State Of Uttar Pradesh vs Ratan Shukla on 16 August, 1955

Equivalent citations: 1956CRILJ679

JUDGMENT

Desai, J.

1. These proceedings have been instituted against Sri Ratan Shukla, a Vakil practising in the District Judgeship of Kanpur, on a report made by the District Judge of Kanpur. The District Judge made the report on being moved by Sri S. M. Ifrahim, Additional District Magistrate o£ Kanpur, in whose court the alleged contempt was committed by the opposite party.

2. Certain appeals were instituted against the assessment of tax by the Municipal Board of Kanpur in the Court of the District Magistrate. Under Section 160, Municipalities Act the appeals could be filed in the court of the District Magistrate or of any other officer as may be empowered by the State Government. An Additional District Magistrate has the power to perform all the functions of a District Magistrate so the Additional District Magistrate could entertain the appeals and dispose of them if they were filed in his court.

The District Magistrate transferred the appeals to his court. The Additional District Magistrate took up the appeals for disposal on 6-2-1954. The Municipal Board engaged the opposite party as its counsel to defend the appeals. The opposite party reached the court at 2 P.M. and started looking into the brief. The Additional District Magistrate reached the court sometime after 3 P.M. and took up the appeals one after another. Five appeals were disposed of after the opposite party had been heard and nothing untoward happened.

Then an application for review of an order passed on a previous day on another Tax Appeal was taken up for hearing. The appellant was represented by Sri Virendra Sarup and the Municipal Board was represented by the opposite party. After Sri Virendra Sarup completed his argument the opposite party started his reply.

The Additional District Magistrate felt that the opposite party's arguments were illegical and incongruous and were delivered in a manner somewhat unusual. He also noticed that lawyers, litigants and their supporters standing near the opposite party put their hands to their noses indicating that bad smell was coming out of the opposite party's mouth. The Additional District Magistrate became convinced that the opposite party was under intoxication and asked him if he was.

The opposite party denied that he was drunk, but the persons standing close to him contradicted him by saying that he was smelling of liquor. Thereupon the Additional District Magistrate ordered him either to withdraw from the court or to agree to medical examination if he maintained that he

was sober.

The opposite party hesitated for a moment and then left the court room. After the departure of the opposite party Sri R. N. Tikku, who is a lawyer, and some other persons handed over a writing to the Additional District Magistrate saying that the opposite party was drunk.

3. Sri Virendra Sarup is the representative at Kanpur of the Pioneer and also member of the Journalists' Association. On 7-2-1954 the Pioneer published news about the above-mentioned incident The opposite party read it and on 8-2-1954 of his own accord went to the house of the Additional District Magistrate.

There he gave to the Additional District Magistrate a writing admitting that he was intoxicated when he appeared in his court on 6-2-1054, and offering an unqualified and unconditional apology for his misconduct.

4. On 9-2-1954 the Additional District Magistrate reported the matter to the District Judge and enclosed the writing given by Sri R. N. Tikku and others. The learned District Judge issued a notice calling upon the opposite party to show cause why action should not be taken against him for professional misconduct and contempt of the Court of the Additional District Magistrate by appearing in his Court under the influence of alcohol.

The opposite party did not appear personally before the learned District Judge, nor filed any written statement in reply to the notice, but Sri S. N. Misra appeared before him as counsel for the opposite party and presented several applications, questioning the jurisdiction of the learned District Judge to take the proceedings, praying for instituting proceedings for contempt against Sri Virendra Sarup, etc. There is total prohibition in Kanpur and the opposite party does not hold a permit to drink. The learned District Judge being satisfied that the opposite party was intoxicated and talked incoherently in the Additional District Magistrate's Court and considering that he thereby rendered himself guilty of professional misconduct and contempt of the court of the Additional District Magistrate, thought it his duty to report his conduct to this Court for such action as may be deemed necessary.

On the report of the learned District Judge this Court issued a notice calling upon the opposite party to show cause why he should not be punished for contempt of court; the Court expressly refrained from issuing a notice calling upon him to show cause why he should not be dealt with for professional misconduct. If there was any defect in the notice issued by the Court, it has been expressly waive i by Shri S. N. Misra, who informed us that he did not want another or fresh notice.

5. The opposite party has appeared and filed an affidavit. He has admitted everything, except that he was drunk. In para 18 of his affidavit he does not expressly deny that he was intoxicated, though he admits that he had informed the Additional District Magistrate in reply to his question that he was not intoxicated. His explanation for accepting the alternative of withdrawing from the court is that he suspected a scheme on the part of. Sri Virendra Sarup and others to disgrace him.

