Asgarali Nazarali Singaporawalla

Vs

The State of Bombay

Criminal Appeal No. 149 of 1954

(N.H. Bhagwati, B.Jagannath Das, Syed Jafar Imam, P. Govinda Menon, J.L. Kapur JJ)

19.02.1957

JUDGMENT

BHAGWATI J. -

This appeal with special leave under Art. 136 of the Constitution is directed against a judgment of the High Court of Judicature at Bombay setting aside the acquittal of the appellant by the Court of the Presidency Magistrate, 19th Court, Bombay and ordering his re-trial by the Court of the Special Judge, Greater Bombay in accordance with the provisions of the Criminal Law Amendment Act, 1952 (Act XLVI of 1952).

The appellant was accused No. 3 in the Court of the learned Presidency Magistrate. Accused No. 1 was the Mehta in the employ of a firm called Messrs. M. M. Baxabhoy & Co., accused No. 2 was the manager of the said firm. The appellant and accused Nos. 4 and 5 were Receivers of the firm in litigation in regard to it. They were all charged with offences under S. 161 read with S. 116 and further read either with s. 109 or s. 114 of the Indian Penal Code for offering to one Jibhai Chhotalal Barot, a sub-inspector of police attached to the Anit-Corruption Branch of the C.I.D. the sum of Rs. 1,25,000 as illegal gratification other than legal remuneration as a motive or reward for his showing favour to the accused and to the firm M/s. M. M. Baxabhoy & Co., in the exercise of his official functions. The offence was alleged to have been committed on July 28, 1950, and the accused were charge-sheeted on June 16, 1951; the trial commenced on July 14, 1951 and charges were framed on September 27, 1951. 40 witnesses were examined and 226 documents were exhibited in the course of the trial, and the prosecution closed its case on July 15, 1952.

During the course of the trial the Criminal Law Amendment Act, 1952 (XLVI of 1952) hereinafter called the impugned Act was enacted by Parliament on July 28, 1952, being an Act further to amend the Indian Penal Code and the Code the Criminal Procedure, 1898 and to provide for a more speedy trial of certain offences, viz., offences punishable under s. 161, s. 165 or s. 165A of the Indian Penal Code or sub-s. 2 of s. 5 of the Prevention of Corruption Act, 1947 (Act II of 1947) and any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified above. The learned Presidency Magistrate proceeded with the trial and after the examination of the appellant under s. 342 of the Code of Criminal Procedure, the appellant filed his written statement on August 14, 1952. The addresses commenced thereafter. The prosecution commenced its addressed on August 26, 1952, ending it on September 5, 1952. The defence thereafter addressed the learned Magistrate. In the meantime on September 23, 1952, the Government of Bombay by a notification appointed a Special Judge to try offences specified above and this appointment was notified in the Official Gazette on September 26, 1952. The defence concluded its address on September 26, 1952 and the learned Presidency Magistrate delivered his judgment on September 29,

1952, whereby he convicted the Accused Nos. 1 and 2 of the offences with which they were charged and sentenced them each to nine months rigorous imprisonment and a fine of Rs. 1,000 in default 6 month's rigorous imprisonment. He however acquitted the appellant and the accused Nos. 4 and 5 of these offences.

The accused No. 2 carried an appeal before the High Court of Bombay being Criminal Appeal No. 1304 of 1952. The State of Bombay also thereupon filed an appeal against the acquittal of the appellant and accused Nos. 4 and 5 being Criminal Appeal Nos. 349 of 1953. In the memorandum of appeal in Criminal Appeal No. 349 of 1953 a point was taken that the learned Presidency Magistrate had no jurisdiction to continue the trial and acquit the appellant and accused Nos. 4 and 5 as the same was ousted by the impugned Act. It was contended that since the date the said Act came into force the Special Judge alone had jurisdiction to try the accused for the offence under s. 161 read with s. 116 of the Indian Penal Code, that the duty of the learned Presidency Magistrate was to transfer this case to the Court of the Special Judge for Greater Bombay, specially appointed to try such offences by the impugned Act and that the order of acquittal of the appellant and accused Nos. 4 and 5 was therefore erroneous in law being without jurisdiction.

Both these Criminal Appeals came up for hearing before a Bench of the Bombay High Court consisting of Bavadekar & Vyas JJ. These appeals were heard only on the preliminary point as to the jurisdiction of the learned Presidency Magistrate to try and decide the case. In reply to the point as to jurisdiction which had been taken by the State of Bombay, the appellant and the accused Nos. 4 and 5 urged that the provisions of the impugned Act were violative of the principle of equal protection of laws contained in Art. 14 of the Constitution and therefore the impugned Act was ultra vires the Constitution. If that was so, it was contended, the learned Presidency Magistrate had jurisdiction to continue the trial in spite of the commencement of the impugned Act and the order of acquittal of the appellant and accused Nos. 4 and 5 recorded by him was correct.

