Rao Shiv Bahadur Singh and Another

Vs

The State of Vindhya Pradesh

Criminal Appeal No. 7

(CJI M. Patanjali Sastri, B.K. Mukherjea, Vivian Bose, Ghulam Hasan, B. Jagannath Das JJ)

22.05.1953

JUDGMENT

JAGANNADHADAS J. -

This is an appeal against the judgment of the Judicial Commissioner of Vindhya Pradesh dated 10th March, 1951, by leave granted under article 134(1)(c) of the Constitution. The first and the second appellants were at the material period of time respectively the Minister for Industries and the Secretary to the Government, Commerce and Industries Department of the then United State of Vindhya Pradesh. The case for the prosecution against them as follows : In the State of Panna (one of the component units of the United State of Vindhya Pradesh) there are certain diamond mines. By an agreement dated the 1st of August, 1936, between the Panna Durbar on the one part and the Panna Diamond Mining Syndicate on the other part, the latter obtained a lease for carrying out diamond-mining operations for a period of 15 years. It appears that on or about the 31st October, 1947, the Panna Durbar directed the stoppage of the mining work on the ground that the Syndicate was not carrying on the operations properly. Since then the Syndicate was making strenuous efforts to obtain cancellation of the said order. It is alleged that the two appellants in the course of these attempts, with which, at the material time, they were concerned in their official capacity, entered into a conspiracy about the beginning of February 1949 at Rewa (within the United State of Vindhya Pradesh), to obtain illegal gratification for the purpose of revoking the previous order of stoppage of mining work. In pursuance of the said conspiracy it is alleged that the second appellant demanded on 8th March, 1949, at Reewa illegal gratification from one Nagindas Mehta, a representative of the Panna Diamond Mining Syndicate, and that later on, on 11th April, 1949, the first appellant, in fact, received a sum of Rs. 25,000 towards it at the Constitution House in New Delhi and forged certain documents purporting to be orders passed in official capacity and intended to confer some advantages or benefits on the Panna Diamond Mining Syndicate.

On these allegations the two appellants were charged for criminal conspiracy and for the taking of illegal gratification by public servant for doing an official act and for the commission of forgery in connection therewith. The charges were under sections 120-B, 161, 465 and 466, Indian Penal Code, as adapted by the Vindhya Pradesh Ordinance No. XLVIII of 1949, and the trial was held by a Special Judge under the Vindhya Pradesh Criminal Law Amendment (Special Court) Ordinance No. V of 1949. At the trial both the appellants were acquitted. The State filed an appeal to the Judicial Commissioner against the same whereupon both were convicted under sections 120-B and 161, Indian Penal Code (as adapted). In addition, the first appellant was convicted under sections 465 and 466, Indian Penal Code (as adapted). He was sentenced to rigorous imprisonment for three

years and to a fine of Rs. 2,000 under section 120-B and to rigorous imprisonment for three years under section 161, Indian Penal Code, the two sentences to run concurrently. In respect of his conviction under section 465 and 466 no separate sentence was awarded. The second appellant was sentenced to one year's rigorous imprisonment and a fine of Rs. 1,000 under section 120-B, but under section 161 no separate sentence was awarded. The validity of the convictions and sentences has been challenged on the ground that there has been infringement of articles 14 and 20 of the Constitution.

In addition, a further point has been raised before us by leave that no appeal lay to the Judicial Commissioner from the acquittal by the special Judge. It is convenient to deal with this point in the first instance. The question raised depends on a construction of the provisions of the Vindhya Pradesh Criminal Law Amendment (Special Court) Ordinance No. V of 1949 dated 2nd December, 1949. By section 2 thereof the Vindhya Pradesh Government was given the power by notification to constitute Special Courts of criminal jurisdiction within the State and by section 3 to appoint a Special Judge to preside over the Special Court. By section 4 the Government was authorised to issue notifications from time to time allotting cases for trial by the Special Judge in respect of charges for offences specified in the Schedule to the Ordinance. Sections 5(1), 7 and 8 provide certain departures from the normal procedure or evidence, and section 9 provides for special punishment. Section 5, sub-section (2) provides as follows :-

> "Save as provided in sub-section (1) the provisions of the Code of Criminal Procedure, as adapted in Vindhya Pradesh, shall, so far as they are not inconsistent with this Ordinance, apply to the proceedings of a Special Court, and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a Jury or without the aid of Assessors, and a person conducting a prosecution before a Special Judge shall be deemed to be a Public Prosecutor."

Section 6 provides as follows :-

> "The High Court may, subject to the provisions of section 7 regarding transfer of cases, exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, as adapted in Vindhya Pradesh, on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a Jury within the local limits of the High Court's jurisdictions."

The argument of learned counsel for the appellants is that section 6 above quoted provides only for the powers of the High Court on appeal preferred to it, but that there is no provision at all conferring on an aggrieved party a right of appeal from the judgment and order of the Special Judge to the High Court. It is contended that the absence of a right of appeal may be a lacuna, but that inasmuch as it has not been expressly provided, it cannot be implied from the fact that a provision has been made for the exercise of powers by the appellate court. It is conceded that this line of argument, if accepted, would result in there being no appeal even as against a conviction. But it is urged that it is the inevitable consequence of the lacuna. It appears however on careful consideration that no such lacuna exists and that sub-section (2) of section 5 of the Vindhya Pradesh Ordinance reasonably construed is an express provision conferring a right of appeal to the aggrieved party, whether an accused or the State, against the judgment of the Special Judge. The section, in terms, says that the provisions of the Code of Criminal Procedure as adapted and in so far as they are nor inconsistent