He admitted having gone to the Additional District Magistrate's house of his own accord on 8-2-1954 and having handed over the letter of apology, but denied that it was a dictated letter written by him because there was quite a large number of Assessment Appeals still pending and he did not want them to be disposed of or decided in an atmosphere of prejudice.

Quite a number of questions have been raised in argument by Shri S. N. Misra. The only question of fact is whether the opposite party was in a drunken state or had taken alcohol before coming to court (or rather was smelling of alcohol in court) ? The rest are questions of law; the most prominent of them are:

> (1) Whether Shri S. M. Ifrahira was presiding over a "court" when deciding the appeals under Section 160, Municipalities Act ?
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> (2) If he was, whether the court was subordinate to this Court ?
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> (3) If the opposite party's act of appearing in court as counsel in a drunken state or after taking alcohol amounted to contempt of court ? and (4) Whether Sri S. M. Ifrahim had jurisdiction to hear the appeals which were not presented to him but were transferred to him by the District Magistrate ?
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> (6) The present proceedings are governed by the Contempt of Courts Act, 1952. Section 3 of it lays down that a High Court has jurisdiction, powers and authorities in accordance with the same procedure and practice in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself provided that it shall not take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where it is an offence punishable under the Indian Penal Code.

It is an offence punishable under Section 228, I.P.C. if insult is offered, or interruption is caused intentionally to any public servant while he is sitting in any stage of a judicial proceeding. Merely appearing in a drunken state in court is neither offering an insult nor causing interruption 'to the presiding officer of the Court.

A counsel appearing in court under intoxication may be showing disrespect to the court, but showing disrespect is not synonymous with insulting. He may do an act under the influence of liquor which amounts to an insult, but it would be an act additional to that of merely being under intoxication.

Further the insult must be offered intentionally in order to be punishable under Section 228; if a counsel appears in court drunk without any idea of insulting the court, even if the court feels insulted by his appearing before it in that state, it cannot be said that he has intentionally insulted it. It cannot be said that the Court's feeling insulted by his appearing drunk is a natural and probable consequence of the act which must be presumed to have been intended by him.

So many people get drunk without the others in their company feeling insulted and there is no reason why a presiding officer should feel insulted merely because a counsel appearing before him is drunk. There is also no interruption caused merely by being drunk.

It is a far-fetched argument that interruption is caused because the counsel cannot work normally or he argues irrelevantly or incoherently and has to be pulled up by the presiding officer at the expense of some time or the presiding officer's attention is diverted from the proceedings that he is conducting either to the appearance or behaviour of the counsel or to the behaviour of those standing close to him.

In the present case itself the attention of Sri S. M. Ifrahim was diverted to the act of the persons standing close to the opposite party of putting their hands to their noses. He also interrupted the proceedings in order to ask him whether he was drunk and then to order him to leave the court or to submit himself to medical examination. But the connection between the interruption and the drunkenness of the opposite party is remote and not direct and the interruption cannot be said to have been caused by the opposite party.

In any case he cannot be said to have intentionally caused interruption there is nothing to suggest that he ever knew or thought that interruption would be caused by his appearing drunk before the Court. Actually nothing had happened during the hearing of the five appeals previously ; if the court did not feel insulted or was not interrupted while it disposed of them, there is no reason to think that it was insulted or interrupted intentionally during the hearing of the sixth appeal.

In - ' Ram Nath v. The State' an accused appeared before a court in a highly intoxicated condition, could not control himself, talked irrelevantly and was convicted by the Magistrate under Section 228. It was observed by this Court that a person may be drunk and yet may not cause insult or interruption. Besides appearing drunk, the opposite party did no act amounting to insulting or causing interruption to the court. He, therefore, did not commit the offence of Section 228, I.P.C.

There is no other provision in the Penal Code under which the opposite party may possibly be guilty, at least none was pointed out by either side. This Court is not deprived by Section 3, (2), Contempt of Courts Act, from taking cognizance of the contempt, if committed by the opposite party in respect of a court subordinate to it.

7. It was contended that the learned District Judge had no jurisdiction to hold the preliminary inquiry on receipt of the report from the Additional District Magistrate. It is true that there is no provision under which the learned District Judge could make the inquiry, but there is also no law under which he was forbidden to make it.

