of Karnal District, and officers of the Government would do well even where they feel strongly in regard to certain alleged offences to proceed in accordance with law. In the present case the authorities have allowed their exuberance and their belief in the guilt of the petitioner and his co-accused to get the better of their discretion and in a free State where a great deal depends upon the judicious use of judicial powers and exercising discretion in accordance with the established judicial precedents it gives the whole administration a bad name if actions taken by Magistrates have the look of malice."

On these findings Mr. Sarin submits that it is not a case which falls within the rule laid down by the Privy Council in *Muhammad Nawaz alias Nazu's case* (1). I agree with this submission and am of the opinion that the circumstances which were proved in this case show that it is not a case which I could certify as a case fit for appeal to their Lordships of the Supreme Court.

On these findings Mr. Sarin reverts to his submission that this belated application should not be allowed to go and a citizen of this State should not be harassed after the lapse of such a long period of time, a contention which I accept.

I would, therefore, dismiss this petition.

CIVIL MISCELLANEOUS

Before Falshaw and Kapur, JJ.

DIN DYAL,—*Petitioner*

versus

UNION OF INDIA AND THE STATE OF PUNAJB,—*Respondents*

Civil Miscellaneous No. 398 of 1952

1953

August 10th.

Code of Civil Procedure (V of 1908)—Section 24—Letters Patent of the Lahore High Court—Clause 9—Case withdrawn from trial court to be tried in its extraordinary jurisdiction by the High Court—Suit dismissed by trial

(1) I.L.R. (1924) 23 Lah. 36

Court before the order of withdrawal communicated to it—whether the decision of trial court dismissing the suit is with jurisdiction—Is there any difference if the order of withdrawal is made on application of the parties or is made suo moto.

Held, that the effect of the order of the High Court withdrawing the suit from the court of the Senior Sub-Judge was to take away his jurisdiction from trying that case and if the order was not conveyed to him the order still remains effective and it makes no difference whether the order is made on application of the parties or is made *suo moto* and the decree of the trial court was without jurisdiction.

Petition under section 24 of the Code of Civil Procedure praying that the case be ordered to be transferred to a court of competent jurisdiction outside the district of Karnal. In case this Hon'ble Court considers that it is not a fit case in which the transfer should be ordered from the district, the prayer is that the case may be transferred from the court of S. Sewa Singh, Sub-Judge, 1st Class, to another court of competent jurisdiction.

A. N. GROVER, for Petitioner.

S. M. SIKRI. Advocate-General, for Respondent.

ORDER

Kapur, J.

KAPUR, J. This is a plaintiff's application praying that this Court should proceed with the trial from the stage that it was at on the 11th of May 1953.

The original suit 'Din Dayal *v.* Union of India' was pending in the Court of Mr. Sewa Singh, Subordinate Judge, 1st Class, Karnal, and by my order, dated 29th December 1952, I transferred it to the Court of the Senior Subordinate Judge for trial. Subsequently on the 11th May 1953, I passed the following order withdrawing the case from the Court of the Senior Subordinate Judge to be tried in the extraordinary jurisdiction of this Court:—

> "In my opinion this case is of some importance and I, therefore, order that the original suit Din Dyal *v.* The Union of India and another be withdrawn from the Senior Subordinate Judge's Court and be tried in the Extraordinary Original Jurisdiction of this Court. As

soon as the record is received papers will be submitted to the Hon'ble Chief Justice for its being sent to a learned Single Judge."

Unfortunately due to something that happened in this office, the order was not sent to the trial Court till the 6th of June 1953, and meanwhile on the 18th of May 1953, the suit of the plaintiff was dismissed.

Mr. Amar Nath Grover submits that as soon as the order of this Court withdrawing the case from the file of the Senior Subordinate Judge was passed the Karnal Judge no longer had any jurisdiction to go on with the case and, therefore, any judgment or order passed after the order of this Court, i.e., after the 11th of May 1953, is without jurisdiction. This submission, is, in my opinion, well founded. There are two provisions by which the High Court can withdraw a case pending in a Subordinate Judge's Court to itself. One is section 24 of the Code of Civil Procedure by which the High Court on its own motion without notice to any party may at any stage withdraw any suit, etc., the other is para. 9 of the Letters Patent which provides:—

> "And we do further ordain that the High Court of Judicature at Lahore shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence when the said High Court may think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

In section 24 the word used is 'withdraw' and in para 9 of the Letters Patent the word used is 'remove'. Now both these are strong words and Mr. Grover submits that as soon as an order is passed for withdrawing the case from the Court of a Subordinate Judge or for removing it for being tried

Din Dyal
v.
Union of India and the State of Punjab

Kapur, J.

in the High Court as a Court of extraordinary original jurisdiction the order becomes operative automatically and puts an end to the jurisdiction of the Court where the case is pending.

Counsel relies on a judgment of the Calcutta High Court in *Hukum Chand Boid* v. *Kamalanand Singh* (1), where an order was passed by the High Court ordering the stay of delivery of possession in execution of a decree. Effect of this order was discussed by Sir Asutosh Mookerjee, J., at page 944 where he said:—

> "As was pointed out by Baldwin, J., in delivering the judgment of the Supreme Court of California in *Buffandeau* v. *Edmondson* (2), injunction by an Appellate Court for stay of execution operates as a supersedeas to the execution as soon as it is made. The legal authority to proceed with the execution is withdrawn by the act of a competent Court, and there is no more legal justification for the execution after the order for stay than there would be for execution after the proceedings have been quashed. The learned Judge further added that no doubt could exist that the order would be effectual without any previous notice to the authority carrying on the execution, because the order for stay has direct effect upon the process itself, although if proceedings are taken to punish the person, who has carried on execution after it had been stayed, it is necessary to show that he had notice of the Order, because, it is only after such notice that his act would be in defiance of law and in contempt of the Court. The rule is laid down in similar terms in Spelling on Injunctions, Vol. I, sections 173—178. The learned author points out that the effect of an injunction upon an execution sale is to stop

