

(1954) 08 MAD CK 0016

In the Madras High Court

Case No : Letters Patent Appeal No. 113 of 1954

In Re: S. Govind Swaminathan

Date of Decision : 17-08-1954

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 1

Citation : AIR 1955 Mad 121 : (1955) CriLJ 505 : (1955) ILR (Mad) 1084

Hon'ble Judges : Rajagopala Ayyangar, J; Balakrishna Aiyar, J

Bench : Division Bench

Advocate : K. Bashyam and T.R. Srinivasan, for the Appellant; A.G. and Public Prosecutor as Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal is against an order of Mack J.- while presiding over the Second Criminal Sessions of the High Court. The learned

Judge held that the appellant had committed "ex facie" contempt of court on 30-4-1954, and affording to the appellant an opportunity to show

cause why he should not be committed for contempt found him guilty and sentenced him to pay a fine of Rs. 1000. The appeal is against this order

of Mack J. convicting the appellant and sentencing him to the punishment abovementioned.

2. We are not now concerned with the details of the contempt alleged or the merits of the Contentions raised by the appellant in this appeal, as the

question which we have now to decide merely relates to a preliminary objection that the appeal itself is incompetent under Clause 15 of the

Letters Patent.

3. In order to appreciate how the case has arisen it would be convenient to set out in brief outline the matters that led to the present proceedings.

Mr. Justice Mack was appointed by the State of Madras u/s 7, Industrial Disputes Act, 1947, as the sole member of an Industrial Tribunal to

adjudicate upon an industrial dispute which existed between the workers and the management of a concern known as the Amalgamation Ltd. After

the award was delivered and the same was published by the State Government u/s 17, Industrial Disputes Act, 1947, certain comments appeared

in the "Madras Mail" a newspaper published in the city which was one of the concerns which was a party to the dispute before the learned Judge

sitting as an Industrial Tribunal. The learned Judge considering these comments to be in the nature of a contempt of himself issued notice to the

Editor of the said newspaper. The appellant who is the State prosecutor of Madras and who appeared as counsel for the employers before the

industrial Tribunal -- including the newspaper "The Madras Mail" -- filed an answer to this notice denying the jurisdiction of the learned Judge to

deal with the newspaper for contempt and also denying that the article constituted any contempt.

When this matter was being enquired into by Mack J. on 14-4-1954, the learned Judge took exception to the manner in which counsel refused to

answer certain questions put to him and directed that notice be given to him to show cause why proceedings for contempt should not be initiated

against him for declining to answer these questions. Thereupon the appellant filed an application before this court for the issue of a writ of certiorari

to quash the proceedings before Mack J. as an Industrial Tribunal as beyond his Jurisdiction. A Bench of this court admitted this application and

directed stay of proceedings before Mack J. As the questions raised by the appellant in the writ of certiorari were of great Importance, Mack J.

agreed to refer the question of his Jurisdiction to a Full Bench and the stay of proceedings before him was dissolved. In pursuance of this, Mack J.

referred the question of his Jurisdiction to deal with the alleged contempt in the newspaper and the conduct of the counsel before him on 14-4-

1954 to a Full Bench. The matter has been heard and is pending judgment.

4. Subsequent to the Issue of this notice and the proceedings before the Bench in the matter of the writ of certiorari referred to certain things were

said in court by the Judge and by the appellant, on 30-4-1954, which was a Friday relating to what was reported to have happened before the

Bench when admitting the writ of certiorari. The proceedings of this - day were reported in all the newspapers on 30th April and 1st May 1954

and the learned Judge considered the remarks made by the appellant on 30th April and his conduct on that day as constituting contempt of this

court. It may be mentioned that the learned Judge was on 30-4-1954 sitting in Sessions and the State Prosecutor was in charge of the

prosecutions before him. On Monday, the 3rd May 1954, when the court started work, the learned Judge asked the appellant whether the reports

in the newspapers as regards the remarks addressed by him to the court on 30-4-1954 were correct and on this being answered in the affirmative,

the learned Judge called for on the appellant to show cause why he should not be committed for contempt for those remarks and for his conduct

on the previous court day. The appellant made a reply but holding that no satisfactory explanation had been given Mack J. found the appellant

guilty of contempt and sentenced him to the punishment set out earlier.