The learned judges of the High Court rejected this contention of the appellant and held that the impugned Act was intra vires and that the learned Presidency Magistrate had no jurisdiction to try the case after the commencement of the impugned Act. The learned Magistrate's order convicting the accused No. 2 and acquitting the appellant and the accused Nos. 4 and 5 complained of by the State of Bombay was accordingly set aside. The High Court ordered a re-trial of the appellant and the other accused by the Court of the Special Judge, Greater Bombay, and remanded the case for disposal according to law.

The appellant applied to the High Court for a certificate under Art. 134(1)(c) of the Constitution which was however refused. The appellant thereafter applied for the obtained from this Court special leave to appeal against the judgment and order passed by the High Court. This is how the appeal has come up for hearing and final disposal before us.

It will be convenient at this stage to set out the relevant provisions of the impugned Act. As already noted the preamble to the Act stated that it was an Act further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, and to provide for a more speedy trial of certain offences. Section 5 of the Act inserted sub-s. (2-B) in s. 337 of the Code of Criminal Procedure, 1898 and provided that in every case where the offence is punishable under s. 161 or s. 165 or s. 165-A of the Indian Penal Code or sub-s. (2) of section 5 of the Prevention of Corruption Act, 1947, ... then notwithstanding anything contained in sub-s. (2-A), the Magistrate shall, without making any further enquiry, send the case for trial to the Court of the Special Judge appointed under the impugned Act. This amendment was to remain in force for a period of two years from the

commencement of the impugned Act, but was subsequently incorporated in the Code of Criminal Procedure, 1898, as s. 337(2-B) by s. 59(b) of the Code of Criminal Procedure Amendment Act, 1955 (Act XXVI of 1955). Special 6 of the Act provided for the appointment of Special Judges and empowered the State Governments by notification in the Official Gazette to appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely :

> (a) an offence punishable under s. 161, s. 165 or s. 165-A of the Indian Penal Code or sub-s. (2) of s. 5 of the Prevention of Corruption Act, 1947; and
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> (b) any conspiracy to commit or any attempt to commit or any abetment of the offences specified in cl. (a) above.

Section 6(2) laid down the qualifications for the appointment of a Special Judge and provided that a person shall not be qualified for appointment as a Special Judge under this Act unless he was or had been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898. Section 7 of the Act is important and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law the offences specified in sub-s. (1) of s. 6 shall be triable by special judges only. Section 7(2) further provided 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. The procedure and powers of special judges were laid down in s. 6 of the Act. A Special Judge was empowered to take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, he was to follow the procedure prescribed by the Code of Criminal Procedure, 1898 for the trial of warrant cases by magistrates. A Special Judge was also empowered to tender a pardon to any person supposed to have been directly or indirectly concerned in, or privy to, an offence on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as a principal or abetter, in the commission thereof. Save as above the provisions of the Criminal Procedure Code, 1898 were so far as they were not inconsistent with the Act made applicable to the proceedings before a Special Judge; and for the purpose of the said provisions, the Court of the Special Judge was deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. A Special Judge was empowered to pass upon any person convicted by him any sentence authorised by law for the punishment of the offences of which such person was convicted. Section 9 of the Act provided for appeal and revision and the High Court was to exercise as far as applicable all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898 on the High Court, as if the Court of the Special Judge were a Court of Sessions trying cases without a jury within the local limits of the jurisdiction of the High Court. Section 10 is also important and provided for the transfer of certain cases pending before magistrates. It was laid down that all cases triable by a Special Judge under s. 7, which immediately before the commencement of the Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the Special Judge having jurisdiction over such cases.

It is clear from the provisions of the impugned Act set out hereinabove that the intention of the legislature in enacting the same was to amend the Indian Penal Code and the Code of Criminal Procedure, 1898 with a view to provide for a more speedy trial of offences punishable under ss. 161, 165 or 165-A, of the Indian Penal Code or sub-s. (2) of s. 5 of the Prevention of Corruption Act, 1947. Special Judges of the status of a Sessions Judge or an Additional Sessions Judge or an

