Baij Nath Prasad Tripathi

Vs

The State of Bhopal (and connected petition)

Petition No. 115 of 1956, and Petition No. 132 of 1956

(CJI S. R. Dass, T. L. Venkatarama Ayyar, B. P. Sinha, S. K. Das, P. B. Gajendragadkar JJ)

13.02.1957

JUDGMENT

S. K. DAS J. -

These two petitions for the issue of appropriate writs restraining the respondents from prosecuting and trying the two petitioners on certain criminal charges in circumstances to be presently stated, raise the same question of law and have been heard together. This judgment will govern them both.

Baij Nath Prasad Tripathi, petitioner in Petition No. 115 of 1956, was a Sub-Inspector of Police in the then State of Bhopal. He was prosecuted in the Court of Shri B. K. Puranik, Special Judge, Bhopal, and convicted of offences under 161, Indian Penal Code, and s. 5 of the Prevention of Corruption Act, 1947. He was sentenced to nine months' rigorous imprisonment on each count. He preferred an appeal against the conviction and sentences to the Judicial Commissioner of Bhopal. The Judicial Commissioner held by his judgment dated March 7, 1956, that no sanction according to law had been given for the prosecution of the petitioner and the Special Judge has no jurisdiction to take cognizance of the case; the trial was accordingly ab initio invalid and liable to be quashed. He accordingly set aside the conviction and quashed the entire proceedings before the Special Judge, He then observed : "The parties would thus be relegated to the position as if no legal charge-sheet had been submitted against the appellant." On April 4, 1956, the Chief Commissioner of Bhopal passed an order under s. 7(2) of the Criminal Law Amendment Act, 1952 (No XLVI of 1952) that the petitioner shall be tries by Shri S. N. Shrivastava Special Judge, Bhopal, for certain offences under the Prevention of Corruption Act read with s. 161, Indian Penal Code. The case of the petitioner is that the cannot be prosecuted and tried again for the same offences under the aforesaid order of April 4, 1956.

Sudhakar Dube, petitioner in Petition No. 132 of 1956, was also a Sub-Inspector of Police in the then State of Bhopal. He was also prosecuted in the Court of Shri B. K. Puranik, Special Judge, Bhopal, on a charge of having accepted illegal gratification for showing official favour to one Panna Lal. The learned Special Judge by an order dated January 10, 1956, came to the conclusion that no legal sanction for the prosecution of the petitioner had been given by the competent authority and the sanction given by Inspector-General of Police was not valid in law; he therefore held that the whole trial was null and void and he could not take cognizance of the offences in question. Accordingly he quashed the proceedings. On February 7, 1956, the Chief Secretary to the Government of Bhopal accorded fresh sanction for the prosecution of the petitioner for offences under s. 161, Indian Penal Code, and s. 5 the prevention of Corruption Act. The petitioner then moved this Court for appropriate writs restaining the respondents from prosecuting and trying him for the offences stated in the fresh action aforesaid.

On behalf of both the petitioner the contention is that by reason of cl. (2) of Art. 20 of the Constitution and s. 403 of the Code of Criminal Procedure, the petitioners cannot now be tried the offences in question, It is necessary to read her some of the relevant sections bearing on the point at issue. Section 6 of the Criminal Law Amendment Act, 1952 (prior to the amendment made in 1955), so far as is relevant for our purpose, is in these terms :

> "6. (1) The State Government may, by notification in the Official Gazette, appoint as many special Judges as many be necessary for such area or areas as may be specified in the notification to try the following offences namely :-
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> (a) an offence punishable under section 161, section 165, or section 165-A of the Indian Penal Code (Act XLV of 1860), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (II of 1947);
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> (b) any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified in clause (a)".

Sub-section (1) of s. 7 of the same Act lays down :

> "7 (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law the offences specified in sub-section (1) of section 6 shall be triable by special Judges only".

The same section also states that when trying any case, a special Judge may also try any offence other than an offence specified in s. 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial. It is not necessary for our purpose to read the other sections of the Criminal Law Amendment Act, 1952. We then go to the Prevention of Corruption Act, 1947, section 6 whereof is relevant for our purpose. That section is in these terms :

> "6. (1) No Court shall take cognizance of an offence punishable under section 161 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction, -
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> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government....., [of the] Central Governmen,

It is under this section that sanction was necessary for the prosecution of the petitions. Clause (2) of Art. 20 of the Constitution, on which the petitioners rely, states :

"No person shall be prosecuted and punished for the same offence more than once."

Section 403(1) of the Code of Criminal Procedure, on which learned counsel for the petitioners has placed the greatest reliance, is in these terms :

> "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while conviction or

> acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237."

