 22 and 33, this clause must be taken to confer jurisdiction on the Court throughout

the territories subject to the Government of Madras. I cannot agree with this contention. The subject-matter of this clause is, in my opinion, quite distinct from that of Clauses 21, 22 and 33, which define and limit the civil and criminal jurisdiction of the Court. The object of Clause 8 was to confer certain specific powers on the Chief Justice and the Puisne Judges. It is noteworthy that under this clause, the Judges are severally appointed as Justices and Conservators of the Peace and Coroners. Clauses 21, 22 and 33 define the jurisdiction of the Supreme Court of Judicature"" at Madras. It is the Court that possesses the powers conferred under Clauses 21, 22 and 33. Each one of the Judges is a Justice of the Peace and possesses the powers laid down in Clause 8, and the powers consist in the jurisdiction and authority which the Justice of the Court of King's Bench had at the time, apparently as Justices respectively and not the jurisdiction and authority of the Court of King's Bench as such. The Judges of the Court of King's Bench, apart from other powers, had the right to issue a writ of habeas corpus under 21, Car. II, c. 2. Clause 8 may be invoked to prove a similar right existing in the Judges of this Court to issue a writ of habeas corpus to be served on any one anywhere in the territories subject to the Madras Government. It is not contended that the Judges of the Court of King's Bench severally had the power to issue a writ of certiorari. either under the Common Law of England or under any Statute. I cannot hold that Clause 8 widens the jurisdiction given to the Court in civil and criminal matters by Clauses, 21, 22 and 33. It must be remembered that there were Courts of Justice established by the East India Company, empowered to administer Justice in the Company's territories. Clause 23 of the Letters Patent expressly makes reference to such Courts providing that ""no action for wrong or injury shall lie against any person whatever exercising a judicial office in any country Court for any judgment, decree or Order of such Court, or against any person for any act done by or in virtue of the order of such Court."" The Supreme Court was a Court of limited jurisdiction and had no general control over the proceedings of the Courts erected and maintained by the East India Company. It is unnecessary to consider whether they had control in any and what specific classes of cases. I do not deal with the question of the powers of the Supreme Court to issue processes to witnesses and writs of

execution outside the limits of its ordinary jurisdiction, in order to exercise the jurisdiction it actually had in civil and criminal matters. See Clauses

17, 27 and 28 of the Letters Patent; also Section 13 of 37, Geo. III, Chapter 142, which relates to the powers of the Recorder's Court in this matter.

10. Reference must be made to another Statute, 4, Geo. IV, c., 71. That Statute empowered the Supreme, Court of Madras to exercise the same

rights and powers as the Supreme Court of Bengal possessed under any Statute 13, Geo. III, Chapter 63 Section 13, enacted that it, shall be

lawful for His Majesty to establish a Supreme Court ""which said Supreme Court of Judicature shall have, and the same Court is hereby declared to

have, all Civil, Criminal, Admiralty and Ecclesiastical jurisdiction and to form and establish such rules of practice and such rules for the process of

the said Court and to do all such other things as shall be necessary for the administration of justice and the due execution of all or any of the

powers, which by the Charter shall be granted and committed to the said Court and shall also be at all times a Court of Record and shall be a

Court of Oyer and Terminer and Gaol Delivery in and for the said town of Calcutta and the Factory of Fort William in Bengal aforesaid and the

limits thereof and the factories subordinate thereto."" Norman, J., in In the matter of Ameer Khan 6 B.L.R. 392, understood this provision as laying

down that ""the Court was to be a Court of Judicature for the Presidency of Bengal as well as a Court of Record and Oyer and Terminer for the

town of Calcutta"" Sections 14 and 17 of the same Statute defined the Civil and Criminal jurisdiction of the Court which were to extend only to

British subjects and persons employed in the service of the Company or of British subjects and to others who had agreed that any matter should

be determined by the Supreme Court. The question before the learned Judge was the right of the Supreme Court to issue a writ of habeas corpus

for the production of a person confined beyond the limits of Calcutta. The learned Judge proceeded chiefly an Section 4 of the Letters Patent of

the Bengal Supreme Court, corresponding to Clause 8 of the Letters Patent of the Madras Court, for holding that the Supreme Court had power

to issue the writ. If the learned Judge intended to hold that Section 13 of the Statute conferred powers to try suits and appeals throughout Bengal,

Behar and Orissa, I am, with all deference, inclined to disagree with him. No clause in the Letters Patent gave the Supreme Court any appellate powers over the proceedings of the Company's Courts; and Section 14 defining the civil jurisdiction was expressly limited in its scope. I am inclined to think that the phrase ""for the said town of Calcutta and Factory of Port William in Bengal aforesaid and the limits thereof and the factories subordinate thereto,"" qualifies the whole of the preceding portion of the sentence describing the jurisdiction of the Supreme Court, 4, Geo. IV c, 71, therefore, did not extend the powers possessed by the Madras Supreme Court under the Statutes and Letters Patent directly relating to that Court. It remains only to add that there is absolutely no doubt that the expression ""British subjects"" was undoubtedly not meant to include the Indian subjects of the East India Company. See the title of 37, Geo. III, c. 142, which refers to British subjects being concerned in loans to Native Princes; Section 11 of the same Statute, which speaks of natives or descendants of natives of Great Britain as apparently equivalent to British subjects: Section 13, which speaks of the inhabitants of Madras to include the Indian, subjects of the Company; Clauses 21 and 22 of the Charter Act of 1800, the former of which refers to British subjects and the latter to inhabitants of Madras; Clause 34 of Charter Act, which speaks of the King's subjects as equivalent to British subjects.