5. The appellant immediately filed this appeal, Letters Patent Appeal No. 113 of 1954 and filed along with it a petition for the grant of interim stay

of the operation of the order regarding the payment of the fine. Even at that stage, the office raised an objection to the maintainability of the appeal.

The matter came on before Subba Rao and Panchapakesa Aiyar JJ. on 5-5-1954 and the learned judges without deciding the question as to the

maintainability of the appeal directed the issue of notice to the Advocate General and granted interim stay of the operation of the order pending

further hearing of the petition.

6. The matter has been placed before us for the consideration of the sole question as to whether the order of the learned Judge finding the

appellant guilty of "ex facie" contempt and sentencing him to the fine is one from which an appeal lies to this court.

7. The learned Advocate General appeared before the court as "amicus curiae" and assisted : us by placing before us the relevant authorities

bearing on the point and we are obliged to him for the assistance he rendered.

8. Though the argument has ranged over a wide ground, the points for decision lie within a narrow compass. The provisions conferring right of

appeal to this court from judgments of single Judges of this court is contained in Clause 15 of the Letters Patent which runs thus:

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the Judgment (not being a Judgment passed in the exercise of appellate Jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal Jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of" the Government of India Act and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a Judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made (on or after the 1st day of February 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, our heirs or successors in our or their Privy Council, as herein-after provided,

9. The questions that arise on the language of Clause 15 are two. The first is whether the order of Mack J. is a ""Judgment"" within the opening words of the clause and secondly if it is, is it or is not a sentence or order passed in the exercise of criminal Jurisdiction.

10. So far as the first question is concerned, reference may be made to the decision of the Full Bench of this court in -- "Tuljaram Bow v.

Alagappa Chettlar", 35 Mad 1 (A), as to the definition of ""judgment"" within the meaning of Clause 15. This decision has been consistently followed

in this court and is binding upon us. Though that case arose in respect of a civil matter, the test laid down seems to us to be equally applicable to

the determination of the character of an order passed in proceedings other than civil. The learned Chief Justice defined a ""Judgment"" as ""an

adjudication whose effect whatever its form may be and whatever may be the nature of the application in which it is made is to put an end to the

suit or proceeding so far as the court before which the suit or proceeding is pending is concerned." Applying this test, the sentence or order passed

by Mack J. certainly put an end to the proceeding before him and therefore would be a "Judgment".

11. The next point that has to be considered in this connection is whether the expression "judgment" in Clause 15 ought to be read as comprising

only "judgments" in such proceedings and in the exercise of such jurisdiction as are Specifically and in terms vested in the High Court by the Letters

Patent or is apt to include a definitive adjudication in any matter which is within the Jurisdiction of the High Court. In the Letters Patent it may be

noticed the following heads of jurisdiction are specifically enumerated: Ordinary Original Civil Jurisdiction (Clauses 11 and 12); Extraordinary

Original Civil Jurisdiction (Clause 13); the jurisdiction of the High Court as a Court of Appeal from the civil courts of the Presidency (Clause 16);

jurisdiction over infants and lunatics (Clause 17); jurisdiction regarding relief of insolvent debtors (Clause 18); criminal Jurisdiction. (Clauses 22 to

29); Admiralty and Vice-Admiralty jurisdiction (Clauses 32 and 33); testamentary and intestate jurisdiction (Clause 34) and matrimonial

Jurisdiction (Clause 35). The question is whether the expression "Judgment" ought to be read as confined to an adjudication in these enumerated

classes or whether it is of a wider application so as to take in orders made or adjudications effected in every species of jurisdiction which may be

conferred upon the High Court by the Legislature or might be inherent in the court as a superior court of the land.

12. In our opinion, the expression "judgment" ought to receive the wider of the two constructions indicated earlier. We are inclined to read Clause

15 as comprehending all definitive adjudications by a Judge of the High Court whatever be the origin of his Jurisdiction whether the same falls

within the enumerated matters covered by the clauses of the Letters Patent set out earlier or are traceable to the exercise of Inherent Jurisdiction or

of jurisdiction conferred by other enactments.