Since the Additional District Magistrate reported the matter to him, he had to decide whether to forward the report, or to make an independent report, to this Court. When a High Court takes cognizance of a contempt of court subordinate to it, it must do so on a report made to it ; the report can be made to it either by the court which has been contemned or by a superior court.

The Additional District Magistrate could report the matter direct to this Court ; he could also report it through the District Judge who is the proper channel for communication between him and this Court. The learned District Judge could forward the report at once ; but he did nothing wrong in giving the opposite party an opportunity to show cause why he should not do so.

The opposite party, therefore, cannot feel aggrieved by the preliminary inquiry held by the learned District Judge; if it was in the interest of any one, it was in his interest.

8. No affidavits have been filed in this Court either by the Additional District Magistrate or by any of the persons who were present in his court on 6-2-1954. All that is against the opposite party on the record is the report of the Additional District Magistrate to the learned District Judge along with its enclosures and the report of the learned District Judge to this Court.

It was contended that all this does not amount to evidence and that in the absence of an affidavit the opposite party cannot be held to have been drunk. Contempt proceedings are neither criminal proceedings nor civil proceedings and are ' sui generis '. It has been held by a Full Bench of this Court in - ' The State v. Padma Kant Malaviya' that they are not governed by the Code of Criminal Procedure.

I do not propose to go into the question whether they are governed by the Evidence Act or not because I find that even if they are governed by the Evidence Act, there is ample evidence on the record to justify the finding that the opposite party had consumed alcohol and was smelling of it.

This evidence is furnished by the opposite party's own letter of apology of 8-2-1954 handed over to the Additional District Magistrate at his house. In that letter he clearly admitted that he was intoxicated when he appeared before him and apologized for being in that condition. The oppposite party has not explained how and by whom he was made to write that letter.

He himself went to the house of the Additional District Magistrate and I am not prepared to believe that the latter dictated the contents of the letter and that he meekly submitted himself to the dictation. That there were other appeals pending in which he had to represent his client does not explain his making a false confession. His confession is evidence under the Evidence Act itself ; it has been retracted but the retraction is unjustified, Then there is the circumstantial evidence, mentioned by the opposite party himself in his affidavit, that when he was arguing the appeal persons standing near him put their hands to their noses, that the Additional District Magistrate felt that he was under the influnce of liquor and questioned him about it, that the people surrounding him at once told the Additional District Magistrate that he was drunk and that he elected to leave the court room and not to submit himself to medical examination.

I am not at all satisfied that there was any conspiracy among Sri Virendra Swarup and others standing in the court at the time to make out a false case that the opposite party was drunk. There is absolutely no evidence, direct or circumstantial, to prove it. If there was no conspiracy the acts of several persons putting their hands to their noses suggest that foul smell was coming out of his mouth and nose.

If he was not smelling of liquor, there was no reason for him to withdraw from the Court. Even if he felt that he was not bound to submit himself to medical examination, he could inform the Additional District Magistrate that he was not drunk and that there was no law under which he could be ordered to undergo medical examination.

The Additional District Magistrate put two alternatives before him, but they were certainly not the only alternatives open to him; he had a third alternative to refuse either of the alternatives which he had every right to do.

Lastly there is the fact that the opposite party did not have the courage to affirm in his affidavit that he had not taken any alcohol. I have therefore, no doubt that he had taken alcohol shortly before coming to court. Dangle in his book on Contempt writes on p. 200 that "a complaint for criminal contempt, signed by him" (the district attorney) "as a public officer carries with it the sanction of his oath of office."

According to this the report of the Additional District Magistrate stands on the same footing as an affidavit by him and would be evidence to prove its contents.

9. Though the opposite party had consumed alcohol before coming to Court, it is by no means certain that he was under the influence of it. He did not reel or totter. He was not unsteady. He did not rave or shout. He did not lose control over his faculties. He argued five appeals without causing any incident.

He was fully conscious and understood every thing; he had the good sense not to create a scene in the court but to accept the other alternative of withdrawing from the Court. He therefore, cannot be said to have consumed so much liquor as to be in a state of intoxication or drunkenness or to be under the influence of liquor.

The smell or liquor did come out of his month and nose, but that only proves consumption of liquor and not necessarily intoxication. All that he is said to have done under the supposed influence of liquor is that he argued irrelevantly or incoherently.

There are some counsel who argue irrelevantly or incoherently even when sober and even if the opposite party argued irrelevantly or incoherently, I have no reason to attribute it to the influence of liquor. It may be that the Additional District Magistrate thought that he argued in an unusual manner or irrelevantly because he felt that he was drunk. I do not think it is established that he was intoxicated.