with the Ordinance shall apply to the proceedings of a Special Court, and that for the purposes of the said provisions (that is, the adapted provisions which are not inconsistent and hence apply) the court of a Special Judge is to be deemed a Court of Session. The provisions of the Criminal Procedure Code relating to the right of appeal are sections 410 and 417, and there is nothing in the Vindhya Pradesh Ordinance which is inconsistent with the application of these two sections to the proceedings of a Special Court treated as a Court of Session for the purpose. It follows that the said proceedings are subject to appeal. But it is urged that the provisions of the Criminal Procedure Code that are attracted by sub-section (2) of section 5 of the Vindhya Pradesh Ordinance to the proceedings of a Special Court are only those provisions which relate to the procedure before the Special Court itself in respect of the proceedings before it and not all the provisions which are connected with or related to those proceedings. There is, in our opinion, no warrant for putting such a limited construction on this sub-section. The only limitation on the application of the provisions of the Criminal Procedure Code to the proceedings of the Special Court is the one arising from the existence of any inconsistent provisions in the Ordinance and not with reference to the conduct of the proceedings before that very court. Once the Special Court is to be deemed a Court of Session the normal right of appeal provided by section 410 or section 417 as the case may be, must be taken to have been expressly provided by reference and not as arising by mere implication.

Learned counsel strongly relied on Attorney-General v. Herman James Sillem [10 H.L. Cas. 704; 11 E.R. 1200.] to show that a provision such as the above was meant only to regulate the proceedings in a case within the four walls or limits of the court. The statutory provision which came up for construction in that case was however very differently worded, and was meant to regulate "the process, practice, and mode of pleadings," i.e., the procedure in the court and not "the proceeding" of the court. While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute and imply a right of appeal, it is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application. The construction urged for the appellant renders section 6 futile and leaves even a convicted person without appeal. We have no hesitation in rejecting it.

Out of the constitutional points raised, that which relates to the alleged violation of article 14 has no substance. In reliance on Lakshmandas Ahuja's case [[1952] S.C.R. 710.] it was sought to be argued that though the trial in this case under Ordinance No. V of 1949 related to offences committed prior to the commencement of the Constitution, the continuance thereof under the special procedure prescribed by the Ordinance was discriminatory and hence unconstitutional. It is to be noticed that the trial commenced on 2nd December, 1949, the acquittal by the Sessions Judge was on 26th July, 1950, and the conviction by the Judicial Commissioner on appeal therefrom was on 10th March, 1951. In the light, however, of the later decision of the Supreme Court in Syed Qasim Razvi v. The State of Hyderabad [[1952] S.C.R. 710.], it was recognised that this point was unsubstantial, unless some material prejudice in the matter of procedure was shown. In this context the learned Attorney-General brought to out notice that even before the Criminal Law Amendment (Special Court) Ordinance No. V of 1949, dated 2nd December, 1949, came into force there was in operation the Code of Criminal Procedure Adaptation (Amendment) Ordinance No. XXVIII of 1949 dated 3rd May, 1949, whereby section 268, Criminal Procedure Code, requiring all trials before a Court of Session to be either by jury or with the aid of assessors was deleted from the Vindhya Pradesh Criminal Procedure Code as adapted. Therefore by the date when the trial in the present case commenced before the Special Court there was no substantial or material prejudice caused to an accused who was tried by the Special Court, and the continuance of such procedure after the Constitution came into force would make no serious difference. What, however, was relied upon was a subsequent change in the situation as a result of section 3 of Central Act No. XXX of 1950

[Part C States (Laws) Act, 1950], whereby Acts and Ordinances specified in the Schedule to the Merged States (Laws) Act, 1949 (LIX of 1949) were extended to Vindhya Pradesh, and one of the Acts specified in that Schedule was the entire Code of Criminal Procedure. This therefore had the effect of reviving section 268, Criminal Procedure Code, in its application to Vindhya Pradesh, repealing by section 4 of the Act the pre-existing law in this behalf in the State. It was accordingly argued that to the extent the trial continued under the old procedure subsequent to 16th April, 1950, there were inevitable discrimination and necessary prejudice. This argument, however, overlooks the fact that the repealing section 4 of Act No. XXX of 1950 contained a saving clause providing that "the repeal shall not affect (a) the previous operation of any such law, or (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or (c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed." It is to be noticed that the saving provision applies equally to proceedings previously commenced and then pending, whether before the special court or the ordinary court, and that therefore respect of two persons equally situated in this behalf, one under trial by the ordinary court and the other by the special court, the position continues what it was before, i.e., the continuance of trial does not involve any substantially discriminatory and prejudicial procedure. Learned counsel however attempted to argue that the very saving clause was discriminatory provision and hence unconstitutional and invalid. But there is no reason, why pending proceedings cannot be treated by the legislature as a class by themselves having regard to the exigencies of the situation which such pendency itself calls for. There can arise no question as to such a saving provision infringing article 14 so long as no scope is left for any further discrimination inter se as between persons affected by such pending matters.

The next and the only serious question that arises in this case is with reference to the objections raised in reliance on article 20 of the Constitution. This question arises from the fact that the charges as against the two appellants, in terms, refer to the offences committed as having been under the various sections of the Indian Penal Code as adapted in the United States of Vindhya Pradesh by Ordinance No. XLVIII of 1949. This Ordinance was passed on 11th September, 1949, while the offences themselves are said to have been committed in the months of February, March and April, 1949, i.e., months prior to the Ordinance. It is urged therefore that the convictions in this case which were after the Constitution came into force are in respect of an ex post facto law creating offences after the commission of the acts charged as such offences and hence unconstitutional. This contention raises two important questions, viz., (1) the proper construction of article 20 of the Constitution, and (2) whether the various acts in respect of which the appellants were convicted constituted offences in this area only from the date when Ordinance No. XLVIII of 1949 was passed or were already so prior thereto.