11. There is a provision in the Letters Patent of 1800 relating to the writ of certiorari. Clause 47 provides that the Court of Requests (that is, the Madras Court of Small Causes) and the Court of Quarter Sessions should be subject to the order and control of the Supreme Court in the same manner as the inferior Courts and Magistrates of England are subject to the Court of King's Bench and to that end the Supreme Court is authorized to award and issue a writ or writs of mandamus, certiorari, procedendo or error to be prepared in manner above mentioned and directed to such Court or Courts or Magistrates as the case may require, and to punish any contempt thereof or wilful disobedience thereto by fine and imprisonment."" The learned Public Prosecutor relies on this clause as impliedly enacting that there is no power to issue a writ of certiorari in any case not covered by it. But if the power could be proved to exist otherwise, I would not be prepared to accept his contention; for it is a well

settled rule that the powers of a Superior Court can be limited or taken away only by some express provision to that effect. I am, however,

satisfied, on an examination of the Statutes relating to the subject, that the Supreme Court did not possess the power to issue the writ on any one

beyond the limits of Madras, unless he was a British subject. The jurisdiction, over British subjects outside Madras and persons in the employ of

the East India Company or of British subjects to hear and determine civil and criminal cases against them, would not affect the power to issue the

writ. The Supreme Court had no general power or control over the Courts of the East India Company in the Moffusil or over their officers acting

judicially. I believe this proposition would be correct even in cases where the officers exercising jurisdiction might be British subjects. The

Divisional officer in this case is not a British subject in the sense in which that expression is used in the Letters Patent of the Supreme Court nor can

he come within the designation of "one in the employ of the East India Company." It cannot be held that, because the Supreme Court had

jurisdiction over all servants of the East India Company, the High Court now has similar jurisdiction over all servants of the British Government. It is

true, no doubt, that the Company's servants became the servants of the Crown by virtue of Section 58 of 21 and 22, Vic, c. 106. But persons

employed subsequent to that Statute by the Crown in the first instance cannot be regarded as falling within that description of persons.

12. I shall now proceed to deal with the cases which were cited during the arguments. There has apparently been no case in which any of the High

Courts issued a writ of certiorari on an officer beyond the limits of its own original jurisdiction. In *Nundo Lal Bose v. Corporation for the Town of*

Calcutta 11 C.p 275 it was issued against the President of the Municipal Corporation of Calcutta. In *Pirbhai Khimji v. Bombay, Baroda and*

Central India Railway Co. 8 B.H.C.R. 59 Reg. v. *Nathalal Pitambar* 10 B.H.C.R. 102 and Reg. v. *Ramdas Samaldas* 12 B.H.C.R. 217 the

Bombay High Court held that it had power to issue a writ within its original jurisdiction. In *In the matter of James Pattle* (1836) Fult Rep. 313 : 1

Ind. Dec.828, an application was made for the writ on a Zillah Magistrate who, it was alleged, had convicted a British subject without jurisdiction.

Ryan, C. J., observed: "The Court has no jurisdiction to remove convictions of Magistrates of Zillahs made on British subjects, but under 53 Geo.,

C. 3, Section 155. The affidavit denies that the conviction is under this Act and states it to be under certain Regulations of the Bengal Government-

-we have no power to issue the writ of certiorari and have no means of quashing the conviction were it returned into Court."" Malkin, J., agreed

with him. Grant, J., was of opinion that the conviction should be quashed, but his decision was not based on the ground that the Supreme Court

had any general jurisdiction over proceedings of the Zillah Magistrates, but on the ground that the Supreme Court had jurisdiction in a particular

class of cases. In *In re Samuel Valentin Foi* (1850) 1 Tay. & Bell. 219 : 2 Ind. Dec. 396, a British subject was convicted by a Mofussil

Magistrate. A writ of habeas corpus against the Jailor was applied for on the ground that he had no jurisdiction. Peel, C.J., held that the Court had

undoubtedly jurisdiction over all persons in the employment of the East India Company within Bengal, Behar and Orissa and the places annexed

thereto in respect of torts and that, therefore, whether a Jailor were a Native or a European, if he had the character of a servant of the East India

Company, the Court would have jurisdiction over his wrongful act of unlawful imprisonment. He went on to observe: ""This Court, though it has an

appellate jurisdiction from the Courts of the Company to a limited extent in certain classes of offences committed by British subjects, has no

jurisdiction generally over those Courts. It has, therefore, no power to rectify a decision, if erroneous, or avert its consequences. Nor is a writ of

habeas corpus the proper writ to rectify errors: it brings up the person only: a certiorari must issue in addition thereto in order to bring up

documents, but this Court has no power to bring up by certiorari the proceedings of a Court of the East India Company generally: it follows,

therefore, that we can interfere only in the case where the proceeding is wholly without a judicial foundation to support it, as it would be if the