Assistant Sessions Judge were to be appointed for the purpose of trying these offences and these offences were made triable only by these Special Judges. Not only were the special judges invested with the exclusive jurisdiction to try these offences but they were also empowered while trying any case involving these offences to try any offence other than those offences with which the accused may, under the Code of Criminal Procedure, 1898 be charged at the same trial. Committal proceedings were also done away with and the special judges were empowered to take cognizance of these offences without the accused being committed to them for trial and were empowered to try the accused persons of the same by following the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by magistrates. The courts of the Special Judges were deemed to be courts of Sessions trying cases without a jury or without the aid of assessors and were also empowered to pass upon the persons convicted by them of any offence any sentence authorised by law for the punishment of such offences. The powers of appeal and revision vested in the High Court were to be exercised as if the courts of Special Judges were the courts of sessions trying cases without a jury or without the aid of assessors within the local limits of the jurisdiction of the High Court. The procedure for trial before the Special Judges was thus assimilated to that obtaining in the case of trial of the accused by the courts of sessions.

Having thus provided for the trial by Special Judges of these offences which would be triable by them after the commencement of the impugned Act, the Act further provided for a transfer of cases falling within that category but pending before the magistrates. It may be noted that the other provisions of the Act were prospective in operation and could not affect pending cases as such. Provision had therefore to be made for divesting the magistrates who had already taken cognizance of these cases, of jurisdiction to try the same any further and for the transfer of such pending cases to the special judges who were appointed under the Act. The cases which were pending before the courts of sessions did not require to be so transferred because they would be tried by the procedure obtaining in the courts of sessions and nothing further required to be done. The cases which were pending before the Magistrates however required to be transferred to the Special Judges because otherwise the Magistrates would continue to try the same and would have to commit them to the courts of sessions, they themselves being unable to mete out the enhanced punishment which could be meted out to the accused on conviction. The Committal proceedings were sought to be eliminated by the impugned Act and the Special Judges were empowered to try these cases as if they were courts of sessions trying cases without a jury or without the aid of assessors. It was therefore provided that cases falling under this category which were pending before the magistrates should on the commencement of the impugned Act be forwarded for trial to the special judges having jurisdiction over such cases. This provision was made when these cases triable by the Special Judges under s. 7 of the Act were pending before the magistrates and the magistrates trying the same were ipso facto divested of the jurisdiction to try the same any further, the Special Judges appointed under the Act having been invested with exclusive jurisdiction to try the same after the commencement of the Act.

It this was the position under the impugned Act it followed without anything more that the instant case which was pending before the learned Presidency Magistrate on July 28, 1952, which was the date of the commencement of the Act, could not proceed any further before him. By the operation of s. 7 of the impugned Act, the learned Presidency Magistrate was divested of jurisdiction to try it and whatever proceedings were continued before him after July 28, 1952, were without jurisdiction and void. The examination of the appellant under s. 342 of the Code of Criminal Procedure and the further proceedings by way of filing of the written statement and the arguments addressed by the prosecution as well as the defence were all without jurisdiction and so were the orders of conviction of the accused Nos. 1 and 2 and the acquittal of the appellant and the accused Nos. 4 and 5.

It was however contended by the learned counsel for the appellant before us that the provisions of the impugned Act were violative of the fundamental right enshrined in Art. 14 of the Constitution and were therefore ultra vires. The respondents on the other hand urged that there was no classification at all and even if there was one, it was based on intelligible differential and had a rational relation to the object sought to be achieved.

The provisions of the impugned Act in substance amended the Indian Penal Code and the Code of Criminal Procedure, 1898 pro tanto making the specified offences triable by special judges and all persons who committed these offences became punishable by higher sentences and were subjected to procedure for trial of warrant cases, the courts of the special judges being deemed to be courts of sessions trying cases without a jury or without the aid of assessors. It can therefore be legitimately urged that there was no classification at all, the provisions thus enacted being equally applicable to all citizens alike without any discrimination whatever.

The matter was however argued before the High Court and also before us on the basis that the offenders who committed these specified offences formed a group or category by themselves and were classified as distinct from the offenders who committed the other offences under the Indian Penal Code. We do not want to express any opinion as to whether there in any classification discernible within the provisions of the impugned Act, but will proceed to deal with this aspect of the question on the assumption that there was such a classification intended to be made by the Legislature while enacting the impugned Act.

The principles underlying Art. 14 of the Constitution have been completely thrashed out in the several decisions of this Courts ere this. The earliest pronouncement of this Court on the meaning and scope of Art. 14 was made in the case of Chiranjit Lal Chowdhury v. The Union of India [[1950] S.C.R. p. 869]. The principles enunciated in that case were summarized by Fazl Ali J. as follows in That State of Bombay v. F. N. Balsara [[1951] S.C.R. at p. 708].

> "(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
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> (2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.
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> (3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.
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> (4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

We have to scrutinize the provisions of the impugned Act in the light of the principle enunciated above.