Article 20(1) of the Constitution is as follows :

> "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

This article in its broad import has been enacted to prohibit convictions and sentences under ex post facto laws. The principle underlying such prohibition has been very elaborately discussed and pointed out in the very learned judgment of Justice Willes in the well known case of Phillips v. Eyre

[(1870) 6 Q.B.D. 1, at 23 and 25.] and also by the Supreme Court of U.S.A. in Calder v. Bull [3 Dallas 386; 1 Law. Edition 648 at 649.]. In the English case it is explained that ex post facto laws are laws which voided and punished what had been lawful when done. There can be no doubt as to the paramount importance of the principle that such ex post facto laws, which retrospectively create offences and punish them are bad as being highly inequitable and unjust. In the English system of jurisprudence repugnance of such laws to universal notions of fairness and justice is treated as a ground not for invalidating the law itself but as compelling a beneficent construction thereof where the language of the statute by any means permits it. In the American system, however, such ex post facto laws are themselves rendered invalid by virtue of article 1, sections 9 and 10 of its Constitution. It is contended by the learned Attorney-General that article 20 of the Constitution was meant to bring about nothing more than the invalidity of such ex post facto laws in the post-Constitution period but that the validity of the per-Constitution laws in this behalf was not intended to be affected in any way. The case in Keshavan Madhavan Menon v. The State of Bombay [1951] S.C.R. 228.] has been relied on to show that the fundamental rights guaranteed under the Constitution have no retrospective operation, and that the invalidity of laws brought about by article 13(1) of the Constitution relates only to the future operation of the pre-Constitution laws which are in violation of the fundamental rights. On this footing it was argued that even on the assumption of the convictions in this case being in respect of new offences created by Ordinance No. XLVIII of 1949 after the commission of the offences charges, the fundamental right guaranteed under article 20 is not attracted thereto so as to invalidate such convictions.

This contention, however, cannot be upheld. On a careful consideration of the respective articles, one is struck by the marked difference in language used in the Indian and American Constitutions. Sections 9(3) and 10 of article 1 of the American Constitution merely say that "No ex post facto law shall be passed ..." and "No State shall pass ex post facto law ..." But in article 20 of the Indian Constitution the language used is in much wider terms, and what is prohibited is the conviction of a person or his subjection to a penalty under ex post facto laws. The prohibition under the article is not confined to the passing or the validity of the law, but extends to the conviction or the sentence and is based on its character as an ex post facto law. The fullest effect must therefore be given to the actual words used in the article. Nor does such a construction of article 20 result in giving retrospective operation to the fundamental right thereby recognised. All that it amounts to is that the future operation of the fundamental right declared in article 20 may also in certain cases result from acts and situations which had their commencement in the pre-Constitution period. In The Queen v. St. Mary Whitechapel [116 E.R. 811 at 814.] Lord Denman C.J. pointed out that a statute which in its direct operation is prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. The general principle therefore that the fundamental rights have no restrospective operation is not in any way affected by giving the fullest effect to the wording of article 20. This article must accordingly be taken to prohibit all convictions or subjections to penalty after the Constitution in respect of ex post facto laws whether the same was a post-Constitution law or a pre-Constitution law. That such is the intendment of the wording used in article 20(1) is confirmed by the similar wording used in articles 20(2) and 20(3). Under article 20(2), for instance, it cannot be reasonably urged that the prohibition of double jeopardy applies only when both the occasions therefor arise after the Constitution. Similarly, under article 20(3) it cannot be suggested that a person accused before the Constitution can be compelled to be a witness against himself, if after the Constitution the case is pending.

In this context it is necessary to notice that what is prohibited under article 20 is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that

which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved.

In this connection our attention has been drawn to the fact that the Vindhya Pradesh Ordinance XLVIII of 1949, though enacted on 11th September, 1949, i.e., after the alleged offences were committed, was in terms made retrospective by section 2 of the said Ordinance which says that the Act "shall be deemed to have been in force in Vindhya Pradesh from the 9th day of August, 1948," a date long prior to the date of commission of the offences. It was accordingly suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9th August, 1949, it cannot be said that the convictions are not in respect of "a law in force" at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase "law in force" as used in article 20. "Law in force" referred to therein must be taken to relate not to a law "deemed" to be in force and thus brought into force but the law actually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of article 20 would be completely defeated in its application even to ex post facto laws passed after the Constitution. Every such ex post facto law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies article 20 cannot possibly be adopted. It cannot therefore be doubted that the phrase "law in force" as used in article 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. It follows that if the appellants are able to substantiate their contention that the acts charged as offences in this case have become such only by virtue of Ordinance No. XLVIII of 1949 which has admittedly been passed subsequent to the commission thereof, then they would be entitled to the benefit of article 20 of the Constitution and to have their convictions set aside. This leads to an examination of the relevant pre-existing law.

But before taking up that examination, it is convenient to deal with a contention which has been repeatedly pressed on us, viz., that the validity of the convictions in this case cannot be upheld on a consideration of the pre-existing state of law, because (1) the charges are specifically with reference to the offences under Ordinance No. XLVIII of 1949, and (2) the said Ordinance itself has repealed the pre-existing law. This contention is, however, without any substance. An examination of the pre-existing state of law in this behalf as on the date of the commission of the offence is not for the purpose of converting the convictions under Ordinance No. XLVIII of 1949 into those under the previous law. The convictions in this case are clearly and legally referable only to Ordinance No. XLVIII of 1949, which was the law applicable to the offence at the time of the commission thereof on account of the retrospective operation validly given to that law by section 2 of the Ordinance. It is only for the purpose of considering the constitutional validity of those convictions that the factual position as regards the previous law in this behalf becomes necessary to be examined. This is a question which arises on the contention of the appellants themselves, and is not an objection to the frame of the charge or the legality of the conviction otherwise than on the footing of constitutional invalidity. Nor is there any question of prejudice involved, since that question has been raised on behalf of the appellants in the trial court itself, and the burden of making out the facts requisite for the constitutional invalidity of the convictions is on them.