10. A counsel appearing in court after consuming liquor does not commit contempt of court. Certainly it is not contempt for him to consume liquor within limits before appearing in Court. If he does not insult or interrupt the court or obstruct it, it is immaterial whether he had any liquor in his stomach or not.

Not a single case was brought to our notice in which appearing before a court even in a state of drunkenness or intoxication was held to be contempt of court. If a counsel appears before a court while under the influence of liquor, it may be an act of disrespect to the court, but as observed in 'Joseph Orakwrie Izoura v. R. 1953 A C 327 (C) at p. 336 not every act of disrespect is contempt.

There is a line dividing disrespect from contempt; it may be difficult to say where the line should be drawn, but it may not be difficult to say that a given case is on this side of the line or that. It was argued that counsel's appearing in court after consuming liquor affects the dignity of the court and that mere tendency to affect the prestige of the court is contempt according to the Supreme Court 'vide Aswini Kumar v. Arabinda Bose' .

The appearance of a counsel, who is so much under the influence of liquor that he is unable to take care of himself, may affect the dignity of the court and may be said to be an act of contempt of court, as to which I express no opinion, but I have no doubt that his appearing in court after consuming liquor but without being under its influence does not affect its dignity or amounts to its contempt.

Some counsel are known to argue more efficiently when they have consumed some liquor; some counsel are also known to appear in court after consuming liquor. Had it been contempt for a counsel to appear in court after consuming liquor, there would have been several authorities laying it down.

The contempt that the opposite party is said to have committed is direct contempt. Direct contempt is defined by Dangle in his book on Contempt, 1939, para 7 in the following words:

> Direct contempt consists of something done or omitted to be done in the presence of court tending to impede or interrupt its proceedings or reflect upon its integrity.... It is insult committed in the presence of the court, ...or a resistance of or interference with the lawful authority of the court or Judge in his precence, or improper conduct so near to the court or judge acting judicially as to interrupt or hinder judicial proceedings.
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> In para 14 he writes that it includes all contemptuous acts committed in the court's presence while the trial is in progress ...tending to prevent or delay trial....disorderly or insolent behaviour....such as....any breach of the peace, noise or disturbance so near to the court as to interrupt its proceedings.
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> Even if the opposite party argued irrelevantly or incoherently and had consumed liquor, he did not commit direct contempt as explained by Dangle.
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> (10A) I agree with Sri S. N. Misra that Sri S. M. Ifrahim when disposing of the appeals did not act as a "court" within the meaning of Section 3, Contempt of Courts Act and that even if the opposite party's act amounted to his contempt, it is not a contempt of court.

Though he was Additional District Magistrate and would have been a "court" if he had been exercising the powers of Additional District Magistrate he was a mere persona designata when hearing the appeals under Section 160, Municipalities Act and not exercising his powers as Additional District Magistrate.

Every person has more than one status; he has the status of an individual or a human being; in addition he has the status derived from some right other than the inherent right of a human being. Sri S. M. Ifrahim had the status of an individual; he had the additional status of Additional District Magistrate.

A power may be conferred upon a person either in his capacity as an individual or in the additional capacity which he must possess; if it is conferred upon him as an individual, he becomes a persona designata and while exercising it, he is not at all affected by the other capacity that he possesses.

If the jurisdiction to hear an appeal under Section 160, Municipalities Act was conferred upon Sri S. M. Ifrahim, as an individual, he acted as an individual, and not as Additional District Magistrate when exercising it. He would not be a "court" merely because he would be "court" when exercising his powers as Additional District Magistrate.

When the jurisdiction to hear the appeal was conferred upon him as an individual, it is absolutely irrelevant that he had the power to decide cases as an Additional District Magistrate. It would be a sheer accident that he happened to possess the power to decide cases as an Additional District Magistrate or as Court.

When a special jurisdiction is conferred upon a person, who for the time being holds a certain office, it is essentially a question of interpretation of the enactment conferring the special jurisdiction whether it is conferred upon him as an individual or persona designata or is conferred upon him to be exercised as the holder of the office.

If the jurisdiction to hear the appeals was conferred upon Sri S. M. Ifrahim as an individual, he would not be a "court" (unless the hearing of the appeals is held to be essentially a court's function); but if it was conferred upon him to be exercised by him as Additional District Magistrate, he would be a "court".