The first question which we have to address to ourselves is whether there is in the impugned Act a reasonable classification for the purposes of legislation. It we look to the provisions of the impugned Act closely it would appear that the legislature classified the offences punishable under ss. 161, 165 or 165-A of the Indian Penal Code or sub-s. 2 of s. 5 of the Prevention of Corruption Act, 1947 in one group or category. They were offences relating to bribery or corruption by public servants and were thus appropriately classified in one group or category. The classification was founded on an intelligible differentia which distinguished the offenders thus grouped together from those left out of the group. The persons who committed these offences of bribery or corruption would form a class by themselves quite distinct from those offenders who could be dealt with by the normal provisions contained in the Indian Penal Code or the Code of Criminal Procedure, 1898 and if the offenders falling within this group or category were thus singled out for special treatment, there would be no question of any discriminatory treatment being meted out to them as compared with other offenders who did not fall within the same group or category and who continued to be treated under the normal procedure.

The next question to consider is whether this differentia had a rational relation to the object sought to be achieved by the impugned Act. The preamble of the Act showed that it was enacted for providing a more speedy trial of certain offences. An argument was however addressed before us based on certain observations of Mahajan J. (as he then was) at page 314, and Mukherjea J. (as he then was) at p. 328 in Anwar Ali Sarkar's case [[1952] S.C.R. 284] quoted at page 43 by Patanjali Sastri C.J. in the case of Kedar Nath Bajoria v. The State of West Bengal [[1954] S.C.R. 30] that the speedier trial of offences could not afford a reasonable basis for such classification. Standing by themselves these passages might lend support to the contention urged before us by the learned counsel for the appellant. It must be noted, however, that this ratio was not held to be conclusive by this Court in Kedar Nath Bajoria's Case [[1954] S.C.R. 30] where this Court held :

> "(1) That when a law like the present one is impugned on the ground that it contravenes art. 14 of the Constitution the real issue to be decided is whether, having regard to the underlying purpose and policy of the Act as disclosed by its little, preamble and provisions, the classification of the offences for the trial of which the Special Court is set up and a special procedure is laid down can be said to be unreasonable or arbitrary and therefore violative of the equal protection clause;
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> (2) having regard to the fact that the types of offences specified in the Schedule to the Act were very common and widely prevalent during the post war period and has to be checked effectively and speedily tried, the legislation in question must be regarded as having been based on a perfectly intelligent principle of classification, having a clear and reasonable relation to the object sought to be achieved, and it did not in any way contravene art. 14 of the Constitution."

In the instance case, bribery and corruption having been rampant and the need for weeding them out having been urgently felt, it was necessary to enact measures for the purpose of eliminating all possible delay in bringing the offenders to book. It was with that end in view that provisions were enacted in the impugned Act for speedier trial of the said offences by the appointment of special judges who were invested with exclusive jurisdiction to try the same and were also empowered to take cognizance thereof without the accused being committed to them for trial, and follow the procedure prescribed for the trial of warrant cases by magistrates. The proceedings before the Special Judges were thus assimilated to those before the courts of sessions for trying cases without a jury or without the aid of assessors and the powers of appeal and revision invested in the High Court

were also similarly circumscribed. All these provisions had the necessary effect of bringing about a speedier trial of these offences and it cannot be denied that this intelligible differentia had rational relation to the object sought to be achieved by the impugned Act. Both these conditions were thus fulfilled and it could not be urged that the provisions of the impugned Act were in any manner violative of art. 14 of the Constitution.

It was next contended that even if the impugned Act was intra vires, the learned Presidency Magistrate trying the case of the appellant was not divested of jurisdiction to try the same after the commencement of the impugned Act and the acquittal of the appellant recorded by him could not be set aside. Reliance was placed upon s. 10 of the impugned Act in support of this contention. It was urged that even though the case related to the offence mentioned in s. 6(1) of the Act and was thus triable exclusively by the Special Judge, no Special Judge was appointed by the State Government by notification in the Official Gazette until September 26, 1952, that the arguments were concluded and the trial came to an end also on September 26, 1952 and the only thing which remained to be done thereafter was the pronouncement of the judgment by the learned Presidency Magistrate and that therefore even though the case may be deemed to have been pending before the learned Magistrate there was no occasion for forwarding the same for trial to the Special Judge appointed by the State Government on September 26, 1952.