(1) I.L.R. 33 Cal. 927
(2) (1851) 17 California 436

the proceedings, where they are, but the injunction does not operate to kill the execution; the sale is arrested by the injunction, but the seizure is not released and the property remains in legal custody pending the injunction, and, if the injunction is subsequently resolved, the parties are restored to the same position, which they occupied before it was granted, *Duckett* v. *Dalrymple* (1), *Lamorer* v. *Cox* (2). The same learned author further points out (Vol. 11, section 1122) that if it is sought, however, to subject a party to punishment in contempt proceedings, it is necessary that it be shown that he has had notice of the contents of the restraining order or writ of injunction, at least to the extent of imparting to him the knowledge that the acts imputed to him were prohibited therein. But that an order takes effect, generally speaking from the time it is made, is amply shown by the cases of *Jones* v. *Roberts* (3), *Aberdeen* v. *Watkinson* (4), *Verlander* v. *Codd* (5), and *Exp. Hookey* (6), see also the observations of Lord Esher, M. R. in *Holtby* v. *Hodgson* (7),"

He was of the opinion that the order takes effect from the time it is made.

This view of the Calcutta High Court was adopted by a Full Bench of the Lahore High Court in *Karam Ali* v. *Raja* (8), where an order was made under Order XLI, Rule 5, staying the execution of a decree and it was held that it operates from the time that the order is made and not from the time that it is communicated. In paragraph 17 the learned Chief Justice has discussed the effect

(1) (1845) 1 Rich. 143
(2) (1880) 32 La. An. 246
(3) (1825) McCle and Yo. 567
(4) (1833) 6 Sim. 146
(5) (1822) 1 Sim. and St. 94
(6) (1862) 4 DeG.F. and J. 456
(7) (1889) 24 Q.B.D. 103, 107
(8) A.I.R. 1949 Lah. 108

Din Dyal
v.
Union of India and the State of Punjab

Kapur, J.

of an order passed by a Court and has approved of the opinion of Mookerjee, J. He has also given the instance of a notification withdrawing the powers of a Second Class Magistrate of recording confessions which in my opinion is very apt. If a Magistrate's powers are duly withdrawn, merely because the fact does not come to the notice of the Magistrate, he cannot make an order which would be beyond his jurisdiction. I would here like to quote from the judgment of Munir, C. J.:—

> "If a sale of property is stayed, a sale during the stay is void,—(*vide* 3 Corpus Juris 1273 and 23 Corpus Juris 533). The American case *Buffandeau* v. *Edmondson* (1), relied on by Mookerjee, J., in *Hukum Chand Boid* v. *Kamalanand Singh* (2), was a case from California where the rule is that the mere perfecting (preferring) of an appeal does not operate as a supersedeas unless so ordered by the appellate Court."

These observations fully apply to the facts of this case and I respectfully adopt them.

The learned Advocate-General submitted that as this order was passed *suo motu* there was no publication of it and it could not become effective before it was communicated and he has relied on an analogy of what was decided by the Supreme Court in *Harla* v. *The State of Rajasthan* (3), where it was held in regard to an order of Jaipur Darbar that it was ineffective because it was not promulgated or published in the Gazette, and he particularly relies upon the observations at page 469, where Bose, J., said:—

> "for, it is inconceivable that a representative of His Britannic Majesty could have contemplated the creation of a body which could wield powers so abhorrent to the fundamental principles of natural justice which all freedom-loving peoples share."

(1) (1851) 17 California 436
(2) 33 Cal. 927 (3 C.L.J. 67)
(3) A.I.R. 1951 S.C. 467

Din Dyal
v.
Union of India and the State of Punjab
Kapur, J.

But I do not think this case has any application to the facts of the present case. An order was made by this Court and was effectuated as soon as it was made which is quite clear from rule 3 of Chapter 4-G of the 5th Volume of the Rules and Orders of this Court. As a matter of fact a judgment takes effect as soon as it is announced. See Volume 19 of Halsbury's Laws of England, Second Edition, page 245. It is not necessary to refer to the other cases which were cited by the Advocate-General because in my opinion they do not give much assistance.

In my opinion the effect of the order of this Court was to take away the jurisdiction of the Senior Subordinate Judge from trying that case and if the order was not conveyed to that learned Judge the order still remains effective and it makes no difference whether the order is made on the application of the parties or is made *suo motu*. The result is that the decree of the trial Court was without jurisdiction and I, therefore, direct that the record of the case may be sent for and be put for decision before a Division Bench of this Court. I also direct that when the record is received the parties' Advocates should be informed and in the manner provided for the printing of first appeals all documents and record be printed. The papers will be placed before the learned Chief Justice for constituting a Division Bench.

FALSHAW, J.—I agree.

REVISIONAL CRIMINAL

Before Harnam Singh, J.

KANSHI RAM,—*Petitioner*

versus

KULDIP SINGH and OTHERS,—*Respondents*

Criminal Revision No. 114 D/52

1953

August 12th

Court-fees Act (VII of 1870)—Section 20—Rule framed by the Punjab High Court under—Rule 5—Court-fee, whether payable by complainant for service of process on the accused in respect of complaint of cognizable offences.

Held, that no court-fee is payable by the complainant for service of process on the accused in respect of a complaint of cognisable offences under Rule 5 framed by the