If the legislature did not intend that the jurisdiction should be exercised by him as a part of his duties as an Additional District Magistrate, he would not be a court merely because he would be a court when exercising his powers as Additional District Magistrate.

If with the same object in view the legislature could have conferred the jurisdiction upon, say an engineer or a doctor and if he would not be a court when exercising it, Sri S. M. Ifrahim would not be a court when exercising jurisdiction as Additional District Magistrate would be irrelevant when the particular jurisdiction is not to be exercised by him as Additional District Magistrate.

Unless the special jurisdiction intended to be exercised as part of ordinary jurisdiction, the two jurisdictions must be kept distinct and the exercise of one should not be affected by the possession of the other.

Now there is nothing in Section 160 or other provisions of the Municipalities Act to indicate that the special jurisdiction conferred upon Sri S. M. Ifrahim by Section 180 was intended by the legislature to be exercised by him as a part of his ordinary jurisdiction as Additional District Magistrate.

The section itself lays down that it is open to the State Government to empower any other officer to hear the appeals. It is open to the State Government to empower an engineer or a doctor to hear the appeals; since he would not exercise the jurisdiction as a part of his ordinary jurisdiction, it follows that the Additional District Magistrate also would not exercise it as a part of his jurisdiction as Additional District Magistrate.

The Municipalities Act confers several duties of a non-judicial or purely executive character upon District Magistrate, 'vide' Sections 34 (1-A), 35 (2), 94 (4), 237, 238, 239, 246 and 333.

Several powers of a purely executive character are also conferred upon the prescribed authority, who, in some cases, is the Commissioner; if the Commissioner when exercising them does not act as a court, District Magistrates also when exercising the executive powers conferred upon to them do not act as courts when exercising them.

Deciding an appeal under Section 160 against a tax assessed upon the annual value of buildings or land or both is more in the nature of an executive function than a judicial function. The assessment of tax by the Board itself would not be a judicial function; and there would hardly be any material before the appellate authority on the basis of which it could act Judicially in deciding the appeals under Section 160, It seems to me that the appellate authority is intended by the legislature to act like an executive authority and not a judicial authority. The legislature has deliberately used the words "the officer hearing the appeal" and "the officer deciding the appeal" in Sections 162 and 163 with reference to the person hearing the appeals under Section 160, instead of the words "the court hearing or deciding the appeal".

In Section 323 orders passed under Sections 201 and 258, are expressed to be subject to appeal to "the next superior court" suggesting that the orders are passed by Courts though the word used in the sections is "magistrate", With reference to the District Magistrate who is empowered by Section 318 to hear certain appeals the legislature has indiscriminately used the words "the appellate authority" (see Sections 318 (2), 321(2) and 322) "the officer hearing the appeal" (see Section 319) and "the court" (See Section 320).

On account of the use of the word "court" in Section 320, the District Magistrate hearing an appeal under Section 318 may be said to be acting as a court, but the same cannot be said of him when hearing an appeal under Section 160 because the corresponding provision in Section 160 uses the word "officer" and not " court".

I am, therefore, of the opinion that the power conferred by Section 160 is intended by the legislature to be exercised as an executive power and not as a judicial power. A District Magistrate has executive powers also; for instance the powers of Sections 13(3), 16, 17, 45 (3), 492 etc. of the Code of Criminal Procedure.

I have already mentioned the executive powers that are conferred upon District Magistrate under the Municipalities Act itself. Therefore Shri S. M. Ifrahim had a third status also, namely that of an administrative officer and there is no reason for thinking that the appeals under Section 160 were to be heard by him as a part of his jurisdiction as Additional District Magistrate and not as a part of his jurisdiction as an administrative officer.

There is no reason for thinking that the special jurisdiction of hearing the appeals was conferred upon District Magistrates because they possess District Magistrate's powers and not because they possess executive powers. The power has been conferred upon "District Magistrates" but it only means that it is conferred upon "the persons holding the post ot District Magistrate at the time".

Had the power been intended to be conferred upon a single individual, he would have been named in the enactment, but when it was intended to be conferred upon a number of individuals, whose duties and jurisdiction were likely to be changed from time to time, they could not be named in the enactment and the legislature thought that the best way of describing them was by referring to their possession of some status.

The legislature could as well have described them in any other manner such as by referring to their residence in a particular place. Accidentally it sought to describe them by their possession of the status of District Magistrates.

The reference to their possessing the status of the District Magistrates was thus only the means adopted by the legislature to identify the persons who can exercise the power, and was not intended to suggest that the power was to be exercised as part of the ordinary powers of District Magistrate.