Court had no jurisdiction to try the subject-matter. But the Judge had jurisdiction of the cause: he had jurisdiction to summon the alleged offender:

he could not know beforehand that the offender was a British subject: and the objection may be untruly made. It is a mixed question itself of law

and fact, which must, if raised, be tried and determined judicially in the Court. The Court is, therefore, necessarily acting judicially in the

determination of that question. This Court has also a limited, jurisdiction; if a party is indicted here for an offence committed in the Mofussil, it is

necessary to prove our authority to try him by proving him subject to the jurisdiction." In the matter of Ameer Khan 6 B.L.R. 392, and In re

Rudolph Stallman 39 C.k 164 : 15 C.W.N. 1053 : 14 C.L.J. 375 : 12 Ind. Cas. 273 : 12 Cri. L.J. 505, cases where the right of High Court to

issue a writ of habeas corpus into the Mofussil was in question. The point was not decided in the latter case. In the earlier case, Norman, J., held

that the High Court had power to issue writ, relying on Clause 4 of the Letters Patent of the Bengal High Court. In Jamuna Bai v. Sadagopa 7 M.k

56 this Court held that before rules were framed for the execution of the decrees of the High Court, it had power to sell property in the Chingleput

District. Attention may be drawn to the observations of Innes, J., as to the scope of the Court's jurisdiction over persons beyond the limits of its

original jurisdiction. In his opinion, it was confined to (1) European British subjects, (2) Native, subjects, servants of the East India Company, and

(3) Native subjects everywhere in matters in which they have contracted to be amenable to the Supreme Court. It is clear that the learned Judge

did not consider that Clause 8 of the Letters Patent of the Supreme Court conferred general power over all persons within the territories subject to

the Government of Madras. In Rajah of Ramnad v. Seetharam Chetty 26 M.k 120 the Court held that after this Court had framed rules for the

execution of its decrees on the Original Side, it had no power to issue a warrant of arrest to be executed beyond the limits of Madras. In In re The

Bombay Justices (1829) 12 E.R. 222 : 1 Knapp. P.C.P. 1, which related to the jurisdiction of the Supreme Court to issue a writ of habeas corpus

beyond the limits of Bombay, no judgment was delivered by the Judicial Committee of the Privy Council; but they made a report which was

affirmed by His Majesty the King. The Committee reported that "the Supreme Court has no power or authority to issue a writ of habeas corpus to

the gaoler or officer of a Native Court (referring to a Court established by the East India Company) as such officer, the Supreme Court having no

power to discharge persons imprisoned under the authority of a Native Court,

13. The precedents referred to above are, in my opinion, against the contention of the petitioner's Counsel that the Supreme Court had jurisdiction

to issue the writ on an officer of the East India Company acting judicially beyond the limits of Madras. It is not contended that the application could

be supported u/s 15 of 24 and 25, Vic, c. 104 (the Charter Act), which lays down that the High Court shall have superintendence over all Courts

which may be subject to its appellate jurisdiction. Assuming that the Divisional Officer was a Court, he can hardly be said to have been a Court

subject to the appellate jurisdiction of this Court. Dr. Swaminadhan, the learned Counsel for the petitioner, argued that a Superior Court like this

Court has inherent jurisdiction to issue a writ to quash all proceedings of a judicial nature where so ever, and by whomsoever held within the ambit

of its jurisdiction. He cited no authority in support of this proposition. I am not prepared to accept it. Our right of superintendence is confined to

Courts subject to our appellate jurisdiction. There may be judicial proceedings held by officers not subject to our appellate jurisdiction. Decisions

as to the Income Tax payable by a person are not subject to review by this Court. The jurisdiction of this Court is defined by the Charter Act and

by the Letters Patent constituting the Court. It will be entirely wrong, in my opinion, to hold that there is any power vesting in this Court over all

persons exercising judicial functions within the limits of the Presidency of Madras. I hold, therefore, on the first question that this Court has no

jurisdiction to quash, on return to a writ of certiorari, the proceedings of the Divisional Officer.

14. The second question is whether the Divisional officer's order, dated 30th July 1910, can be taken to have been passed by him as a Court. In

Criminal Revision Case No. 130 of 1900, Weir's Criminal Rulings, Volume 2, page 598, a Divisional Officer made an order u/s 476 of the

Criminal Procedure Code apparently on a report by a Tahsildar before whom an alleged false statement was made in an inquiry before him as

Income Tax Officer. It was held that in doing so he did not act as a Court and the order was set aside by Subramania Aiyar and Sheppard, J.J. It

does not appear how the learned Judges thought they had jurisdiction to interfere in the matter. Possibly, they regarded the order as one purporting

to be passed by an inferior Criminal Court, as this Court's powers of revision are confined to orders passed by an inferior Criminal Court.