13. The next question that has to be dealt with is whether the sentence or order "of a Judge, dealing with "ex facie" contempt of the court is or is

not in the exercise of criminal , jurisdiction". The contention of Mr. Bhashyam Aryan-gar learned counsel for the appellant who argued in support

of the admission of the appeal is that the expression should be understood as confined to sentences or orders passed in the exercise of criminal

Jurisdiction as set out in Clauses 22 to 29 of the Letters Patent. Before dealing with this contention it would be necessary to discover the exact

nature of "ex facie" contempt.

The question has received consideration in several reported English decisions which had to deal with the meaning of the expression "'criminal cause

or matter'" occurring In Section 47, Supreme Court of Judicature Act 36 and 37 Vict. Ch. 66. Section 19 of that enactment conferred a general

right of appeal on the court of appeal from any judgment or order of the High Court "'save as hereinafter mentioned.'" Section 47 ran thus:

The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested In the Justices of either Bench and the

Barons of the Exchequer by the Act of the Session of the eleventh and twelfth years of the reign of her present majesty, Chapter seventy-eight,

instituted. "An Act for the further amendment of the administration of the criminal law", or any Act amending the " same, shall and may be

exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief

Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the "'Exchequer, or one of such chiefs at least, shall

be part. The determination of any such questions by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no

appeal shall lie from any Judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as

to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her

majesty's reign.

14. It will be noticed that the first portion of the section deals with regular criminal appeals in the exercise of criminal jurisdiction while the last

portion of the section which prohibits any appeal uses the expression "'judgment of the High Court In any criminal cause or matter'". In relation to

appeals in cases of punishment for contempt questions have arisen whether the prohibition against appeals enacted in the last portion of Section 47,

applied to such cases and they have been considered from two aspects. The first

was whether the expression "'criminal cause or matter'" ought to be read in a restricted sense confining it to orders in criminal trials dealt with in the earlier part of the section and the second whether the orders in contempt matters were or were not a "'criminal cause or matter.

The leading case upon the point is a decision of the Court of Appeal reported in - O'Shea v. O'Shea and Parnell", (1890) 15 P D 59. The

contempt of court dealt with by the learned Judges there consisted of a publication in a newspaper called the Freeman's Journal of an active

commenting on the conduct of Captain O'shea who was the petitioner in a pending action against his wife for dissolution of marriage. The

petitioner served notice of motion for a writ of attachment against the appellant for contempt of court. The gravamen of the charge was that the

printing and publishing of the article was calculated to prejudice the petitioner in the eyes of the public and to discredit him in the assertion of his

rights in the court. The matter came on before Butt J. who held on the evidence that the appellant was responsible for the publication of the article

and ordered a writ of attachment to issue unless he should pay a fine of ₹100. The contemnor filed an appeal to the court of appeal and a

preliminary objection was taken to the hearing of the appeal on the ground that the last portion of Section 47, Judicature Act, 1873, barred the

appeal. Dealing with this objection, Cotton L.J. said:

The present proceeding is for a contempt of court. Of course, there are many contempts of court that are not of a criminal nature; for instance,

when a man does not obey an order of the court made in some civil proceeding, to do or to abstain from doing something -- as where an injunction

is granted in an action against a defendant, and he does not perform what he is ordered to perform and then a motion is made to commit him for

contempt -- that is really only a procedure to get something done in the action, and has nothing of a criminal nature in it.

Dealing with the case before him the learned Judge continued:

.... the appellant has done something to prevent the course of justice by preventing the divorce suit from being properly tried. That is clearly a

contempt of court of a criminal nature. Authorities have been cited which show that everything done to prejudice the Judge or Jury in the trial of an

action is a criminal act, because it is an attempt to prevent the course of

justice It is conceded that it was a wrongful act, otherwise there could be no fine or imprisonment. And when you concede that it is a wrongful act, you find that, although it is headed in the divorce action, it is not a proceeding in the action --not a proceeding for the purpose of obtaining anything in the action, but an application to "punish an attempt to induce the jury not to try the case properly, which is as much a criminal act as an attack upon the Judge himself.

Lindley L. J. dealt with the point and stated:

There are obviously contempts and contempts; there is an ambiguity in the word; and an attachment may sometimes be regarded as a civil, proceeding. For instance, where an order was made by the court of Chancery in former days there was no mode of enforcing such order but by attachment. We must not, therefore, be misled by the words "'contempt'" and attachment but we must look at the substance of the thing. In the present case I have no doubt that the proceeding is a summary conviction for a criminal offence, and therefore, no appeal lies.

