

1948

Present : Dias and Gratiaen JJ.

THURAISINGHAM *et al.*, Appellants, and KARTHIKESU,
Respondent

S. C. 59-61—D. C. Criminal, Jaffna, 3,159

Contempt of Court—Disobedience of injunction—Sentences non-appealable under Criminal Procedure Code—Right of appeal—Civil Procedure Code, Chapter 65.

A right of appeal exists in every case against an order, sentence, or conviction in a contempt proceeding. The general rules of procedure are those contained in Chapter 30 of the Criminal Procedure Code so far as they are applicable.

APPPEAL from a judgment of the District Judge, Jaffna.

S. J. V. Chelvanayakam, K. C., with *H. W. Tambiah*, for the appellants.

Colvin R. de Silva, with *C. S. Barr Kumarakulasinghe, H. W. Jayewardene* and *T. W. Rajaratnam*, for the respondent.

Cur. adv. vult.

September 24, 1948. DIAS J.—

The appellants are the 1st, 2nd and 3rd defendants in D. C., Jaffna, 3,159. They were convicted for contempt of Court for alleged disobedience of an injunction issued by the Court. Section 663 of the Civil Procedure Code empowers a Court of civil jurisdiction to punish as for a contempt of Court disobedience of an injunction issued by such Court—see *Perera v. Abdul Hamid*¹. The 1st and 2nd appellants were sentenced to undergo six weeks' rigorous imprisonment. The 3rd appellant, who is a woman, was sentenced to pay a fine of Rs. 50.

¹ (1931) 33 N. L. R. 285.

Mr. Colvin R. de Silva for the plaintiff petitioner has taken the preliminary objection that none of these appellants has a right of appeal inasmuch as the sentences imposed by the District Judge are non-appellable under section 335 (1) (d) and (e) of the Criminal Procedure Code. We decided to deal with this preliminary matter in the first instance. It was agreed that if the objection failed, the main appeal against the convictions should be listed for argument in due course before another bench of two Judges as it will be some time before my brother and I will be able to sit together by reason of the fact that I have to proceed on circuit in a few days.

The procedure governing a prosecution for contempt of Court is contained in Chapter LXV of the Civil Procedure Code (sections 792-800). The law regulating appeals in such cases is to be found in section 798 which reads as follows :—

“ 798—An appeal shall lie to the Supreme Court from every order¹ sentence, or conviction made by any Court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of Court, and of offences by this Ordinance made punishable as contempt of Court; and the procedure on any such appeal shall follow the procedure laid down in the Criminal Procedure Code regulating appeals from orders made in the ordinary criminal jurisdiction of District and Magistrates' Courts ”.

Mr. de Silva contended that the meaning of section 798 is that all appeals in prosecutions under Chapter LXV of the Civil Procedure Code are governed by the provisions of Chapter XXX of the Criminal Procedure Code (sections 335-352). Therefore, as no appeal lies in cases where an accused has been sentenced by a District Court to a term of imprisonment not exceeding three months without any other punishment (section 335 (1) (d)), or where an accused has been sentenced by a District Court to a fine not exceeding one hundred rupees without any other punishment (section 335 (1) (e)), it is argued that these appellants have no right of appeal except with the leave of the District Judge. No such leave having been obtained, it is submitted that these appeals must be rejected.

At the date the Civil Procedure Code was enacted in 1889 the old Criminal Procedure Code, No. 3 of 1883, was in existence. Sections 400 *et seq.* of that Code are almost similar to what is enacted by the Criminal Procedure Code of 1898. It is curious that during the past fifty-nine years, although there have been many appeals from convictions for contempt of Court, the question now raised has apparently not been raised before. In the case of *R. v. Chandradassa*¹ an accused, who had been fined Rs. 50 by a District Court for contempt of Court, appealed to the Supreme Court. Both sides were represented at the hearing of the appeal. Yet, the point now taken was not raised as a bar to the hearing of the appeal. On the contrary, Schneider J. said: “ The appellant is entitled to appeal by virtue of the provisions of section 798 of the Civil Procedure Code ”. That learned Judge, by reason of his long

¹ (1923) 1 T. L. R. 166.