Apparently, the false statement was made before the Tahsildar, who recorded it for the purpose of determining the assessment to be levied. The

case is distinguishable from the present one where the statement was made in the course of the hearing of an appeal made by the petitioner against

an order fixing the assessment. The determination of the assessment in the first instance may not be an act of a Court, although the assessing officer

may have power to record statements. But an appeal against the assessment is dealt with by the Collector in the manner in which an appeals

disposed of by a Civil Court. He is bound to hear the appellant and has power to record evidence. (See Sections 28 and 37 of the Income Tax

Act II of 1886.) In *In re Kalidas Rewadas* 8 Bom. L.R. 477 : 4 Cri. L.J. 34, the Bombay High Court held that an Income Tax Collector

determining appeals against the assessment was not a Court and that the High Court had no power to interfere in revision with an order passed by

him u/s 476 of the Criminal Procedure Code. The Punjab Chief Court has held the contrary view; see *Emperor v. Rup Singh* 3 Cri. L.J. 128 : 187

P.L.R. 1905 : 44 P.R. 1905 : and the majority of the Chief Court of Sindh also has done so. See *Emperor v. Deumal* 10 Cri. L.J. 395 : 3 Ind.

Cas. 886 : 3 S.L.R. 66. What then is the test for deciding whether the Divisional Officer acted as, a Court or not? In *Naloo Patra v. Emperor* 38

C.p 368 : 11 Ind. Cas. 595 the proceedings of a Deputy Collector under the Land Registration Act, in an application for the registry of the

applicant's name as proprietor, were held to be proceedings of a Court. The learned Judges, Holmwood and Shraffuddin JJ., would appear to

have held that the circumstance that the Collector had power to summon and enforce the attendance of witnesses and compel them to give

evidence and also compel the production of documents went to show that he was to act as a Court. In *Queen-Empress v. Munda Shetti* 24 M.p

121 this Court held that a Tahsildar, when holding an inquiry as to whether a transfer of names in a land register should be made or not, is a

Revenue Court. The Court observed that the Tahsildar "was authorized, under Act III of 1869, to receive evidence and to decide whether the

transfer should, be made or not, He was, therefore, in our opinion, a tribunal empowered to deal with a particular matter and authorized to receive

evidence bearing on that matter in order to enable him to arrive at a determination." I am of opinion that the test for deciding whether the Divisional

Officer was a Court or not has been correctly laid down in the last case. In *Rex v. Woodhouse* (1906) 2 K.B. 501 : 75 L.J.K.B. 745 : 95 L.T.

399 : 70 J.P. 485 : 22 T.L.R. 603 the test adopted appears to be whether there was a lis before the officer. In my opinion, there was a lis in this

case. It is not necessary that there should be two parties arrayed as opponents in the matter to be decided by the officer. The petitioner had a right

that he should not be made to pay a heavier tax than was properly assessable on his income. The officer had to decide as between the petitioner

and Government what the petitioner's income was. He was bound to fix a day and place for the hearing of the petition. (See Section 28). It is

immaterial that in the appeal, the Government would not be named as a respondent. Suppose a trustee or a guardian of an infant makes an

application to a Court for leave to sell certain properties of the beneficiary or the ward. There might not be any respondent in the application; yet, it

cannot be doubted that the order passed would be that of a Court. The petitioner was putting forward a right that his income should be assessed at

a certain figure and the Government had equally a right that the assessment should be fixed on the true income of the petitioner. I am of opinion,

therefore, that the Divisional Officer acted as a Court in deciding the Income Tax appeal. I may observe that I am prepared to agree with Dr,

Swaminadhan that mere authority to receive evidence would not make the officer recording it a Court.

15. With regard to the next question, whether the petitioner should have appealed to the Revenue Board against the Divisional Officer's order u/s

476, I am of opinion that the learned Public Prosecutor's contention cannot be sustained. Abdul Raoof v. Emperor 4 A.L.J. 701 : (1907) A.W.N.

277 : 6 Cri. L.J. 350 no doubt, appears to support it, but I am unable to agree with the view taken in that case. It is not pointed out under what

provision of law, the Revenue Board would have power to set aside the Divisional Officer's order. I do not think that the mere fact that the

Divisional Officer was subordinate to the Revenue Board, in the discharge of his functions as a Revenue Officer, generally could be taken to give

any revisional jurisdiction to the Revenue Board. It might be that, if instead of acting u/s 476, he had accorded sanction u/s 195 of the Criminal

Procedure Code, such an order could have been set aside by the Revenue Board as the authority to whom he was subject in the discharge of his

functions as an Income Tax Officer. But it does not follow that they had any jurisdiction to set aside an order passed u/s 476. I cannot, therefore,

hold that the objection to the petition on the ground that there was other remedy open to the petitioner can be sustained, if this Court would

otherwise have the power to interfere by a writ of certiorari and if the Divisional Officer did not act as a Court.