This decision was followed by the Court of Appeal in -- "Scott v. Scott", 1913 P D 241 (O), where there had been a publication of the proceedings in court in contravention of an order directing that a matrimonial cause be heard in camera. Vaughan William L. J. dealt with the different types of contempt in these terms:

I think it is worthwhile to mention a few cases Since -- "Reg v. Steel", (1876) 2 QBD 37 . (D) and -- "Ex parte, Woodhall", (1888) 20 QBD

832 (E) and -- "Reg v. Jordan", 1888 WN 152 (P); (insulting a Judge) and I shall attempt to distinguish between contempts which are criminal and

those which are not criminal, and between simple disobedience to civil process and disobedience to process which though issued by a party in the

exercise of a legal right partakes of a punitive or disciplinary nature, and I shall do this with the object of defining which of these cases are within

the word "'criminal'", in Section 47, Judicature Act of 1873, and which are not.

15. In the class of cases which are criminal one finds, first of all, those cases where the Court has fined or imprisoned for contempt of court in the

face of the court or where there have been publications calculated to bring the court or the Judge into contempt. In all these cases of insult to the

court it is the court and the administration of justice which are insulted, and the

proceedings for contempt are in no sense a step in the action. Lord

Russell C. J. in speaking in -- "Reg v. Gray, 1900 2 Q. B. 38 (G), of a contempt consisting of personal scurrilous abuse of a Judge in a

newspaper, says I repeat that it is personal scurrilous abuse of a Judge as a Judge. We have therefore to deal with it as a case of contempt and we

have to deal with it *beryl manu*. This is not a new fangled jurisdiction; it is a Jurisdiction as old as the common law itself, of which it forms part. It is

a jurisdiction, the history, purpose and extent of which are admirably treated in the opinion of Wilmot C. J., then Wilmot J. in his opinions and

Judgments (Rex V. Almon, 1765 Wilmot's Opinions 243 (H)).

16. The next class of contempts are contempts in procedure which consist in disobedience by a party to an action to the orders or process of the

court. Such contempts are not generally criminal even though the motion for committal asks for and obtains a punitive order: see -- "Seldon v.

Wilde", 1911 1 KB 701 (I).

17. This distinction between what might be called civil contempt and criminal contempt has been approved by the Privy Council in -- AIR 1938

295 (Privy Council) Their Lordships here held that a contempt for a "" breach of an injunction was not criminal in its nature and distinguished these

cases from those where the contempt consisted in criticising the action of a court or "ex facie" contempt which were really criminal in their nature,

18. It is therefore clear that if the matter were decided by the tests adopted in England, the case on hand would fall within the expression ""criminal

cause or matter"" in the last portion of Section 47, Judicature Act, 1873. In fact it is conceded by Mr. Bashyam Aiyangar learned counsel for the

appellant that if the question arose in England there could be no doubt that the order of Mack J. in the present case would be a ""judgment"" in a

criminal cause or matter"" and therefore could not be the subject matter of an appeal to the court of appeal in England. It is however contended

that Clause 15 of the Letters Patent is differently worded from Section 47, Judicature Act, 1873, the expression used here being ""in the exercise of

criminal jurisdiction"" and not ""in a criminal cause or matter"" which is said to be wider.

19. Reference may also be made to the Judgment of the Privy Council in -- "Surendranath Banerjee v. Chief Justice and Judges of the High Court

of Bengal", 10 Ind App 171 (K). The petitioner for special leave to appeal had published an article in a newspaper which , was held to be libellous

of a Judge of the High Court of Bengal and the Court had sentenced him to imprisonment for a period of two months. The ground of appeal was

that the High Court had not observed the proper procedure in dealing with the petitioner. Dealing with the objection that the contempt in question

constituted the offence of defamation and had therefore to be"" dealt with in accordance with the provisions of the Criminal Procedure Code and

not summarily, Sir Barnes Peacock delivering the opinion of the Judicial Committee said,

Their Lordships are of opinion that a contempt of the High Court by a libel such as the present published out of court when the court is not sitting

is not included in the words "offences under the Indian Penal Code" although the contempt may include defamation. Such an offence is something

more than mere defamation and is of a different character. It is an offence which by the common law of England is punishable by the High Court in

a summary manner by fine or imprisonment or both The High Courts in the Presidencies are superior courts of record and the offence of

contempt and the powers of the High Court for punishing it are the same as in this country, not by virtue of the Penal Code for British India and the

Code of Criminal Procedure, 1882, but by virtue of the Common law of England. -- "Mc. Detmott v. Judges of British Guiana", (1868) 5 Moo

PC466 (L).

