

Union of India

Vs

Sukumar Pyne

Civil Appeal No. 701 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

06.10.1965

JUDGMENT

SIKRI, J. –

This is an appeal by certificate granted by the High Court of Calcutta under art. 132(1) of the Constitution and is directed against the judgment of the High Court accepting a petition under art. 226 of the Constitution and quashing adjudication proceedings under the Foreign Exchange Regulation Act, 1947 (VII of 1947) - hereinafter referred to as the Act.

The relevant facts are as follows : Following the recovery in 1954 of some foreign currency and Travellers Cheques at No. 311, Bow Bazar Street, Calcutta, where the respondent alongwith his, mother and brother, carried on the business of jewellers, the Director of Enforcement issued a notice on April 23, 1958, on the petitioner calling up on him to show cause within 10 days if the receipt of the notice why adjudication proceedings should not be held against him for contravention of s. 23(1) of the Act. On May 10, 1958, the respondent replied to the above memorandum giving his version as to how came into possession of the foreign currency, but he denied having sold any travellers cheques. He prayed that the proceedings may be dropped and the currency seized returned to him. The Director of Enforcement, after considering the cause shown by the respondent came to the conclusion that the adjudication proceedings should be held. He, therefore, requested the respondent to arrange to be present either personally or through his authorized representative before the Director on May 13, 1958, in the office of the Calcutta Branch of the Directorate. On this, on May 13, 1959, the respondent filed a petition under art. 226 of the Constitution challenging the adjudication proceedings on various grounds, the principal grounds being that s. 23(1)(a) and s. 23D of the Act were ultra vires of art. 20(2) of the Constitution, and that the offence having been committed in 1954, the proposed adjudication was illegal and entirely without jurisdiction.

Before the High Court, at the time of the final hearing, the petitioner was allowed to raise the point that s. 23(1)(a) as well as s. 23D contravened art. 14 of the Constitution.

Mitter, J. held that s. 23(1)(a) violated art. 14 of the Constitution and was accordingly ultra vires the Constitution, and that the relative provision of s. 23D must also be condemned. Regarding the second point, namely, whether s. 23(1)(a), having been substituted by the Amending Act XXXIX of 1957, would have retrospective operation in respect of the alleged offence, which took place in 1954, the High Court came to the conclusion that the petitioner "had a vested right to be tried by an ordinary court of the land with such rights of appeal as were open to all", and although s. 23(1)(a) was procedural, where a vested right was affected, prima facie, it was not a question of procedure. Therefore, the High Court came to the conclusion that the provision as to adjudication by the

Director of Enforcement could not have any retrospective operation. The learned judge observed that "the impairment of a right by putting a new restriction thereupon is not a matter of procedure only. It impairs a substantive right and an enactment which does so is not retrospective unless it says so expressly to by necessary intendment." Accordingly, as stated before, the adjudication proceedings were quashed being without jurisdiction.

This Court held in *Shanti Prasad Jain v. Director of Enforcement* ([1963] 2 S.C.R. 297.) that s. 23(1) and s. 23D of the Foreign Exchange Regulation Act did not violate art. 14 of the Constitution. Mr. P. K. Chatterjee, counsel for the respondent, properly concedes that he cannot press this point.

The learned Solicitor-General, who appeared on behalf of the appellant, contends that the High Court was in error in holding that the accused had a vested right to be tried by an ordinary criminal court. He says that the amendment only changed the venue of trial from a Magistrate to the Director of Enforcement in some cases and no vested right was affected. He refers to the decision of this Court in *Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh* ([1953] S.C.R. 1188.) where Jagannadhas, J., speaking for the Court, observed at p. 1200 as follows :

"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."

Before its amendment by Act XXXIX of 1957, s. 23(1) of the Act read as follows :

"23(1) Whoever contravenes any of the provisions of this Act or of any rule, direction or order made thereunder shall be punishable with imprisonment for a term which may extend to two years or with fine or with both, and any Court trying any such contravention may, if it thinks fit and in addition to any sentence which it may impose for such contravention, direct that any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place shall be confiscated....."

After the amendment by Act XXXIX of 1957, another s. 23(1) was substituted and s. 23D was added, which read as follows :

"23(1) - If any person contravenes the provisions of section 4, section 5, section 9, section 10, sub-section (2) of section 12, section 17, section 18A or section 18B or any rule, direction or order made thereunder, he shall -

(a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided, or....."

"23D. (1) For the purpose of adjudging under clause (a) of sub-section (1) of section 23 whether any person has committed a contravention the Director of Enforcement

shall hold an inquiry in the prescribed manner after that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provision of the said section 23;

Provided that if, at any stage of the inquiry, the Director of Enforcement is of opinion that having regard to the circumstances of the case, the penalty which he is empowered to impose would not be adequate, he shall, instead of imposing any penalty himself, make a complaint in writing to the Court...."

The effect of these provisions is that after the amendment of 1957, adjudication proceedings or criminal proceeding could be taken up in respect of a contravention mentioned in s. 23(1) while before the amendment only criminal proceedings before a Court could be instituted to punish the offender. The High Court, as already observed, held that the new amendment did not apply to contraventions which took place before the Act came into force.

Mr. Chatterjee, the learned counsel for the respondent, urges that a substantive vested right to be tried by an ordinary court existed before the amendment, and he relied on Maxwell 11th Edition, p. 217, where it is stated that "the general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it." He says that there is a good reason if the principles of art. 20 are borne in mind. In our opinion, there is force in the contention of the learned Solicitor-General. As observed by this Court in Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh ([1953] S.C.R. 1188.) a person accused of the commission of an offence has no vested right to be tried by a particular court or a particular except in so far as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved. It is well recognized that "no person has a vested right in any course of procedure" (vide Maxwell 11th Edition, p. 216), and we see no reason why this ordinary rule should not prevail in the present case. There is no principle underlying art. 20 of the Constitution which makes a right to any course of procedure a vested right. Mr. Chatterjee complains that there is no indication in the Amending Act that the new procedure would be retrospective and he further says that this affects his right of appeal under the Criminal Procedure Code. But if this is a procedure, then it is not necessary that there should be a special provision to indicate that the new procedural law is retrospective. No right of appeal under the Criminal Procedure Code is affected because no proceedings had ever been started under the Criminal Procedure Code.

Mr. Chatterjee's next point is that the new s. 23(1)(a) contravenes art. 20(1) of the Constitution. He says that s. 23(1)(a) prescribes a minimum penalty while under the old s. 23(1) the Magistrate had an option of fixing a fine less than the minimum prescribed under s. 23(1)(a). But we are unable to agree with him that the new section prescribes any minimum. What it does prescribe is a maximum. The words "not exceeding" cover not only the expression "three times the value of the foreign exchange" but also the words "five thousand rupees". Therefore, no greater penalty than might have been levied under the old section has been prescribed by the new section 23(1)(a), and consequently there is no breach of art. 20(1) of the Constitution.

We may add that offence is alleged to have been committed in 1954 and notice of adjudication was sent in 1958 and now we are in the year 1965. It would be expedient if the adjudication proceedings are disposed of as expeditiously as possible.

In the result the appeal is accepted and the petition under art. 226 dismissed. The appellant will have

his costs here and in the High Court.

Appeal allowed.

</html