11. There are several decisions in support of the view taken by me. In 'Masoon All Khan v. All Ahmad Khan' AIR 1933 All 764 (E) it was held that a District Judge empowered by Section 18, U.P. District Boards Act to hear an election petition is not a civil Court but is a persona designata, even though Section 20, District Boards Act invested him with the same powers and privileges as a Judge of a civil court.

An Additional District Magistrate hearing an an appeal under Section 160, Municipalities Act was held in 'Municipal Board, Allahabad v. District Judge, Allahabad' not to be under the supervisory jurisdiction of the High Court under Article 227 of the Constitution.

It was observed in that case that assessment proceedings are not proceedings in a court of law where questions are determined upon the evidence on record and that an additional District Magistrate hearing an appeal under Section 160, Municipalities Act may take judicial notice of facts which are of general knowledge.

The word "court" has been explained by Sinha C.J. and Bhutt J. in 'M. V. Rajwade v. Dr. S. M. Hassan' AIR 1954 Nag 71 (G) at page 76; it was observed that the least attribute of a tribunal which would make it a court within the meaning of the Contempt of Courts Act is that it is legally authorised to deal with any particular matter judicially and accordingly it was held that the Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 and presided over by a Judge of the High Court is not a court.

12. The word "court" according to Section 3, Evidence Act includes all Judges and Magistrates and all persons except arbitrators "legally authorised to to take evidence." A District Magistrate hearing an appeal under Section 160, Municipalities Act is not legally authorised to take evidence. The words "legally authorised" contemplate a positive authorisation.

The right to receive evidence is not an incident of an appellate court; wherever an appellate court possesses the right to receive evidence it is by virtue of an express enactment such as those contained in Section 428, Criminal P.C. and Order 41, Rule 27, Civil P.C.

13. It was argued that even if Sri S. M. Ifrahim did not act as a court when deciding the appeals under Section 160, Municipalities Act, he certainly acted as a tribunal and that the word "court" in the Contempt of Courts Act includes tribunals. The argument is fallacious.

The whole inquiry before us is whether Sri Ifrahim acted as a court within the meaning of the Contempt of Courts Act: If a court is distinct from a tribunal, it means that a tribunal is not always a court; if every tribunal were a court, there would be no distinction between a court and a tribunal.

If there is no distinction, there is no difference between an inquiry whether Sri S. M. Ifrahim acted as a tribunal and an inquiry whether he acted as a court. Really there is a distinction between a court and a tribunal though some tribunals are also courts. A tribunal may be said to be an authority which decides disputes while a court is a particular tribunal created as a court by a statute.

The criminal, civil and revenue courts are all created by statutes and they are the only courts, A tribunal deciding appeals under Section 160, Municipalities Act is a mere tribunal and is not a court. The Constitution distinguishes between courts and tribunals. Article 227 invests every High Court with the superintendence over "all courts and tribunals" throughout its territorial jurisdicion; if the words "courts" and "tribunals" were synonymous, the Constitution would not have used the word "and". Item 3 of List II of Sch, 7 deals with constitution and organisation of all "courts"; it is clear that the word "courts" here cannot include (all) tribunals.

> "Contempt of Court" is Item No. 14 of List III of Sch. 7 of the Constitution. The Contempt of Courts Act was enacted after the Constitution came into force; therefore, the word "Court" in the Act must be interpreted in the same manner in which it is used in the Constitution. Since the Constitution, makes a distinction between courts and tribunals, the word "Court" in the Act cannot be interpreted so as to include all tribunals.

> The word "Court" used in the Act was interpreted by this Court in 'Satdeo Pande v. Baba Raghav Das' . It was observed by Wali Ullah, J. at p. 432 that the word is used in a wide sense in the Act "as including a tribunal, legally authorised to deal with a particular matter judicially".

The question before the Court was whether an Assistant Collector deciding a case under Section 40, Land Revenue Act was a court subordinate to the High Court within the meaning of the Contempt of Courts Act, 12 of 1926. It was not in controversy that he acts as a court; what was in controversy was whether as a court he is subordinate to the High Court. Therefore, all the observations about the meaning of the word "court" were by way of 'obiter dicta'.

Moreover, though the language of Section 3, Contempt of Courts Act of 1952 is the same as that in the corresponding provision of the Act of 1926 since the Act of 1952 was enacted after the Constitution has come into force it must be interpreted in accordance with Constitution and the interpretation put upon the language of the Act of 1926 is not to be blindly put on the language used in the Act of 1952.