Now, it is necessary to state that the point taken be learned counsel for the petitioners is really concluded by three decisions - (a) one of the Privy Council, (b) another of the Federal Court and (c) the third of this Court itself. The Privy Council decision is in Yusofalli Mulla v. The King [A.I.R. 1949 P.C. 264]; the Federal Court decision in Basdeo Agarwalla v. King-Emperor [[1945] F.C.R. 93]; and the decision of this Court (not yet reported) was given in Buddha Mal v. State of Delhi [Criminal Appeal No. 17 of 1952 decided on October 3, 1952] on October 3, 1952. The Privy Council decision is directly in point, and it was there held that the whole basis of s. 403(1) was that the first trial should have been before a Court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the Court was not so competent, as for example where the required sanction for the prosecution was not obtained, it was irrelevant that it was competent to try other cases of the same class or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained. So is the decision of this Court where the following observations were made with regard to the point in question :

> "Section 403, Criminal Procedure Code, applies to case where the acquittal order has been made by a Court of competent jurisdiction but it dose not bar a retrial of the accused in cases where such an order has been made by a court which had no jurisdiction to take cognizance of the case. It is quite apparent on this record that in the absence of a valid action the trial of the appellant in the first instance was by a magistrate who has no jurisdiction to try him."

After the pronouncements made in the decisions referred to above, it is really unnecessary to embark on a further or fuller discussion of the point raised, except merely to state that we have heard learned counsel for the petitioners who made a vain attempt with a crusading pertinacity worthy of a better cause, to show that the Privy Council decision was wrong and the decision of this Court required reconsideration, and having heard learned counsel in full, we are of the view that the decisions referred to above state the legal position correctly. It is clear beyond any doubt that cl. (2) of Art. 20 of the Constitution has no application in these two cases. The petitioners are not being prosecuted and punished for the same offence more than once, the earlier proceedings having been held to be null and void. With regard to s. 403, Code of Criminal Procedure, it is enough to state that the petitioners were not tried, in the earlier proceedings, by a Court of competent jurisdiction, nor is there any conviction or acquittal in force within the meaning of s. 403(1) of the Code, to stand as a bar against their trial for the same offences. Learned counsel for the petitioners invited our attention to ss. 190, 191, 192, 529 and 530 of the Code of Criminal Procedure and submitted that in certain circumstances the Code drew a distinction between 'jurisdiction' and 'taking cognizance'. The whole fabric of the argument of learned counsel was founded on this distinction. Assuming, however, that in certain cases one Magistrate may take cognizance and another Magistrate may try an accused person, it is difficult to appreciate how any Court an try the petitioners of these cases in the absence of a sanction in view of the mandatory provisions of s. 6 of the Prevention of Corruption Act, 1947. If no Court can take cognizance of the offences in question without a legal sanction, it is obvious that no Court can be said to be a Court of competent jurisdiction to try those offences and that any trial in the absence of such sanction must be null and void, and the sections of the Code on which learned counsel for the petitioners relied have really no bearing on the matter. Section 530 of the Code is really against the contention of learned counsel,

for it states, inter alia, that if any Magistrate not being empowered by law to try an offender, tries him, then the proceedings shall be void. Section 529(e) is merely an exception in the matter of taking cognizance of an offence under s. 190, sub-s. (1), cls. (a) and (b); it has no bearing in a case where sanction is necessary and no sanction in accordance with law has been obtained.

As part of his arguments, learned counsel for the petitioners referred to certain observations made by Braund J. in a decision of Allahabad High Court, Basdeo v. Emperor [A.I.R. 1945 All. 340], where the learned Judge drew a distinction between 'taking cognizance' and 'jurisdiction'. The distinction was drawn in a case where a Magistrate duly empowered to commit cases to the Sessions Court committed an accused person to the Court of Session in disregard of the provisions of s. 254 of the Code of Criminal Procedure, and the question was whether the irregularity so committed rendered the Sessions Court incompetent to try the case. The facts there were entirely different from the facts of the present cases and there was no occasion nor necessity for considering such mandatory provisions as are contained in s. 6 of the Prevention of Corruption Act. We do not think that the observations made in that case can be pressed in service in support of the argument of learned counsel for the petitioners in these cases, treating those observations as though they laid down any abstract propositions of law not dependent on the context of the facts in connection with which they were made.

Out of deference to learned counsel for the petitioners, we have indicated and considered very brief the arguments advanced before us. As we have said before, the point is really concluded by decisions of the highest tribunal, decisions which correctly lay down the law. The result therefore is that these petitions are devoid of all merit and must be dismissed.

Petitions dismissed.

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