16. The fourth and fifth questions are whether there was defect of jurisdiction in the Divisional Officer on the ground that the order u/s 476 was

passed some considerable time after the close of the income tax proceedings. On this question, there has been a conflict of judicial opinion. See

Aiyakannu Pillai v. Emperor 32 M.k 49 : 4 M.L.T. 404 : 19 M.L.J. 42 : 9 Cri. L.J. 41; In re Chillashi Nanu Nair 6 M.L.T. 92 : 2 Ind. Cas. 425 :

10 Cri. L.J. 80; In re Ramakristnamma 8 M.L.T. 81 : 7 Ind. Cas. 398 : 11 Cri. L.J. 479; In re Ratna Pillai 10 M.L.T. 333 : 12 Ind. Cas. 216 : 12

Cri. L.J. 496 and Riazul Hassan v. Emperor 10 Cri. L.J. 525 : 4 Ind. Cas. 260 : 6 A.L.J. 924. I consider it unnecessary to refer to the decisions of

the other High Courts. In Aiyakannu Pillai v. Emperor 32 M.K 49 : 4 M.L.T. 404 : 19 M.L.J. 42 : 9 CrI. L.J. 41 the majority of the Full Bench of

this Court were of opinion that a Court has no power to pass an order under that section except as a part of the proceedings in which the offence

referred to in the section was committed or brought to its notice. At the same time, there is weighty judicial opinion to the contrary. It may be that,

according to the opinion of the majority of the Full Bench in Aiyakannu Pillai v. Emperor 32 M.L 49 : 4 M.L.T. 404 : 19 M.L.J. 42 : 9 Cri. L.J. 41

the illegality may be regarded as so serious as to entitle this Court to interfere in revision. But, in my opinion, it can hardly be said that the case is

one of entire absence of jurisdiction in the Court passing the order. The Court has inherent jurisdiction under the Procedure Code to pass the

order. Taking it that it is bound to do so at a particular time, it is not easy to say that the passing of the order after the lapse of the time would be a

ground for holding it to be made without jurisdiction. At any rate, I do not think that this Court would be bound to quash the proceedings on

account of a defect of jurisdiction of this character. We are not bound to interfere and quash the proceedings on certiorari even in cases where the

defect can be said to be one of jurisdiction. The matter rests entirely on our discretion which will be exercised if the justice of the case demands

our interference. Even if we have the power to interfere, I am of opinion that the case is not one in which we should quash the order of the

Divisional Officer.

17. I would, therefore, dismiss the petition.

Sadasiva Aiyar, J.

18. In this case, I have had the great advantage of having perused the exhaustive judgment of my learned brother. So far as the Revision Case No.

509 of 1911 is concerned, I need say nothing more than that I agree with my learned brother for the reasons stated by him that that case ought to

be dismissed. The other Criminal Petition No. 320 of 1911, which relates to the application under which a writ of certiorari has been issued,

involves several difficult questions of law on which I shall proceed to express my opinions at once.

19. As formulated in my learned brother's judgment, the questions for decision are:

(1) Has this Court jurisdiction to issue a writ of certiorari on an officer beyond the limits of its original jurisdiction?

(2) Was the Divisional Officer a Court in hearing appeals under the Income Tax Act?

(3) If he was a Court, should the petitioner have applied to the Revenue Board to get the Divisional Officer's order set aside?

(4) Was the order of the Divisional Officer bad for want of jurisdiction on the ground that it was passed long after the close of the Income Tax

proceedings?

(5) Is this a proper case for the exercise of our discretion to quash the Divisional Officer's proceedings on certiorari?

20. On the questions 2, 3, 4 and 5, I agree in the conclusions of my learned brother. I think that the Divisional Officer was a Court in hearing

appeals under the Income Tax Act. The word "Court" has numerous significations in the English language in various departments of human activity.

Confining oneself to the significations of this term as used in the department of law, even in that single department, the word has a very extended

signification. Bouvier's Law Dictionary gives four meanings as follows:

(1) A body in the Government to which the public administration of justice is delegated;

(2) The presence of a sufficient number of the members of such a body regularly convened in an authorised place at an appointed time, engaged in

full and regular performance of its functions;

(3) The place where justice is judicially administered;

(4) The Judge or Judges themselves, when duly convened.

21. The word "Court", in Section 476 of the Criminal Procedure Code, evidently means a Judge or body of Judges to whom the public

administration of justice as regards any particular subject or subjects has been delegated by the Government. The Divisional Officer has been,

empowered by Government to do justice between itself and payer of an income tax on the question as to the extent of his liability to pay such tax

and I am, therefore, clear that he is a Revenue Court. The question who or what is a Court within the meaning of particular enactments is frequently

a very difficult question and even the highest tribunals seem to be both to give any definition which would be comprehensive and exhaustive. For

instance in *Hiranand Ojha v. Emperor* 9 C.W.N. 983 : 2 C.L.J. 149 : 2 Cri. L.J. 575 their Lordships did not think it necessary to express any

opinion whether a Sub-Deputy Collector who was empowered, under the Bengal Land Registration Act of 1876, to inquire into claims for

registration of landed estate and who had powers to compel witnesses to give evidence before him, was or was not a Court. In *In re Maharajah*

Madhava Singh 32 C. 1 : 8 C.W.N. 841 : 6 Bom. L.R. 793 : 1 A.L.J. 691 : 31 I.A. 239, the Commissioners, who were appointed by the