We do not accept this contention. It cannot be denied that on July 28, 1952, the date of the commencement of the impugned Act the case of the appellant was pending before the learned Presidency Magistrate. On that day the prosecution had closed its case and the appellant had not yet been called upon to enter upon his defence. The examination of the appellant under s. 342 of the Code of Criminal Procedure took place after that date. The appellant filed his written statement on August 14, 1952 and the address by the prosecution as well as the defence continued right up to September 26, 1952. The word "pending" is thus defined in Stroud's Judicial Dictionary, 3rd Edition, Vol. III, p. 2141 :

PENDING :- (1) A legal proceeding is "pending" as soon as commenced and until it is concluded, i.e., so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

Similar are the observations of Jessel, M.R. In re Clagett's Estate, Fordham v. Clagett [(1882) 20 Ch. D. 637 at p. 653] :

> "What is the meaning of the word "pending" ? In my opinion, it includes every insolvency in which any proceeding can by any possibility be taken. That I think is the meaning of the word "pending".....A cause is said to be pending in a Court of justice when any proceeding can be taken in it. That is the test."

There is no doubt therefore that the case of the appellant was not concluded and was pending before the learned Presidency Magistrate at the date of the commencement of the impugned Act.

We were however told that as many as 40 witnesses had been examined and 226 documents exhibited in the course of the trial before the learned Presidency Magistrate and it could not have been intended by the Legislature when enacting s. 10 of the impugned Act that a case where everything had been finished except the addressed and the pronouncement of the judgment should be forwarded for trial before the Special Judge appointed under the Act. The fallacy underlying this argument is that on July 28, 1952, when the impugned Act came into operation the trial even in the

restricted sense of the term had not been concluded. The prosecution had closed its case but the appellant had yet to enter upon his defence and lead evidence, if any, in reply to the case set up by the prosecution. The same was the position even on September 26, 1952, when by a notification in the Official Gazette the Special Judge was appointed having jurisdiction over such cases. The notification came into operation from the commencement of September 26, 1952, which was immediately after the mid-night of September 25, 1952 and the defence address had not concluded by this time but was continued when the learned Presidency Magistrate's Court assembled at 11 a.m. on September 26, 1952 and was concluded thereafter. The word "trial" is also defined in Stroud's Judicial Dictionary, 3rd Edition, Vol. IV, at page 3092 :

TRIAL : (1) A "trial" is the conclusion, by a competent tribunal, of questions in issue in legal proceedings whether civil or criminal. (2) The "trial" (Criminal Justice Act, 1948 (11 & 12 Geo. 6. C. 58) s. 23(1) is not complete until sentence has been passed or the offender has been ordered to be discharged (R. v. Grant (1951) 1 K.B. 500).

The trial of the appellant therefore could not be said to have been concluded on July 28, 1952 and even on the September 26, 1952, assuming for the sake of argument that the effective commencement of the impugned Act could not be said to have come about until the Special Judge was appointed by the State Government by notification in the Official Gazette. This contention of the appellant therefore is in any event devoid of substance. We are aware that in cases like the present one, the provisions contained in s. 10 of the impugned Act would work to the prejudice of the appellant in that he would be subjected to a re-trial before the Special Judge having jurisdiction over the case involving a re-hearing of the whole case with 40 witnesses to be examined and 226 documents to be exhibited. The time which would have to be spent, the anxiety which the appellant would have to undergo, the expenses which he would have to make in the matter of his defence by competent counsel and the possibility which he would have to face of the Special Judge trying the same coming to a conclusion different from the one which was reached by the learned Presidency Magistrate are all considerations which would have made us consider his case very sympathetically and try to find out ways and means whereby he would be saved these troubles and tribulations. The words of s. 10 of the impugned Act however are very clear and categorical and are not capable of being construed in any other manner except that all cases triable by the Special Judges which were pending immediately before the commencement of the impugned Act before any magistrate must be forwarded for trial to the Special Judge having jurisdiction over such cases, the magistrates having cognizance of the same and trying them being divested of jurisdiction to proceed further with the trial thereof immediately after the commencement of the Act. The only persons who were invested with jurisdiction to try these cases after the commencement of the impugned Act were the Special Judges having jurisdiction over the same and whatever was done by the magistrates thereafter was without jurisdiction and void. The case of the appellant is unfortunate. For ought we know the Special Judge trying him would acquit him of the offence with which he has been charged in the same manner as the learned Presidency Magistrate himself did, but there is no escape from the fact that he will have to face a re-trial and undergo the expenses and anxiety in defending himself over again.

We have therefore come to the conclusion that the order for re-trial of the appellant made by the High Court was correct and the appeal must be dismissed. We hope and trust that the re-trial before the Special Judge will be conducted with all possible dispatch and the trial will be concluded as early as possible. The appeal will accordingly stand dismissed.

Appeal dismissed.

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