The words ""all offences under any other law"" in Section 5 (of the Code of Criminal Procedure, 1882) cannot be intended to include a contempt

like the present, for which no provision is made by the Code. It is unnecessary, therefore, to consider what is the true construction of the words

"any special jurisdiction or power conferred by any other law now in force" in section 1.

20. A similar line of reasoning was the basis of the decision of the Supreme Court in --"Sukhdev Singh v. Chief Justice and Judges, Pepsu High

Court AIR 1954 SC 186 (M); where their Lordships laid down that ""the power of a High Court to institute proceedings for con-tempt and punish

where necessary, is a special jurisdiction which is inherent in all courts of record and that Section 1(2), Criminal P. C. expressly excludes such

special Jurisdiction from its scope. These authorities establish that a con-tempt of court -- other than mere disobedience to orders Of court, which have been regarded as civil in English law as illustrated in the authorities already set out, which line of reasoning has also been followed in India in the cases to be referred to later -- is ""criminal"" in its essence and that the jurisdiction exercised when a contemnor is punished is similarly ""criminal and in our opinion the source of the jurisdiction of this court -- whether it is part! of the inherent power of the court or is incidental to its being a superior court of record --does not affect its nature or character.

21. The next question that fails to be considered Is whether the expression ""in the exercise of criminal jurisdiction"" should be read as confined or limited to the exercise of the jurisdictions mentioned in Clauses 22 to 29 of the Letters Patent. Before dealing with this it might be pointed out that in the Letters Patent as issued in 1865 the exclusion of the right of appeal was confined to ""sentences or orders passed or made In any criminal trial before the Courts of original criminal jurisdiction which might be constituted by one or more Judges of the High Court."" In 1919 the Letters Patent were amended so as to widen the exemption from appeals not merely to cases of ""sentences or orders in criminal trials"" but also to those passed in the exercise of criminal jurisdiction"". The words now ""used are very general and in our opinion include within their scope the exercise of jurisdiction by a Judge of the High Court dealing with any criminal matter and we are unable to see any distinction between the expression ""criminal cause or matter"" as understood in England and the words ""in the exercise of criminal jurisdiction"" in the Letters Patent.

22. Even on the narrower construction of the expression ""in the exercise of criminal jurisdiction"" which the learned counsel for the appellant invited us to adopt, viz., of confining it to the Jurisdictions enumerated in the Letters Patent we are of opinion that our answer to the question must be the same. The matter might be considered from more than one point of view.

23. Before proceeding further it might be useful to refer to the basis of the Jurisdiction of the High Court to deal with contempt of itself. It is unnecessary to trace the historical evolution of the power of courts of record to punish for contempts in view of the provisions specifically made in Article 215 of the Constitution constituting each of the High Courts as a court of

Record and investing them with the power of punishing for contempt which a court of "record would possess. The Supreme Court had recently to consider the question of the basis of the power of the High Courts to Institute proceedings and to punish for contempt of themselves in AIR 1954 SC 186 (M) already referred to Their Lordships rested this power on the inherent right of the court and as its necessary Incident and attribute without which it would no more exist than without a Judge.

We shall have occasion to deal with this decision later and it will be sufficient to say here that their Lordships decided that this is not a power which the court was exercising under the Criminal Procedure Code. The Letters Patent Itself by Clause 2 constituted "the High Court to be and continue a court of record" so that if there was power in the High Court as a court of record to punish for contempt, apart from the said power being inherent in every superior court, the jurisdiction to protect itself against contempt would also be a jurisdiction under the Letters Patent in this view even if a narrower construction was adopted and the expression "judgment" in Clause 15 of the Letters Patent was confined to those rendered in Jurisdictions which are specifically enumerated or dealt with by the Letters Patent, the exercise of jurisdiction In contempt would fall within these enumerated classes, with the result that the sentence or order of a court punishing a person for contempt would be a judgment "in the exercise of criminal jurisdiction" within the meaning of Clause 15. In there words, if jurisdiction in a criminal matter is conferred by Clause 2 of the Letters Patent it cannot be disputed that "ex facie" contempt of a Judge of the Court is criminal in its nature -- it would be a sentence or order passed in the exercise of criminal Jurisdiction within Clause 15 of the Letters Patent.

