

Muhammad Nawaz alias Nazu - - - - - *Petitioner*

v.

The King Emperor - - - - - *Respondent*
and twelve other petitions

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

for special leave to appeal in forma pauperis

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH JULY, 1941

Present at the Hearing :

THE LORD CHANCELLOR (Viscount Simon)
LORD ATKIN
LORD THANKERTON
LORD RUSSELL OF KILLOWEN
SIR GEORGE RANKIN

[*Delivered by* THE LORD CHANCELLOR]

The Judicial Committee has before it this morning 13 petitions for special leave to appeal in criminal cases *in forma pauperis*. All the proposed appeals are from the High Court of Judicature at Lahore, which in each instance has confirmed the decision of a Sessions Judge sentencing the petitioner to death for murder. In each of these 13 cases the papers before their Lordships include (as rule 8 of the Judicial Committee Rules requires) a certificate signed by counsel in India that the petitioner has reasonable grounds of appeal to this Board.

Their Lordships regret to find that, with the possible exception of the petition in the case of *Rehmat v. The King Emperor*, there is no basis whatever on which a certificate could, or should, have been given expressing the opinion that there were grounds on which the petition could properly be presented. This is a very serious matter, not only because those who so certify are misusing their professional position, but because the due course of criminal justice is interfered with if the delay of application to the Board is interposed without any valid reason between the judgment of the Court in India and the due execution of the sentence which that Court thinks it right to pronounce.

Their Lordships' attention is called to the fact that this is not the first time that a batch of petitions has been brought before the Board praying, on wholly inadequate grounds, that appeals may be brought against death sentences for murder which have been duly confirmed by the High Court of Lahore. This has happened several times, e.g., in May last 9 such petitions came before the Board from Lahore, together with one from Oude, one from the North West Frontier Province, and one from Sind. In these cases also the certificates as to reasonable cause of appeal, without which no application was possible, were equally unwarranted.

It is evident that there exists in parts of India, and especially in the Punjab, a serious error as to the strict and definite limits within which the Judicial Committee entertains appeals from a criminal sentence. Their Lordships must assume that these certificates are given under a misunderstanding of the true position, as otherwise some of them could only be explained as proceeding from an utter disregard of the solemn and

serious responsibilities of the counsel who certify. Their Lordships, therefore, desire to restate, in unmistakable terms, the limits of the jurisdiction exercised in criminal appeals by the Judicial Committee, and trust that this explanation will be carefully noted in the quarters where it seems to be needed and that the practice, of which their Lordships have to complain, will cease.

The Judicial Committee is not a revising court of criminal appeal: that is to say, it is not prepared or required to re-try a criminal case, and does not concern itself with the weight of evidence, or the conflict of evidence or with inferences drawn from evidence, or with questions as to corroboration or contradiction of testimony, or as to whether there was sufficient evidence to satisfy the burden of proof. Neither is it concerned to review the exercise by the previous tribunal of its discretion as to permitting cross-examination as a hostile witness or in awarding particular punishments. In some of the certificates of counsel which are before their Lordships in connection with the present set of petitions the certificate sets out particular reasons why it is considered that there is a reasonable ground for appeal, and these reasons disclose that the certifying counsel has not appreciated, or allowed for, the fact that the Judicial Committee cannot be asked to review the facts of a criminal case, or set aside conclusions of fact at which the tribunal has arrived. In all such cases an appeal on such grounds is useless, and is indeed an abuse of the process of the Court.

It may be of assistance to counsel, who are considering whether they are justified in certifying that a petition of appeal in a criminal case might reasonably be presented, to give illustrations, by way of contrast, of what are the limited but very important grounds on which a petition in a criminal case may properly be presented. Broadly speaking, the Judicial Committee will only interfere where there has been an infringement of the essential principles of justice. An obvious example would be a conviction following a trial, where it could be seriously contended that there was a refusal to hear the case of the accused, or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had no jurisdiction either to try the crime, or to pass the sentence.

These limitations upon the interference of the Judicial Committee with convictions arrived at by tribunals charged with criminal jurisdiction beyond the seas, have been again and again laid down in the clearest terms at this Board. It is sufficient to quote Lord Watson's words: "The rule has been repeatedly laid down and has been invariably followed, that Her Majesty will not review, or interfere with, the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial or grave injustice has been done" (*Re Dillet*, 12 A.C. 459) or, as Lord Dunedin said, "There must be something so irregular, or so outrageous, as to shake the very basis of justice" (*Mohindar Singh v. The King Emperor*, 59 I.A. 233).

Their Lordships have thought it right on this occasion to re-state these principles at some length in the hope that it will assist practitioners, who are asked to certify in support of a proposed petition, in determining whether it is in accordance with their professional duty to do so. They trust that these observations will have a beneficent effect. If, indeed, after this explanation and warning petitions continue to reach the Board which never should have been certified, it will be necessary to call the attention of the suitable authorities in the area from which such petitions come to the continued disregard of the rule by the certifying counsel concerned. Their Lordships must make it plain that no reflection is involved upon the conduct of counsel or solicitors representing these petitioners before the Board to-day: they cannot properly be held responsible for improper certificates signed by other counsel in India.

Their Lordships will therefore humbly advise His Majesty that all the petitions should be dismissed.



In the Privy Council

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DELIVERED BY
THE LORD CHANCELLOR