The argument that on the very terms of Ordinance No. XLVIII of 1949 there is no pre-existing law with reference to which the constitutionality of the convictions under article 20 is to be judged is based on sections 2 and 3(1) of the said Ordinance, which run as follows :

Section 2 : "The Indian Penal Code as in force generally in the Provinces of India immediately before the commencement of this Ordinance shall apply, and shall be in force in Vindhya Pradesh, subject to the adaptation and modifications set out in the Schedule, and the said Code as so applied shall be deemed to have been in force in Vindhya Pradesh from the 9th day of August, 1948."

Section 3(1) : "If immediately before the commencement of this Ordinance there is in force in Vindhya Pradesh or any part thereof any law corresponding to the Indian Penal Code, such law is hereby repealed."

It is urged that as a result of these two provisions the pre-existing law, if any, has been repealed as from 9th August, 1948, and that therefore the period between 9th August, 1948, and 11th September, 1949, on which date Ordinance No. XLVIII of 1949 came into force must be taken to be a period of no penal law in this territory for judging the constitutionality of any conviction subsequent to 11th September, 1949, for an alleged offence committed during that period. This argument is self-contradictory, and proceeds on misconception. What is relevant for the application of article 20 is not the result brought about by repeal and the retrospective operation thereof, but the factual state of law as it existed prior to the date when the repeal came into operation. The repeal itself posits the pre-existence of the law, and it is that law which is relevant for our present purpose.

It therefore becomes necessary to examine in some detail what was the criminal law factually in force during the months of February, March and April, 1949, when the acts charged as offences against the appellants were committed, and to see whether it was anything different from what was enacted by Ordinance No. XLVIII of 1949. Since the valid existence of such law has been, in the course of the arguments, contended as depending on the administrative set-up at the relevant period and the legislative authority functioning in that set-up, it becomes necessary to have a correct appreciation of the events which resulted in bringing about a United State of Vindhya Pradesh.

The State of Vindhya Pradesh consists of as many as 35 pre-existing native States known as Bundelkhand and Baghhelkand States of which the State of Rewa was apparently the largest unit. Immediately after the passing of the Indian Independence Act of 1947 which by virtue of section 7 thereof resulted in the lapse of the suzerainty of the British Government in India, these various States executed in favor of the Government of India Instruments of Accession under section 6 of the Government of India Act in accordance with the form which is found at pages 165 and 169 of the White Paper on Indian States issued by the Government of Indian in March 1951. At about the same time they executed also standstill agreements as per form given at page 173 of the White Paper. Shortly thereafter and in pursuance of the policy of Government of India all these 35 States executed, with the concurrence of the Government of India, an inter se Covenant dated 18th March, 1948, for the establishment of a United State of Vindhya Pradesh comprising the territories of these 35 States with a common executive, legislature and judiciary. That Covenant provided for common administrative arrangements and for the election of a Rajpramukh. Article 9 of the Covenant vested in the Rajpramukh the entire legislative authority of the United State of Vindhya Pradesh until a Constitution to be framed by the appropriate body for the said United State of Vindhya Pradesh provided otherwise. The Maharajah of Rewa became the first Rajpramukh of the United State of Vindhya Pradesh, and we are informed that though the Covenant provided the 1st day of May, 1948, as the date within which the administration is to be made over to the Rajpramukh by each of the

States, some did not, and that, as a fact, the integrated administration by the Rajpramukh in respect of all States came into operation only from the 9th of August, 1948. Meanwhile, however, it appears to have been thought expedient that a fresh Instrument of Accession should be executed by the Rajpramukh on behalf of the United State of Vindhya Pradesh replacing the individual Instruments of Accession which were executed in the months of August, September, October and November, 1947. Consequently a fresh Instrument of Accession was executed by the Rajpramukh on behalf of the United State of Vindhya Pradesh on the 20th of July, 1948, and was accepted by the Governor-General of India on the 13th of September, 1949. It may be incidentally mentioned that one of the important differences between the previous individual Instruments of Accession executed by the various rulers and the later Instrument of Accession executed by the Rajpramukh is that while under the former, accession was only in respect of three matters, viz., Defence, External Affairs and Communications, under the later Instrument dated the 20th of July, 1948, all matters enumerated in Lists Nos. I and III of the Seventh Schedule of the Government of India Act, 1935, were accepted as the matters in respect of which the legislature of India, then called the Dominion Legislature, might make laws for the United State of Vindhya Pradesh. It may also be mentioned that on the 25th November, 1949, the Rajpramukh of the United state of Vindhya Pradesh issued a proclamation whereby he declared that the Constitution of India which was then shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the Vindhya Pradesh as for the other parts of India and specifically superseded and abrogated all other constitutional provisions inconsistent therewith which were then in force in this State. These arrangements brought about an integrated United State of Vindhya Pradesh within the framework of the Dominion of India but only by way of accession. Further steps, however, had the effect of merging these United States as part of the territory of India. It is unnecessary to notice those steps in detail, as they fall beyond the period with which we are concerned for the present purpose.

It is against this background of events constituting the integration of these various ruler States into the United State of Vindhya Pradesh within the Union of India by accession thereto that the question as to what was the criminal law in force by February, March and April, 1949, has got to be judged. From the above narration it will be noticed that at the relevant period it was the Government of the United State of Vindhya Pradesh constituted by the inter se integration Covenant dated the 18th March, 1948, that was functioning under the authority of the Rajpramukh of Vindhya Pradesh and subject to the Instrument of Accession with the Dominion of India executed by him on the 20th July, 1948. As already stated, the actual integrated administration under these arrangements came into operation for the entire United State only on the 9th of August, 1948.