Governor-General to inquire into the truth of a charge against the Maharaja of Panna that, he had instigated the death of his uncle and who had

convicted the Maharaja of such offence, were held by their Lordships of the Privy Council not to come within the meaning of the term "Court"

because the Commission was appointed merely to advise the Governor-General in Council. But it appears from the short judgment of Lord Davey

in that case that their Lordships added that even if the Commission in question was a Court, it was not a Court from which an appeal lay to His

Majesty in Council. The expression "Civil Criminal or Revenue "Court," in Section 476 of the Criminal Procedure Code, cannot, of course,

include a private Court of Arbitration or Commissioners who are merely empowered to take evidence, but it must include a tribunal like the Court

of a District Munsif which has ordinarily power to give decisions as to rights of parties coming before it, though in particular cases as for example,

where another Court has sent a Commission to the District Munsif merely to take

evidence, or where" an Appellate Court directs it to take evidence and send the evidence so taken to the Appellate Court, it may not be able to give any decision on the evidence taken before it as a Court. Again, it is conceivable that there may be constituted Appellate Courts which can only decide upon evidence taken by Inferior Courts. They may not themselves be empowered to take evidence and yet they will come under the definition of Courts. I am, therefore, of opinion that the test for deciding whether a particular officer is a Court, does not depend upon whether he is empowered to take evidence but whether he has been given jurisdiction by the constituted authorities to deal out justice in any particular defined class of cases. In the case in *Queen-Empress v. Munda Shetti* 24 M.L. 121 the learned Judges also lay stress on the fact that the Tahsildar holding an inquiry as to transfer of names in a land register was a tribunal empowered to deal with a particular matter and to consider all the evidence in order to enable him to arrive at a determination on that matter. Applying this test, the Revenue Divisional Officer in this case was clearly a Revenue Court. Coming to the next question whether the petitioner had any other remedy against the Order of the Divisional Officer, who purported to act u/s 476 of the Criminal Procedure Code, I agree with my learned brother that the petitioner had none. As regards the next question as to whether the Revenue Officer's order was without jurisdiction because it was passed long after the close of the Income Tax proceedings, I think I am bound by the Full Bench case of *Aiyakannu Pillai v. Emperor* 32 M.K. 49 : 4 M.L.T. 404 : 19 M.L.J. 42 : 9 Cri. L.J. 41 though, if I may say so with respect, the reasoning in the dissentient judgments of Miller, J. both in *Rahimatulla v. Emperor* 31 M.K. 140 : 3 M.L.T. 79 : 17 M.L.J. 584 : 7 Cri. L.J. 54 and *Aiyakannu Pillai v. Emperor* 32 M.K. 49 : 4 M.L.T. 404 : 19 M.L.J. 42 : 9 Cri. L.J. 41 have appealed more to my mind, as they have evidently appealed to the minds of Benson and Munro, JJ. in the case of *Ramiya Naik* (Criminal Miscellaneous Petition No. 207 of 1907) and to the minds of the Judges who decided *In re Lakshmidas Lalji* 32 B.K. 184 : 3 M.L.T. 116 : 10 Bom. L.R. 28 : 7 Cri. L.J. 35, I think that till the Legislature makes the point clear by amending the Code, I must follow *Aiyakannu Pillai v. Emperor* 32 M.K. 49 : 4 M.L.T. 404 : 19 M.L.J. 42 : 9 Cri. L.J. 41. On the 5th question

whether this is a fit case for the exercise of our discretion to grant a writ of certiorari, assuming that we have jurisdiction to do so, the petitioner can take all objections as to the alleged illegality of the Divisional Officer's action u/s 476 before the Criminal Court, which is trying him for the offence of perjury and I am not inclined to encourage technical objections which are merely intended to prevent the Courts from going into the merits of the question, whether the petitioner did or did not commit perjury in the statements he gave before the Revenue Court. The only question remaining for disposal, which I have reserved till the end as one of great difficulty, is whether the High Court has got power to issue a writ of certiorari on an officer performing judicial duties in the Mofussil. The statutes on this point have been referred to in the judgment of my learned brother and I do not intend to refer to all of them. That the High Court has inherited all the powers of the Supreme Court seems to be clear law. The Letters Patent of Supreme Court, Clause 8, clearly says that the Chief Justice and the Puisne Judges have such jurisdiction and authority as "Our justices to the King's Bench have and may lawfully exercise" within England, the jurisdiction of the Supreme Court to extend for this purpose throughout the settlement of Fort Saint George and the town of Madras and all the territories which now are or hereafter may be subject to or dependent upon the Government of Madras. That the Court of King's Bench had the power to issue writs of certiorari over the whole of England cannot be denied. The Chief Justice and Judges of the High Court have, therefore, in my opinion, clearly jurisdiction over the whole Madras Presidency to issue writs of certiorari. The Court of King's Bench had similarly power to issue writs of habeas corpus over the whole of England and Mr. Justice Norman, in *In the matter of Ameer Khan* 6 B.L.R. 392, expressly bases the power of the High Court of Calcutta to issue writs of habeas corpus throughout Bengal even to persons in the Mofussil on the ground that the High Court of Calcutta inherited all the powers of the Supreme Court of Calcutta under its Letters Patent, which contained a similar provision to Clause 8 of the Letters Patent of the Madras Supreme Court, and had all the powers of the King's Bench in England over the whole of Bengal. Both writs are high prerogative writs vested in the Court of King's Bench as representing the powers of the Crown to do justice in extraordinary cases and I see no reason to restrict the power to issue such writs of certiorari

to persons within the Original, Civil and Criminal, jurisdiction of the Madras High Court, if (as must be conceded) the writ of habeas corpus can

issue into the Mofussil also. I am unable to agree that the Clause 8 of the Letters Patent gave the powers it gives to the Chief Justice and the Puisne