24. There is one further aspect of the question to which reference may now be made. Clause 22 of the Letters Patent provides:

Ordinary original jurisdiction of the High Court: And we do further ordain that the said High Court of Judicature at " Madras shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction and also in respect of all such persons, beyond such limits, over whom the said High Court of Judicature at Madras shall have criminal Jurisdiction at the date of the publication of these presents.

The provision in this clause has its parallel in Clause 11 dealing with ordinary

original civil jurisdiction which runs thus:

Local limits of the ordinary original jurisdiction of the High Court: And we do hereby ordain that the said High Court of Judicature at Madras shall

have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made

by the Governor in Council and, until some local limits shall be so declared and prescribed within the limits of the local Jurisdiction of the said High

Court of Madras at the date of the publication of these presents, and the ordinary original civil jurisdiction of the said High Court shall not extend

beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

The scope of Clause 11 came up for consideration by the Judicial Committee in the case reported, in -- "Hamid Hasan v. Banwarilal Roy AIR

1947 PC 90 (N), and the point related to whether the territorial limitation which applied to the ordinary original civil jurisdiction of the High Court

confining it to the limits of the three Presidency Towns also applied to the exercise of the jurisdiction in the matter of the issue of a prerogative writ.

25. The case before the Privy Council arose this way: The Governor of Bengal had in exercise of the powers conferred on him under Rule 52-F of

the Defence of India rules passed an order superseding the Howrah Municipality for a period of one year and directing an officer appointed by him

to discharge the functions of the superseded authority. An application for the issue of a writ of "quo warranto" questioning the legality of this

appointment was made to the High Court of Calcutta and the rule was made absolute. On appeal to the Privy Council by the officer so appointed,

the jurisdiction of the High Court of Calcutta to issue the prerogative writ in Howrah an area outside the limits of the city of Calcutta was

questioned, the argument on behalf of the appellant being that the judgment of the High Court to issue prerogative writ was also subject to the

same territorial limitations as were applicable to their ordinary original civil Jurisdiction by Clause 11 of the Letters Patent. This contention was

accepted by their Lordships of the Privy Council. Sir John Beaumont delivering the judgment of the Board said:

High prerogative writs are not mentioned in the Letters Patent If the power to issue the other high prerogative writs falls within the ordinary

original civil Jurisdiction of the High Court their issue outside the local limits of such Jurisdiction Is expressly barred by Clause 11. It cannot be

disputed that the issue of such writs is a matter of original jurisdiction. As to its being of a civil nature, it was held as long ago as 1788 in -- "Rex v.

Francis", (1788) 2 Term Rep 484 (O) that information in the nature of "quo warranto" is in the nature of a civil proceeding so that a new trial may

be ordered. That leaves only the adjective "ordinary" and it was contended, on behalf of the respondent, that the issue of a high prerogative writ

could not be regarded as falling within the ordinary original civil jurisdiction; that it would be an act of "extraordinary jurisdiction".

and after dealing with what fell within the signification of the latter expression concluded:

In their Lordships" opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or

later enactments falls within the description of ordinary original civil jurisdiction.

Applying the reasoning of this decision, it seems to us that it would not be improper to designate the exercise by the High Court of the power of

punishing a person guilty of "ex facie" contempt as ""the exercise of ordinary original criminal jurisdiction of the High Court"" within Clause 22. If as

must be conceded the proceeding in ""criminal"" there cannot be any controversy regarding its being ""original"" and it would also be ""ordinary"" which

expression is used in the Letters Patent in contradistinction to ""extraordinary."" It might also be mentioned that Clause 38 of the Letters Patent of

this Court which determines the procedure to be applied by the High Court in criminal cases saves the practice and procedure in use in the court

immediately before the Letters Patent except as modified by law We consider that in the light of these provisions we would not be wrong in

holding, that even on the narrower construction of the exception to Clause 15 of the Letters Patent, a sentence or order punishing an individual for

"ex facie" contempt of or insult to the court would be ""in the exercise of ordinary criminal jurisdiction"" and that from such a judgment an appeal is

not permitted to this court.