We may now start with the fact above noticed that the various component States became the United State of Vindhya Pradesh on the 18th March, 1948. In the normal course and in the absence of any attempts to introduce uniform legislation throughout the State the pre-existing laws of the various component States would continue to be in force on the well-accepted principle laid down by the Privy Council in Mayor of Lyons v. East India Company [1 M.I.A. 175, at 270, 271.]. The first step towards the introduction of some uniformity in the laws for the entire State was taken by the Rajpramukh by issuing on the 31st July, 1948, an Ordinance styled the Vindhya Pradesh Application of Laws Ordinance No. IV of 1948. Section 2 of that Ordinance provided as follows :-

> "All Acts, Codes, Ordinances and other laws, and rules and regulations made thereunder, which have, by publication in the Rewa Raj Gazette, been enforced in the Rewa State, and continue to be in force, are extended so as to be applicable to the whole of Vindhya Pradesh, Provided that nothing in this clause shall apply to any local law, rules, regulation or custom having the force of law, which relates to

matters connected with land revenue or tenancy."

This Ordinance extended to the whole of Vindhya Pradesh, and was to come into force with effect from the 9th of August, 1948, by virtue of section 1 thereof. The Ordinance was amended later by another Ordinance No. XX of 1949 which deleted from section 2 of the previous Ordinance the words "by publication in the Rewa Raj Gazette". The effect of these two Ordinances, so far as we are concerned, was to extend to the entire State of Vindhya Pradesh the criminal law which was in force previously in the Rewa State. That law is to be found by reference to Orders Nos. IV of 1921 and VI of 1922 issued by the then Regent of Rewa acting for the Maharajah on the 18th February, 1921, and 9th March, 1922, respectively. A perusal of these two Orders and in particular of paragraph 10 of the 1921 Order as interpreted by the 1922 Order makes it perfectly clear "that the Indian Penal Code and the Code of Criminal Procedure were introduced in the Rewa State, in the letter and in the spirit with due adaptation to local conditions." It is not disputed that this continued to be the position so far as Rewa State was concerned until the United State of Vindhya Pradesh was formed. It follows that the Indian Penal Code and the Code of Criminal Procedure with necessary adaptations were brought into operation in the entire United State of Vindhya Pradesh shortly after the introduction of the integrated administration under the Rajpramukh.

It has been urged, however, that though this may have been the intention, the intention did not become operative for reasons to be presently stated. Section 2 of Ordinance No. IV of 1948 while extending the laws of Rewa State to the rest of Vindhya Pradesh refers to the publication of such laws in the Rewa Gazette and a requisite therefor, and it is pointed out that the Rewa Gazette itself came into existence only in October 1930 (vide page 386 of the printed paper book), whereas the Penal Code and the Criminal Procedure Code were brought into operation in the Rewa State in 1921 and 1922. It is also pointed out that the deletion of the requirement of previous publication in the Rewa Gazette by Ordinance No. XX of 1949 came into operation only when that Ordinance was published in the Vindhya Pradesh Gazette, i.e., on the 15th May, 1949, sometime after the commission of the offence in this case. To substantiate the view that only such of the Rewa laws which were previously published in the Rewa Gazette were understood as having been originally extended to Vindhya Pradesh by Ordinance No. IV of 1948, a decision of the Vindhya Pradesh High Court dated the 29th October, 1949, in Criminal Appeal No. 27 has been brought to our notice which assumes that the Prisoners' Act in force in India was not in force in Vindhya Pradesh as there was no previous publication of it is the Rewa Gazette. On the other side a notification of Vindhya Pradesh Government dated the 19th March, 1949, and published in the Vindhya Pradesh Gazette dated the 30th March, 1949, has been brought to our notice which specifically mentions all the laws by then in force in Vindhya Pradesh and shows "Indian Penal Code - mutatis mutandis - with necessary adaptations" as item 86 thereof. This is relied on to show that there must have been a previous publication thereof in the Rewa Gazette before integration. There seems to be considerable force in this argument that in respect of the various Rewa State laws which have been enumerated in the above-mentioned Gazette as having been brought into force in Vindhya Pradesh (some of these are Acts prior to 1930) there must have been previous publication in the Rewa Gazette sometime after 1930, and that neither Ordinance No. XX of 1949 nor the decision of Vindhya Pradesh High Court relating to Prisoners' Act (which is not one enumerated in the above Gazette) can be taken to negative it. We are prima facie inclined to accept this view and to think that the Indian Penal Code as in force in Rewa became extended to Vindhya Pradesh by Ordinance No. IV of 1948. But even assuming that section 2 of the Ordinance failed to achieve its purpose on account of misconception as to the previous publication of any particular Rewa law in the Rewa Gazette, it is clear that that Rewa law would continue to be in force in the Rewa portion of the United State of Vindhya Pradesh, as the Vindhya Pradesh law therefore, on the principle recognised in Mayor of Lyons v.

East India Company [1 M.I.A. 175.], that on change of sovereignty over an inhabited territory the pre-existing laws continue to be force until duly altered. Since in the present case we are concerned with offences committed in relation to the Rewa State portion of Vindhya Pradesh, there can be no reasonable difficulty in holding that the criminal law of Rewa state, i.e., the Indian Penal Code and the Criminal Procedure Code with adaptations mutatis mutandis, was the relevant law for out present purpose by the date of integrated administration, viz., the 9th August, 1948.