Judges in their individual capacity and that it was not intended to give them powers as constituting the Supreme Court. The Statute 39 and 40,

George III, Ch. 79, was intended to establish a Supreme Court of Judicature at Madras to consist of the like number of persons, etc., the

Supreme Court at Fort William and the Letters Patent were issued in order to establish the said Supreme Court of Judicature to consist of the

Chief Justice and the Puisne Judges. The said Chief Justice and Puisne Judges were empowered to make rules for forming Courts made up of

individual Judges or Bench of Judges, as the case may be, to hear particular matters within the jurisdiction of the Supreme Court. The writ of

habeas corpus, when it is issued by a single Judge or a Bench of Judges, is issued because the Judge or Judges form the Court for that particular

matter and I am, therefore, clear that the writ of certiorari cannot be put on a different footing from the writ of habeas corpus; and if the writ of

habeas corpus can issue into the Mofussil by the powers vested in the Supreme Court (and inherited by the High Court) under Clause 8 of the

Supreme Court Letters Patent, the writ of certiorari can also run in the Mofussil under the same powers. The power of the King's Bench to issue

writs of habeas corpus and certiorari were not given by any Statute, for the first time but belonged to them as representing the high prerogative

powers of the King. The Habeas Corpus Act 31 Charles II, Chapter 2, did not create the power in the Court of the King's Bench for the first time

and, as Norman, J., remarked during the course of the argument in Ameer Khan's case 6 B.L.R. 392, the Statute assumes the power of the

Judges to issue writs of habeas corpus at Common Law. The Court of King's Bench at Westminster had power to issue writs of habeas corpus to

all parts of Her Majesty's dominions even to those parts in which there were independent legislatures as was done in the case of Henry

Anderson (1861) 3 El. & El. 487 : 30 L.J.Q.B. 129 : 7 Jur.(N.S.) 120 : 3 L.T.(N.S.) 622 : 9 W.R. 255 : 122 R.R. 808, where a habeas corpus

was issued to Canada. In the year 1862, that power was qualified by 25 and 26. Victoria, Chapter 20, which enacts that no writ of Habeas

Corpus shall issue out of England into any colony or foreign dominion where Her Majesty had a lawfully established Court of Justice having

authority to grant and issue the said writ and to ensure the due execution thereof throughout such colony or dominion. Now the Charter Act and

the Letters Patent of 1800 gave to the Supreme Court, throughout the territories subject to the Madras Government all, the powers of the King's

Bench which the King's Bench could exercise throughout England and it seems to me clear that those powers included the jurisdiction to issue

writs of habeas corpus, certiorari and others. Prerogative writs like habeas corpus, certiorari" prohibition and mandamus belong to Superior

Courts as representing the King's Majesty, who "for the pleasure of God and the quietness of our subjects, to save our conscience and to keep

our oath" has commanded "our Justices" to hold these powers. The writ of certiorari includes several kinds of writs viz., certiorari to remove for

trial, certiorari for judgment on indictment, certiorari to quash commitment, certiorari for the purpose of execution or coercive process, certiorari to

remove Orders, etc., of cases stated, certiorari to remove depositions for bail, and certiorari to remove record for use as evidence. But in this

case, we are only concerned with the third kind, viz., certiorari to quash. The Supreme Court was established as a Court of Judicature for the

whole presidency and all the dominions which may come under the Government of Madras. I agree with Norman, J., that while as regards

Original, Civil and Criminal, jurisdiction, the Letters Patent confined the jurisdiction of the Supreme Court to the Presidency Town, the powers of

the Supreme Court, as a Court of Judicature for the whole of the Presidency of Madras, extend to the issuing of writs of habeas corpus and like

prerogative writs into the Mofussil also, provided that they are not issued so as to affect Courts. The fixing of the Civil, Criminal and other

jurisdiction of the Supreme Court and habitants, who do not owe undivided allegiance to the British Crown by Clauses 21, 22, 33, 34, of the

Letters Patent, cannot, in my opinion, limit the powers given by Clause 8. I think that the power to issue these high prerogative writs in the Indian

Dominions of His Majesty must inhere in some Courts of record and Clause 8 of the Letters Patent for Madras and Clause 4 of the Letters Patent

for Bengal and similar clauses in the Letters Patent of the other High Courts must have been intended to give such powers to the High Courts in

India, the King's Bench in England being deprived, of the power to issue writ of habeas corpus in the dominions of India by 25 and 26 Victoria,