26. It will now be convenient to refer to the authorities which have considered the question now raised and it is conceded that all these authorities

are against the maintainability of the appeal. The first case which has considered

the point in detail is a decision of the Bombay High Court reported in -- Narayanrao Vithal Sayanna Vs. Solomon Moses, . The contempt which was the subject of the proceedings in that case, consisted in the publication of comments on a pending trial. The defendant in that action took out a notice of motion to commit the publishers for contempt. The notice of motion was heard by Rangnekar J. who dismissed the application with costs on the ground that the publication did not constitute a contempt of the court. This order was taken up on appeal and a preliminary objection was raised that no appeal lay from the order dismissing the application for committing the publishers (respondents) for contempt under Clause 15 of the Letters Patent. Beaumont C. J. dealing with this objection said:

Now, the learned Advocate General on behalf of the respondents does not dispute that that order is a judgment within Clause 15, Letters Patent, but he says it is a judgment made in exercise of criminal jurisdiction and is, therefore, not appealable under the clause. The difference between civil and criminal contempt is discussed in Halsbury's Laws of England, Vol. VII at page 280. It is there pointed out, that disobedience to an order made in a civil suit constitutes contempt of a civil nature, and any application to punish that disobedience by process of contempt is an application of a civil nature, But it is further pointed out that where the alleged contempt consists in interfering with the due trial of a civil suit, that contempt is of a criminal nature, and "a fortiori" that must be so where the alleged contempt is by persons who or some of whom are not parties to the civil suit.

He then made a reference to the decision in (1890) 15 PD 59 (B) and the decision of the Court of appeal in 1912 PD 241 (C). After referring to the Letters Patent, the learned Chief Justice said:

It seems to me clear on the English authorities that the order which the learned Judge was asked to make here was to be made in the exercise of criminal jurisdiction. Whether it could be said also to be made "In the course of a criminal trial" within Clause 25 of the Letters Patent is perhaps doubtful. But it seems to me impossible to say that the order was made otherwise than in the exercise of criminal jurisdiction.

Blackwell J. agreed with the learned Chief Justice and the appeal was dismissed.

27. The next case which has considered the question is a decision of the Bench of the Calcutta High Court reported in -- Shyam Sundar Halwasiya

Vs. Jodhraj Halwasiya, . The contempt there consisted in an assault by the plaintiff in an action on a witness for the defendant who seized the latter

by the throat and threatened to kill him if he dared to depose against him in the suit. The matter was brought immediately to the notice of Edgley J.

and a rule was issued upon the plaintiff to show cause why he should not be committed for contempt of Court. The learned Judge after an enquiry

held that the plaintiff abused and assaulted the witness in order to intimidate him, and to interfere with the proper administration of justice. On these

findings the learned Judge directed the plaintiff to be committed to prison for a period of two weeks and to pay a fine of Rs. 400. An appeal was

filed against this order of Edgley J. At the hearing of the appeal, a preliminary objection was taken by the counsel for the respondent challenging its

competency. The point is thus dealt with in the judgment of Mukherjea J.:

Mr. Gupta appearing for the appellant has argued before us that the expression "criminal jurisdiction" occurring in Clause 15 of the Letters Patent

refers to and means the Jurisdiction that is exercised by a Judge of this Court under Clauses 22 to 29 of the Letters Patent and, as these clauses

apparently do not cover a case of inflicting penalty for contempt of court, an appeal is not barred under Clause 15 of the Letters Patent. The

contention though plausible at first sight, does not appear to us to be sound. It is true that the various clauses of the Letters Patent classify the

different jurisdictions of this court under different heads and Clauses 22 to 29 come under that part which is headed as "criminal jurisdiction".

Then dealing with the amendment of the Letters Patent in the year 1919 the learned Judge continued:

It is clear, however, that the amendment of the Letters Patent in the year 1919 deliberately changed the expression "criminal jurisdiction"

apparently has a wider connotation than a criminal trial as used in Clause 25 of the Letters Patent. If the jurisdiction which the Judge exercises in a

contempt matter is criminal jurisdiction, it is immaterial, in our opinion, whether the jurisdiction was derived from the Letters Patent or existed apart

from it.