Now the subsequent alterations therein by Ordinances of the Rajpramukh may be shortly noticed. So far as the substantive penal law is concerned, there was the Anti-corruption Ordinance No. XII of 1948 dated the 16th December, 1948, and the Indian Penal Code (Application to Vindhya Pradesh) Ordinance No. XLVIII of 1949 dated the 11th September, 1949. The former being prior to the dates of commission of the offences in the present case does not require any further notice. So far as the Criminal Procedure Code is concerned, there were two Ordinances : (1) the Criminal Procedure Code Adaptation Ordinance No. XV of 1948 dated the 31st December, 1948, and (2) the Criminal Procedure Code Adaptation (Amendment) Ordinance No. XXVII of 1949 dated the 3rd May, 1949. In view of what has been found above, viz., that by virtue of the Orders of the Regent of Rewa dated 1921 and 1922 the Indian Penal Code and Criminal Procedure Code with the necessary adaptations mutatis mutandis were in force in Rewa State and either became extended to the entire Vindhya Pradesh State from the 9th August, 1948, by Ordinance No. IV of 1948 or continued to be in force in the Rewa portion of Vindhya Pradesh State by virtue of the principle in Mayor of Lyons' case [1 M.I.A. 175.] it is prima facie correct to say that the penal law in force in the relevant area was substantially the same both before and after the above-mentioned amendments made by the Rajpramukh.

It is urged however that in two important respects relevant for our present purpose there is difference. It is pointed out that there is an amendment as regards the definition of "public servant" by Ordinance No XLVIII of 1949. It is also urged that sections 3 and 4 of the Indian Penal Code and section 188 of the Criminal Procedure Code, which are extra-territorial in operation could not have been brought into force into Rewa or Vindhya Pradesh by adaptation or legislation for lack of legislative competence in this behalf at the relevant times. The points thus raised assume importance since the charge against the first appellant, who is a Minister, is in his capacity as a public servant and since also one of the charge against him is in respect of acts done in New Delhi - completely outside Vindhya Pradesh. It is true that Ordinance No. XLVIII of 1949 amended the Indian Penal Code by substituting for the previous first clause of section 21 thereof relating to the definition of a "public servant" the phrase "Every Minister of State". But it does not follow that "a Minister of State" was not a public servant as defined in section 21 of the Indian Penal Code even before this amendment. Clause 9 of section 21, Indian Penal Code, shows that every officer in the service or pay of the Crown for the performance of any public duty is a "public servant". The decision of the Privy Council in King-Emperor v. Sibnath Banerji [[1945] F.C.R. 195 at 222.] is decisive to show that a Minister under the Government of India Act is "an officer" subordinate to the Governor. On the same reasoning there can be no doubt that the Minister of Vindhya Pradesh would be an "officer" of the State of Vindhya Pradesh. Therefore, prior to the passing of Ordinance No. XLVIII of 1949 and on the view that the Indian Penal Code with necessary adaptations mutatis mutandis was in force at least in the Rewa Portion of Vidhya Pradesh (if not in the entirety of Vindhya Pradesh) the first appellant was a public servant as defined in section 21, Indian Penal Code, as adapted. The amendment of the said section brought about therefore no substantial change in the position of the first appellant. It has been faintly suggested that, even so, under the pre-existing law the definition of public servant could have reference only to an officer of the Rewa State, and that the charge brought about by Ordinance No. XLVIII of 1949 made only the Minister of Vindhya

Pradesh State a public servant. This argument is fallacious. It is implicit in the continuance of Rewa law after integration that from the moment of such continuance it become the Vidhya Pradesh law for the Rewa portion of Vindhya Pradesh territory with the requisite implied adaptation consonant to the new set-up. There is therefore no substance in the argument that the amendment of section 21, Indian Penal Code, by Ordinance No. XLVIII of 1949 brought about any change in the situation of the first appellant as a public servant.

The further question that remains to be considered is whether under the Vindhya Pradesh law, acts committed outside the State are offences and are triable by Vindhya Pradesh courts, and whether in any case there was any such law in factual operation at the date when the acts charged as offences in this case were committed at New Dehil in April, 1949. Under the normal Indian law the relevant legislative provisions are section 3 and 4, Indian Penal Code, and section 188, Criminal Procedure Code, and the question is whether by express or implied adaptation mutatis mutandis these sections can be held to have been validly in force in Vindhya Pradesh at the relevant period. It is contended that the rulers of native States had no authority for extra-territorial legislation, and that consequently any adaptation in this behalf cannot be implied and if expressly pruporting to be made, cannot be valid. There can be no doubt that the provisions of the Penal Code and the Criminal Procedure Code are in the nature of extra-territorial legislation, and that every sovereign legislative authority has the power to pass such was laws also. [See Macleod v. Attorney-General for New South Wales [[1891] A.C. 455.]]. In the present case we are concerned only with that portion of the relevant extra-territorial law which renders an act committed by a subject of the State outside the limits of the State an offence triable by the courts of the State. In the course of the arguments it has been suggested that to that limited extent no question of extra-territoriality of the relevant legislation arises. But the concept of extra-territorial legislation appears to comprehend such cases also, if the passages relied on before us from Pitt-Cobbet's International Law, 5th Edition, at page 216 as also at pages 225 and 226 - paragraphs 101 and 102, are to be accepted as correct. Assuming without deciding that this is so, the argument has been advanced that no ruler of the Indian States, before the 15th August, 1947, and much less the Rajpramukh of Vindhya Pradesh, had any such full sovereign status as to entitle them to pass extra-territorial laws, It is well-known that these rulers had no external sovereignty, as it was taken out of them and exercised by the suzerain British power. But for internal purposes or municipal purposes the rulers were generally considered as having full sovereign status except to the extent that the suzerain power assumed to itself any function of such internal sovereignty either on specific occasions, or generally but for specified and limited purposes. In their relation with the rulers of the native States, the suzerain British power acted on the justice theory propounded by Sir Heney Maine that "sovereignty is divisible, though independence is not" - See Ilbert's Government of India, page 425 - a theory accepted in the Butler Committed Report on Indian States (1928-29) at page 25, paragraph 44. The passages at pages 398, 399 and 426 of Ilbert's Government of Indian would show that what may have been left of internal sovereignty to a particular ruler may in exceptional cases be nothing more than titular. The general position of these Native States in India prior to 15th August, 1947, appears fairly clearly from certain instructive passages at pages 422 and 423 of Ilbert and is correlative to the actual exercise of British jurisdiction within those States as appears from the following passages :-