Chapter 20, when the Supreme Courts were established in the Indian Dominions. As said in *Peacock v. Bell* (1679) 1 Willi Saun 74 nothing shall

be intended to be out of the jurisdiction of the Superior Court except that which especially appears to be so. If the right to issue writs of certiorari

into the Mofussil in appropriate cases, did not reside in the Supreme Court at Madras and does not reside now in the High Court, where else did

and does it-reside? The right to quash proceedings of judicial bodies was intended to meet cases where irremediable injustice might ensue to the

subjects of His Majesty and if such a power does not exist in the High Court, the King would be unable to exercise his prerogative to prevent such

injustice. I am "" aware, as Innes, J., remarked in *Jamuna Bai v. Sadagopa* 7 M.K 56, that the exact jurisdiction conferred by the Charter of the

Supreme Court has always been regarded as very obscure but in that case in *Jamuna Bai v. Sadugopa* 7 M.K 56 their Lordships did accept the

argument of the Advocate General that the jurisdiction of the Supreme Court was not merely territorial and they allowed property situate in

Chingleput to be sold in execution of a decree passed by the Madras High Court on its Original Side. Innes, J., makes no reference to Clause 8 of

the Letters Patent of the Supreme Court, simply because it was not necessary to consider that clause at all for the purposes of that case and I am

unable to find any observation in that judgment which shows that the learned Judge must have held that Clause 8, to which, as I have already said,

he makes no reference, conferred no power to issue writs of habeas corpus or certiorari, directed to judicial bodies within the territories subject to

the Government of Madras. The case of *Raja of Ramnad v. Seetharam Chetty* 26 M.K 120 depended upon the provisions; of the Letters Patent

of 1865, which expressly enacted that the ordinary Original, Civil and Criminal, jurisdiction of the said High Court of Madras shall not extend

beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction and it had nothing to do with the right of the High

Court as inheriting the powers which the Supreme Court had under Clause 8 of its Letters Patent. We are considering this question not in the

ordinary Original Civil side of the High Court and hence the restriction placed upon the Original Side of the High Court by the Letters Patent of

1865 and the rules framed by the High Court under the Letters Patent relating to transfer of Original Side decrees for execution have no bearing

upon the consideration of the question before us. The Cases of *In re The Bombay Justices* (1892) 12 E.R. 222 : 1 Knapp. P.C.P. 1, *In the matter*

of *James Pattie* (1836) *Fulton's Rep.* 313 : 1 Ind. Dec. 828, and *In re Somuel Valentin Foy*. (1850) 1 Tay. & Bell. 219 : 2 Ind. Dec.(o.s.) 396,

all depend upon the question whether the Supreme Court had any kind of jurisdiction over the Courts established by the East India Company in

the Mofussil and the officers of the Company's Courts, the powers of the East India Company being regulated by their own special statutes and

charters which gave them power to establish Courts in the Mofussil as regards the Company's subjects, who were not even considered as British

subjects owing direct allegiance to the Crown. British Laws did not run in the Company's Mofussil Territory. The Company obtained varying

rights over scattered factories from various Native Princes and the Company's Courts countenanced slavery and the Company's native subjects in

the Mofussil were not even British Subjects. Till direct allegiance to the Crown was established and the Mofussil Courts became the Courts of the

Crown just like the High Court, instead of having been the Courts of the East India Company, the Supreme Court had clearly no right to issue

writs of certiorari in respect, of Mofussil, Courts, which were practically Foreign Courts and over the officers of the Mofussil Courts carrying out

the orders of such Courts and that is the main ground on which those old cases were decided, Clause 23 of the Letters Patent barring the Supreme

Court's jurisdiction over Courts--the Company's Courts. As was said by Sir Elijah Impey in the Patna case in 1777: "'In this country, the gross

body of the people are not, and only certain persons answering particular descriptions are, objects of the King's Laws and of the jurisdiction of

this Court'", that is, the Supreme Court. But when all the people became subject to the King's Laws and the King's Courts instead of the

Company's laws and Company's Courts, they must be entitled to invoke the King's prerogative vested in the Superior Courts for their protection.

22. In the result, and after much anxious consideration, I have come to the conclusion that the power to issue the writ of certiorari to quash judicial

proceedings passed by persons in the Mofussil does belong to the High Court, though, of course, the power should not be invoked except in very

extraordinary cases. I can well conceive of cases in which proceedings in the nature of judicial proceedings might be passed by an officer and these

proceedings might be postponed by him to take effect at a future time when the person to be affected by such order may have to be absent from

British India and could not, therefore, then take steps to prevent the execution of that order. In such a state of facts, it might be necessary, in the

interests of justice, to remove such order by a writ of "certiorari to quash" to the High Court and have it quashed to prevent irremediable injustice.

23. As I agree with my learned brother on all the questions arising in this case except this rather academic, though important, question as to the

powers of the High Court to issue writ of certiorari to quash and as the decision on the other four questions leads to the same conclusion as that

which my learned brother has arrived at, I agree that this petition (No. 320 of 1911) also, like the Petition No. 509 of 1911, should be dismissed.