Practice at the Bar when he acted both as Solicitor-General and Attorney-General, would be perfectly familiar with the legal principles applicable. Although the point now raised does not appear to have been specifically raised, Schneider J. had no doubt that, although the appellant had been only fined Rs. 50 in the District Court, he was entitled to appeal¹.

An interesting argument was addressed to us to show that the provisions of section 335 of the Criminal Procedure Code are not rules of substantive law, but are adjective or procedural law. Counsel for the appellants does not contest this. In fact, it seems to be quite clear that the whole of Chapter XXX of the Criminal Procedure Code contain rules of procedure. The question we have to determine is whether, granting that section 335 of the Criminal Procedure Code contains rules of criminal procedure, the right of appeal granted in the earlier part of section 798 of the Civil Procedure Code from every order, sentence or conviction is taken away, limited, or annulled by the latter part of the section which provides that appeals under section 798 are to follow the procedure laid down in the Criminal Procedure Code regulating appeals in District Court criminal cases and appeals from Magistrates' Courts. That Schneider J. did not think so is at least clear from *R. v. Chandradassa* (*supra*).

Reference was made to appeals under the Maintenance Ordinance. Section 17 of the Maintenance Ordinance (Chapter 76) provides that any person who shall be dissatisfied with any order made by a Magistrate under section 2 or section 14 may prefer an appeal to the Supreme Court "in like manner as if the order was a final order by a Magistrate's Court in a criminal case or matter, and sections 338 to 352 (inclusive) of the Criminal Procedure Code shall apply to such appeal". In my opinion no assistance can be derived from this section in construing section 798 of the Civil Procedure Code.

Reference was also made to the recent case of *Thomas v. Ceylon Wharfage Co., Ltd.*² Section 48 of the Workmen's Compensation Ordinance (Chapter 117) gives to a workman an appeal on a point of law against an order made by the Commissioner. Section 51 says that "subject to the provisions of this Part, the provisions of Chapter XXX

¹ I have examined several cases and reproduce the results :—

Perera v. Perera (1906) 8 N. L. R. 343—Court of Requests. Three persons were convicted under section 800 of the Civil Procedure Code and sentenced respectively to 30 days' simple imprisonment, a fine of Rs. 5 or 3 days' imprisonment in default, and a fine of Rs. 50 with 1 month's imprisonment in default. The appellants and respondents were all represented. No question regarding the right of appeal was raised. *In re Vanny Aiyar* (1915) 18 N. L. R. 180—Fine of Rs. 7.50 for contempt of the Magistrate's Court. No appearance for the Magistrate. No question raised regarding the right of appeal. Conviction quashed. The point that the Magistrate's Court had no jurisdiction to deal with the matter was not raised. *Velapper v. Sinnapillai* (1915) 1 C. W. R. 91—Conviction in Court of Requests for contempt of Court. Accused fined but the amount does not appear in the report. No appearance for the Magistrate. The question of the appellant's right to appeal was not questioned. Conviction quashed and fine remitted. *Rengasamy v. Beale* (1915) 1 C. W. R. 195—Conviction in District Court for contempt of Court. Appellant fined Rs. 100 or in default to undergo 1 month's imprisonment. Both sides represented. The right of the appellant to appeal was not questioned. *Abeykoon v. Adikaram* (1928) 9 Ceylon L. Rec. 132—Fine of Rs. 2.50 for an alleged contempt of the Magistrate's Court. No appearance for the Magistrate. The question of the right to appeal was not considered. *Perera v. Abdul Hamid* (1931) 33 N. L. R. 285—Charge of contempt of court in a Court of Requests. Complainant appealed without the sanction of the Attorney-General. The right to do so was not questioned.