> "In point of fact the jurisdiction of the Governor General in Council within the territories of Native States is exercised -
>
> (a) over European British subjects in all cases;

(b) over native Indian subjects in certain cases;

(c) over all classes of persons, British or foreign, within certain areas.

It is the policy of the Government of India not to allow native courts to exercise jurisdiction in the case of European British subjects but to require them either to be tried by the British courts established in the Native State, or to be sent for trial before a court in British India.

The Government of India does not claim similar exclusive jurisdiction over native Indian subjects of His Majesty when within Native States, but doubtless would assert jurisdiction over such persons in cases where it thought the assertion necessary ....."

"The Government of India does not, except within specified areas, or under special circumstances, such as during the minority of a native prince, take over or interfere with the jurisdiction of the courts of a Native State in cases affecting only the subjects of that State, but leaves such cases to be deals with by the native courts in accordances with native laws."

Lee Warner in his book on "Protected Princes of India" states the position at pages 351 and 352. The following extract from paragraph 143 at page 351 is instructive :

"But where, as in the case of European British subjects, material distinctions is religion, education, and social habits separate them form the native community, and justify the extension of them of those rights of ex-territoriality, which are still obtained for them by Capitulations and agreements with foreign non-Christian nations, these distinctions are absent in the case of native Indian subjects of Her Majesty. The systems of native justice, if not similar to those in British territory, are more or less assimilated, and provided that the trial of native Indian subjects by the ordinary tribunals of the States, whose laws they have offended, is supervised by the British agent, the general rule is to leave to the Native States jurisdiction over such British subjects who break their laws, even where the offence committed is also cognisable under the law of India. The British Government goes still farther, since it extradites to the Native States a native Indian subject, who, after the commission of an extra-ditable offence in the Native principality, seeks shelter in British territory, provided that the political agent is satisfied that the crime can be properly tried in the courts of the Native State. The powers of the sovereigns of the States, in respect of the trial of native Indian subjects, have been generally classified. Some chiefs can try any person, whether their own or a native Indian subject, for a capital offence without express permission; others can only try a native Indian subject for such an offence with permission; and others, again, cannot pass a final sentence of death without the confirmation of Government to it."

These passes, while showing that the extent of the exercise of internal sovereignty by each of these rulers in actual practice, is a matter for evidence, when called in question, indicate that full jurisdiction over the rulers" own subjects was never denied but generally conceded, except where a sentence of death was involved. There is therefore no reason at all to think that the rulers had no authority to pass laws binding their own subjects and regulating their own courts in respect of acts

committed outside their State assuming such laws to be extra-territorial. In this context an old treaty of 1813 between Rewa State and the British Government and a fairly recent judgment of the Rewa High Court in 1945 have been brought to our notice to show the contrary at least so far as Rewa State is concerned. The treaty is to be found at page 255 of Volume V of Aitchison's Treaties, Engagements and Sanads. Article 6 thereof which is relied on only provides facilities for the suzerain Government to follow and pursue into Rewa State, offenders who having committed offences in British India escape away into the State. This does not negative the authority of the Rewa State to enact legislation concerning its own subjects when they commit such offences outside the State. 1945 Rewa Law Reports 84 is no doubt a case in which the High Court assumed that the court had no jurisdiction to try an offence committed outside the State by a subject of the State. There is no discussion in the judgment of the question involved, and this single instance is not enough to make out either the absence of the State's legislative authority in this behalf or the factual non-existence of the relevant law.

It must therefore be held that the rulers of the native States had prior to 1947, the authority to pass extra-territorial laws relating to offences committed by their own subjects and vesting in their own courts the power to try them, except where the contrary is made out by evidence in the case of any individual State, and that so far at least as Rewa State is concerned, the contrary cannot be hold to have been proved.

The further point that has been raised is that whatever may be the position of the Rewa State before 1947 the attempt of the Rajpramukh of the State of Vindhya Pradesh in so far he purported to extend the extra-territorial portion of any of the Rewa laws to Vindhya Pradesh by Ordinances Nos. IV of 1948 and XX of 1949 and his attempt to introduce into Vindhya Pradesh the extra-territorial portion of the Indian Penal Code and the Criminal Procedure Code by Ordinances Nos. XLVIII of 1949 and XXVIII of 1949 respectively, must fail as he had no such authority for extra-territorial legislation with reference to the basic covenants from which his authority was derived. These basic convenants are as already above shown the inter se integration agreement dated 18th March, 1948, executed by all rulers of the component States of Vindhya Pradesh and the Instrument of Accession dated 20th July, 1948, executed by the Rajpramukh in favour of the Dominion of India. Under the inter se integration agreement and by article IX, clause (3) thereof, the Rajpramukh was vested with the power to make and promulgate Ordinances for the peace and good government of the United State of Vindhya Pradesh or of any part thereof. Under the Instrument of Accession and by clause (3) thereof the Rajpramukh accepted all matters enumerated in Lists I and III of the Seventh Schedule to the Government of India Act, 1935, as matters in respect of which the Dominion Legislature may make laws for the United State. It has been strenuously argued before us that in view of these provisions the authority of the Rajpramukh for legislation was in substance reduced to the powers of the Provincial Legislature within the framework of the Constitution of India as it then was. Section 6, sub-section (1), of the Indian Independence Act and section 99(2) as amended are relied on to show that the Provincial Legislature has no power to make extra-territorial laws. It is accordingly that the Rajpramukh had no power at least after the execution of the Instrument of Accession to amend or adapt the Indian Penal Code or the Criminal Procedure Code so as to bring into operation sections 3 and 4, Indian Penal Code, and section 188, Criminal Procedure Code, with the necessary modifications in the State of Vindhya Pradesh. Though this argument appears plausible, a careful scrutiny of the scheme of the integration and accession covenants as also of the relevant provisions of the Government of India Act and the Indian Independence Act show clearly that such an argument is not tenable. The provisions under the Government of India Act under which the Instrument of Accession has been executed keep the position of the Provinces distinct form the position of the acceding States. Section 5(1) of the Government of India Act while making the