14. In the result I find that Shri S. M. Ifrahim did not act as a court when deciding the appeals under Section 160 of the Municipalities Act.

15. Even if it be assumed that he did act as a court it is by no means certain that that court is subordinate to this Court. This Court has no powers of appeal or revision over his decisions; they are final as laid down in Section 164 (2), Municipalities Act.

He is certainly authorised to make a reference to this Court; but neither is he bound to make, a reference, nor does he become a subordinate court just because he can refer a question on which he entertains a doubt to this Court for its opinion. If a person is entitled, or empowered, to seek another's opinion on a certain question, he does not thereby become subordinate to the other.

In 'Bishambhar Nath v. Achal Singh' AIR 1932 All 651 (I), Iqubal Ahmad, J. stated.

It appears to me however, that a court can be said to be subordinate to another court only if the latter court has appellate or revisional jurisdiction or power of superintendence given to it by some statutory provision over the former court, and that the mere authority to decide a reference does not necessarily make the Court making a reference subordinate to the court deciding the same.

In 'State v. Bramha Prakash' the subordination contemplated by the Contempt of Courts Act was held to be judicial subordination. If so, the tribunal deciding appeals under Section 160, Municipalities Act is not subordinate to the High Court, which has no judicial control over it. The decision in the case of 'Bramha Prakash (J)' was approved of by Wali Ullah, J. in the case of 'Satdeo Pande (H) (sup. ra).

Under Article 227 of the Constitution this High Court has superintendence over all courts and tribunals throughout the State of U.P. It was contended that superintendence includes judicial

control and that consequently all tribunals within the State are subordinate to the High Court.

In 'Kapur Singh v. Jagat Narain' AIR 1951 Punj 49 (K) a Bench of the Punjab High Court observed that superintendence includes the power to deal with contempt of court, and that all courts and tribunals over which a High Court has superintendence are subordinate to it.

It may be that under English Law the power of a superior court to punish contempt of an inferior court is derived from the superior court's having superintendence over the inferior court. But I doubt if the word "superintendence" itself includes the power to punish contempt:

> In any case we are dealing with the words used in Section 3, Contempt of Courts Act. The Legislature did not use the words "the courts over which the High Court has superintendence" or the words "the courts within the territories in relation to which the High Court exercises jurisdiction" to describe the courts, the contempt of which can be punished by it.
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> There is, therefore, some force in the contention that the Legislature by using the word "subordinate" in the Act did not mean "subject to the supervisory jurisdiction." Chapter VI of the Constitution deals with "subordinate Courts"; the chapter may not be giving an exhaustive list of courts subordinate to a High Court but it can hardly be disputed that some guidance can be had from the nature of the courts mentioned in the chapter about the meaning of subordination.
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> The words "a court subordinate to it" are expressly used in Article 228; when one Article uses a word, "superintendence" and the very next Article, "subordinate," it suggests that the constitution distinguished between subordination to the High Court and being under its superintendence.
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> Under Article 228 it is obligatory upon a High Court to withdraw every case pending in any subordinate court in which a substantive question of law as to the interpretation of the Constitution is involved. If every court mentioned in Article 227 were subordinate to the High Court, the High Court would be obliged to withdraw cases from a larger number of courts, and I do not think it was the intention of the Constitution-makers that it should do so.

16. In 'Sadeck Abdulla v. Mahomed Abdulla' AIR 1929 Bom 190 (L) Patkar and Murphy JJ. held that a court at Aden is subordinate to the High Court at Bombay, because the latter has superintendence over it. There are a number of authorities including some of this Court laying down that Superintendence contemplated by Article 227 is not merely administrative superintendence, but also includes judicial superintendence.

Under Article 226 of the Constitution writs of certiorari, mandamus, prohibition, etc. can be issued by a High Court to any person or authority within its territorial limits; but it does not follow that every person or authority is subordinate to the High Court.

Exercise of jurisdictions has nothing to do with subordination and a person or authority over whom a High 'Court can exercise jurisdiction is not thereby made subordinate to it. It cannot be disputed that Government against whom also a writ can be issued by the High Court, is not subordinate to the High Court.

In 'Bhagirathi v. State (S) AIR 1955 All 113 (FB) (M), I have expressed a doubt on the correctness of the view that superintendence includes judicial superintendence. In view of the provisions of Article 226 there is much to be said for restricting superintendence to administrative superintendence. It is doubtful if a court over which the High Court has only administrative superintendence can be said to be subordinate to it.