² (1948) 49 N. L. R. 397.

of the Criminal Procedure Code shall apply *mutatis mutandis* in regard to all matters connected with the hearing and disposal of an appeal preferred under section 48” In the above cited case Basnayake J. held that the effect of section 51 was to make applicable the provisions of section 340 of the Criminal Procedure Code to an appeal on a question of law, and that in the absence of a certificate from an advocate or proctor that such point of law was a fit question for adjudication by the Supreme Court, the appeal should be rejected. I do not think this case affords assistance in solving the problem before us, which must be determined by an interpretation of the language used in section 798 of the Civil Procedure Code. What is the precise meaning to be given to the words “shall follow the procedure laid down in the Criminal Procedure Code?”

An examination of the authorities indicates that section 798 is only concerned with appeals from convictions in District Courts and Courts of Requests. The section does not apply to the Supreme Court or to Magistrates' Courts. In the case of *In re Wijesinghe*¹ a Divisional Court held that section 798 does not apply to orders made or sentences passed for contempt by one or more Judges of the Supreme Court. In the case of *In re de Sousa*² Pereira J. said “I doubt that Chapter LXV of the (Civil Procedure) Code was ever intended to apply to the Supreme Court. The only indication of such an intention is section 800 of that Chapter which does no more than repeat the provisions of section 81 (section 47 ?) of the Courts Ordinance as to the punishment to be imposed by the Supreme Court in cases of contempt”.

Although Magistrates' Courts are given jurisdiction by section 57 of the Courts Ordinance to punish for contempts of Court, there is no penalty provided either by the Courts Ordinance or by section 800 of the Civil Procedure Code. This omission in the law was pointed out in *Silva v. Carolis*³ when it was held that Chapter LXV only applied to civil Courts, that is to say, to District Courts exercising civil jurisdiction and to Courts of Requests. Even when a contempt is committed in the face of a Magistrate's Court, the proper procedure is for the Magistrate to report the case to the Supreme Court for necessary action.

The history of the law of contempt of Court in this Island shows that the right of a minor Court to punish for contempt is one which the Legislature carefully guarded. When it is realized that there was a time when almost the whole of the minor judiciary was manned by civilians, the reason for this caution becomes manifest. That is the reason why when jurisdiction was conferred on District Courts and Courts of Requests to punish certain contempts of Court, the Legislature in section 798 was careful to provide that an appeal to the Supreme Court was to lie “from every order, sentence or conviction”. An “order” would include a discharge or an acquittal. It was the policy of the Legislature to give both sides in a contempt proceeding free access to the Supreme Court by way of appeal. When this is realized, it seems to me that the construction of the latter part of section 798 presents no formidable

¹ (1913) 16 N. L. R. 312.

² (1914) 18 N. L. R. at p 43.

³ (1918) 20 N. L. R. 445.

difficulty, although the Legislature might have made its meaning plainer. What section 798 says in effect is "In every contempt proceeding an appeal to the Supreme Court shall lie against every order, sentence, or conviction" from District Courts and Courts of Requests. Those appeals shall follow the machinery provided by Chapter XXX of the Criminal Procedure Code so far as the same are applicable". I find it impossible to hold that the law-giver conferred the right of appeal, and then immediately proceeded to deprive the appellant of that right by bringing section 335 into operation. We must give some meaning to every word used by the Legislature in section 798 of the Civil Procedure Code. I am of the view that the generality of the powers of appeal given by section 798 cannot be rendered inoperative or nugatory in the manner suggested. The true intention underlying section 798 is that while a right of appeal exists in every case against an order, sentence, or conviction in a contempt proceeding, the general rules of procedure contained in Chapter XXX of the Criminal Procedure Code, so far as they are applicable, must be followed in order to bring the case before the Supreme Court. Thus the appeal must be filed within the time limit allowed and the petition of appeal must conform to the usual form and bear the requisite stamp duty. If the appellant is on remand he should be allowed bail, or if he cannot give bail, hard labour must be stayed. When an appeal is filed, the trial judge must take steps to notice the other side and transmit the appeal to the Supreme Court. On receipt in the Registry the case will be numbered, &c.

I am, therefore, of opinion that the preliminary objection fails, and that the appellants are entitled to have their appeals heard and decided on the merits in due course.

GRATTIEN J.—I agree.

Objection overruled.