The learned Judge then dealt with the point as to whether the order appealed

from was or was not made in the exercise of criminal jurisdiction and following the decisions in (1890) 15 PD 69 (B) and 1912 PI 241 (C), reached the conclusion that the order was passed in the exercise of criminal jurisdiction and that therefore no appeal lay from that order. Harries O. J. who agreed with the learned Judge said:

In English law a distinction has been drawn between contempts of a criminal nature and contempts of a civil nature. If ft contempt is criminal in its nature it is difficult to resist the conclusion that a Judge dealing with such a contempt is exercising criminal jurisdiction. English Courts have now held that a sentence passed in respect of a criminal contempt is a sentence passed in the exercise of a Judge's criminal jurisdiction.

Mr. Atul Chandra Gupta argued strenuously that Courts in India should not accept this distinction which has been made in English law. He urged that the distinction was a purely technical one and based on no good reason whatsoever. My learned brother Mukherjea J. however, has pointed out that the distinction, rests on a very firm Juridical basis.

The Chief Justice then referred to an earlier decision in -- "Tarit Kanti Biswas, in re", AIR 1918 Cal 988 (R), where it had been held that a contempt of the Court other than disobedience of an order in a civil action was contempt of a criminal nature and held that no appeal lay. We respectfully agree with what is contained in these two judgments which; in our opinion, properly interpret the relevant clauses of the Letters Patent.

28. Our attention was also drawn to the decision Of the High Court of Orissa in -- S.S. Roy and Another Vs. The State and Another, , where the nature of the jurisdiction in contempt was discussed and the conclusion reached that it was open to the High Court to grant leave to appeal under Clause 41 of the Letters Patent from such an order. If this decision were applied it would be clear that the present appeal would be incompetent.

29. The next contention of Mr. Bhashyam Aiyangar is that the decision of the Supreme Court in AIR 1954 SC 186 - (M) is authority for the position that an order passed by a High Court in the exercise of its jurisdiction to punish for contempt is not made in the exercise of the criminal jurisdiction of the Court. We are unable to agree what this decision is capable of this construction. What the Supreme Court was called upon to decide was whether Section 527, Criminal P. C., enabled that Court to effect a

transfer of the proceedings from the High Court of Pepsu to any other Court. This depended upon whether the proceedings before the Court to punish for contempt were governed by the Criminal Procedure Code. If it was not, the statutory power of transfer under 8. 527 could not be invoked.

The Supreme Court pointed out that the power to punish for contempt was a special jurisdiction which was specifically excluded from the scope of the Criminal Procedure Code by Section 1(2) of the Code. The very fact that but for the exclusion enacted in Section 1(2), Criminal P. C.,

proceedings for contempt would have fallen within the scope of the Criminal Procedure Code itself clearly makes out that the proceedings are

criminal in their nature and that the Jurisdiction which the Courts invested with the power to deal with them exercise in that behalf is a species of

criminal jurisdiction. It appears to us therefore that far from this decision being an authority in favour of the appellant, it is really a decision against

the maintainability of the"" appeal. Mr. Bhashyam Aiyangar has not been able to bring to our notice the decision, of any Court in which from an

order punishing an "ex facie" contempt or an insult to a Judge an appeal has been entertained under Clause 15 of the Letters patent.

30. It is only necessary to add one observation if only to obviate misunderstanding. Contempts have been classified into two categories--which

might broadly be designated civil and criminal contempts--the former comprising those cases where the power of the Court is invoked and

exercised to enforce obedience to order of Courts and the latter where the act of the contemnor is calculated to interfere with the course of justice

including libels or insults to Judges and publications prejudicing the fair conduct of proceedings in Court. In regard to ""civil"" contempts Courts

have held that being civil in their nature appeals He from orders passed in such, cases and the decision of this Court reported in -- Gundu

Venkatalingam Vs. Gundu Mrutyanjayadu, is an instance in point. (Vide also AIR 1938 295 (Privy Council) We are not here concerned with a

contempt"" of this category but of the other variety which has always been treated as criminal in its essence.

31. We are clearly of the " opinion that no appeal lies under Clause 15 of the Letters Patent from the order of Mack J. punishing the appellant for

contempt. We are not expressing any opinion about the merits of the appellant's contentions on the legality or propriety of the order appealed against.