17. I am of opinion that Shri S. M. Ifrahim, if he was a court, was not a court subordinate to this court,

18. I am not impressed with the argument that Shri S. M. Ifrahim had no jurisdiction to hear the appeals under Section 160, Municipalities Act, because he was Additional District Magistrate and not District Magistrate. Appeals under Section 160 can be heard by a District Magistrate."

The words "District Magistrate" are not defined in the Municipalities Act or in the U.P. General Clauses Act. Section 10 (1) Criminal P.C. requires Government to appoint a District Magistrate in every district. Therefore a District Magistrate in Section 160 must mean the person appointed as District Magistrate under Section 10, Crirninal P.C. The State Government is further empowered by Section 10 (2) to appoint and Additional District Magistrate, who is to have all or any of the powers of a District Magistrate, not only under the Code of Criminal Procedure but also under any other law for the time being in force as the State Government may direct. Shri S. M. Ifrahim was appointed as Additional District Magistrate.

It was not alleged that he did not have all the powers of a District Magistrate and I proceed on the assumption that he had all the powers. Consequently he had the power of a District Magistrate to decide an appeal under Section 160. In 'Prabhulal Ramlal v. Emperor' AIR 1944 Nag 84 (N), it was held that the power conferred by a State Government on a District Magistrate under the Defence of India Act could not be exercised by an Additional District Magistrate; the decision was based upon the assumption that the Legislature intended the Government to confer the power only upon the person holding the post of District Magistrate and no one else.

Under Section 3, Temporary Control of Rent and Eviction Act the District Magistrate is empowered to permit a landlord to file a suit for ejectment of his tenant. In 'Kedar Nath v. Mool Chand' , Sapru J. laid down that an Additional District Magistrate has no power to permit a landlord to eject his tenant and that the permission must be granted by the person holding the office of District Magistrate and none else. He was of the opinion that the District Magistrate was a 'persona designata.

With great respect to the learned Judge, I find it difficult to hold that an Additional District Magistrate cannot exercise the power conferred upon a District Magistrate under Section 3 of the

Act. The powers that an Additional District Magistrate is expressly authorised by Section 10 (2), Criminal P.C. to exercise are the powers which are expressed to be exercised by a District Magistrate.

If a power of a District Magistrate under the Code of Criminal Procedure can be exercised by an Additional District Magistrate by virtue of Section 10 (2), I see no reason why the power of a District Magistrate under Section 3, Control of Rent and Eviction Act or under Section 160, Municipalities Act cannot be exercised by an Additional District Magistrate, when Section 10 (2) of the Code makes no distinction between the powers exercisable by a District Magistrate under the Code of Criminal Procedure and those exercisable by him under any other law for the time being in force. I have no doubt that Shri S. M. Ifrahim was competent to decide the appeals under Section 160. But the matter is not quite simple; the appeals were not instituted in his court but were transferred to him by the District Magistrate. A District Magistrate has not been invested with any power to transfer appeals under Section 160 to an Additional District Magistrate.

An Additional District Magistrate can also decide an appeal but it does not follow therefrom that a District Magistrate can transfer an appeal from his file to that of an Additional District Magistrate without any statutory provision authorising him to do so. Whenever a court has power to transfer a case to another court, it is expressly conferred upon it by enactment. It follows that there is no power of transfer in the absence of an enactment. The District Magistrate could not have, therefore, transferred the appeals to Sri. S. M. Ifrahim. The fact that Shri S. M. Ifrahim had no jurisdiction to hear the appeals, however, doss not mean that no contempt could be committed of him. So long us he was seized of the appeals, no contempt could be committed of him.

It is not the law that a court dealing with a matter which is beyond its jurisdiction can be contemned with impunity or that the liability of a person to be punished for contempt of a court depends upon whether the court was acting within its jurisdiction at the time when it is alleged to have been contemned. The opposite-party, therefore, cannot claim that he is not guilty of contempt because Shri S. M. Ifrahim had no jurisdiction to decide the appeals.

19. The notice issued against the opposite-party should be discharged, the opposite-party should bear his costs himself, and the Government Advocate should get his fee from the State.

Beg, J.

20. I agree with my learned brother that the act of the opposite party, under the circumstances, did not amount to contempt of court. In this view of the matter it is not necessary for me to express an opinion on the question whether the authority whose contempt is said to have been committed was acting as a court or not.

21. The notice issued against the opposite party is discharged. The opposite party will bear his own costs.