Provinces as well as the acceding States, part of the Dominion of India enumerates the two under separate categories by clause (a) and (b). Sub-section (2) of section 6 specifically provided that,

> "An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject."

Section 101 of the Government of India Act in terms says that,

> "Nothing in the Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitation contained therein."

If the argument put forward by the appellant' counsel is correct, viz., that the mere reference to the legislative items in respect of which the Dominion Legislature couled make laws applicable to the state of Vindhya Pradesh as Lists I and II carried with it the necessary implication that the Dominion Legislature alone had the power to make laws for the State with extra-territorial operation, and to that extent therefore curtailed the legislative authority of the Rajpramukh, it would be tantamount to the importation of all the limitations under sections 99 to 104 into the Instrument of Accession. This would be contrary to section 101 of the Government of India Act. There is no justification for such a view merely because of the reference to the enumerated items as Lists I and III which may have been a matter of convenience for reference. On the other hand, the Instrument of Accession in terms states by clause 9 as follows :

> "Save as provided by or under this Instrument nothing contained in this Instrument shall affect the exercise of any power, authority and right enjoyed by the Rajpramukh or the validity of any law for the time being in force in the Untied State or any part thereof."

The authority of the Rajpramukh which is referred to in this clause is not only the unfettered legislative authority "to make and promulgate Ordinances for the peace and good government of the United States or any part thereof" vested in him by Article IX of the integration Covenant dated 18th March, 1948, but also that which is vested in him under article VI of the said agreement. This article vests in him "all right, authority, and jurisdiction belonging to the ruler of each Covenanting State and incidental to the government thereof." There can be no doubt therefore that if, as has been pointed out above, the various Covenanting States and in particular the State of Rewa, had the power to pass extra-territorial laws at least to the extent of making certain acts committed outside the State by its subjects as offences and to vest in the State courts authority to deal with such offences, that power has not in any way been curtailed either by the integration Covenant or the Instrument of Accession. It follows therefore that sections 3 and 4, Indian Penal Code, and section 188, Criminal Procedure Code, at least in so far as it affected the subjects and courts of the State, were entirely within the legislative competence of the States concerned for all purposes adaptation or amendments.

Now, so far as sections 3 and 4 of the Indian Penal Code are concerned, the amendment brought about by Ordinance No. XLVIII of 1949 ins nothing more and nothing less than a mere adaptation of these sections for the new set-up and this, as shown above, was exactly the law already in force

without formal amendment. Hence it would follow that the conviction of the appellants in respect of all the offences of which they are charged including the extra-territorial offence said to have been committed by the first appellant at New Delhi is not open to the objection under article 20 on the ground that it is a conviction under an ex post facto law.

As regard the amendments in the Criminal Procedure Code brought about by Ordinances Nos. XV of 1948 dated the 31st December, 1948, and XXVII of 1949 dated the 3rd May, 1949, no detailed consideration is necessary in view of what has been held at the outset that the constitutional objection under article 20 does not apply to a change in procedure or change of court. Items 62 and 63 of section 2 of Ordinance No. XV of 1948 would seem to indicate that the jurisdiction which the criminal courts of Vindhya Pradesh previously had to try extra-territorial offences was probably lost thereby, If so, that jurisdiction was restored under Ordinance XXVII of 1949 by the amendment thereby of the said items 62 and 63 thus bringing it into line with section 188, Criminal Procedure Code, with the requisite adaptation. Hence the power of the Vindhya Pradesh courts to hold trials for extra-territorial offences which was probably interrupted from 31st December, 1948, was restored on 3rd May, 1949, before the trial in this case commenced with retrospective operation, i.e., as from the date of the prior Ordinance, i.e., 31st December, 1948.

In the result, we hold that (1) The appeal to the Judicial Commissioner from the acquittal be the Special Judge was competent; (2) The trial of the appellants under the Vindhya Pradesh Criminal Law Amendment (Special Courts) Ordinance No. V of 1949 is not open to objection under article 14 of the Constitution; (3) The criminal law relating to the offences charged against the appellants at the time of their commission was substantially the same as that which obtained at the time of the convictions and sentences by the appellate court. This was so both in respect of offences committed within the limits of the State of Vindhya Pradesh and those committed outside it; (4) The law relating to the offence committed by the first appellant outside the State of Vindhya Pradesh (at New Delhi) was perfectly within the competences of the appropriate legislative authority at the relevant time; and (5) Consequent on 3 and 4 above, the objection to the convictions and sentences of the appellants under articles 20 is not sustainable.

The appeal is accordingly directed to be posted for consideration whether it is to be heard on the merits.

Order accordingly.

Agent for the appellants : Rajinder Narain.

Agent for the respondent : G. H. Rajadhyaksha.

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