

Uttam Bala Ravankar

Vs

Assistant Collector of Customs and Central Excise, Goa and Another

Criminal Appeal No. 30 of 1970

(S. M. Sikri, I. D. Dua JJ)

03.08.1970

JUDGMENT

SIKRI, J. -

1. This appeal by Special Leave is from the Judgment and Order of the Judicial Commissioner, Goa, Daman and Diu, allowing the revision application under Section 435 of the Indian Code of Criminal Procedure filed by the State. The only point involved in this appeal is whether the order passed by the Lt. Governor, dated November 6, 1963, was in valid. This order reads as under :

"ORDER

GAD/74/63/25007

In exercise of the powers conferred by the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962 and notwithstanding anything to the contrary contained in any law for the time being in force in this Territory, the Lieutenant Governor makes the following order :

All criminal proceedings in relation to offences committed prior to the date of coming into force of the Criminal Procedure Code shall be carried on under the law in force in the Territory before that date.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu."

2. Before dealing with the question of the validity of this order it is necessary to give a few facts. On December 20, 1961, Goa, Daman and Diu, became part of the territory of India. The Residence of the appellant was raided on June 25, 1963 and 72 bars of gold were seized. On November 1, 1963, the Goa, Daman and Diu (Laws) Regulation, 1962 (Regulation No. XII of 1962), hereinafter referred to as the Regulation was promulgated by the President and published in the Gazette on November 22, 1962. The effect of Section 3 of the Regulation, read with the Schedule, was inter alia to extend the provisions of the Code of Criminal Procedure, 1898, to Goa, Daman and Diu. Section 3(2) of the Regulation enabled the Lt. Governor to fix the date of coming into force of the Act in Goa, Daman and Diu. It appears that by notification, dated September 24, 1963, the date of the coming into force of the Indian Penal Code and the Code of Criminal Procedure was changed from October 1, 1963 to November 1, 1963. Accordingly, it is the latter date on which the Code of Criminal Procedure came into force in Goa, Daman and Diu.

Section 7 of the Regulation provides :

"Until the relevant provisions of the Code of Criminal Procedure, 1898, are brought into force in Goa, Daman and Diu, all offences under any Act shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the corresponding law in force in Goa, Daman and Diu."

The effect of Section 7, as is clear from the section, was that offences committed prior to the coming into force of the Criminal Procedure Code were to be investigated, inquired into etc., under the provisions of the corresponding law in force in Goa, Daman and Diu.

Section 8 of the Regulation provides :

"If any difficulty arises in giving effect in Goa, Daman and Diu, to the provisions of any Act extended by this Regulation to that Union Territory, the Central Government may, by order in the Official Gazette, make such provisions or give such directions as appear to it to be necessary for the removal of the difficulty."

3. It appears that some difficulties were experienced by the Lt. Governor and he purported to pass the impugned order which we have set out above.

4. It will be noticed that the impugned order does not refer to Section 8 of the Regulation but refers instead to Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962. We have seen this order and it is common ground that this order did not enable the Lt. Governor to pass the impugned order.

5. On April 20, 1966, a complaint was filed against the appellant in the Court of judicial Magistrate, 1st Class, Margao, under the Defence of India Rules. The prosecution was challenged on various grounds but these grounds failed before the Judicial Magistrate. The order of the Judicial Magistrate is not on the record. A revision was filed to the Sessions Judge, who first discussed the question of jurisdiction. He held that by virtue of the impugned order the procedure to be followed in the case is one laid down by the Portuguese Criminal Procedure Code and not by the (Indian) Code of Criminal Procedure, 1898.

6. On a revision filed by the State, the learned Judicial Commissioner came to the conclusion that the impugned order was ultra vires. He agreed with the Government pleader that the impugned order was not in conformity with the 1962 Order (Goa, Daman and Diu) (Administration) Removal of Difficulties (Order), passed by the Central Government.

7. It is common ground that if a power subsists and the Lt. Governor can justify the impugned order under any law, the State is not debarred from relying on that law. It seems to us that Section 8 of the Regulation clearly authorised the Lt. Governor to pass the impugned order.

8. The learned counsel for the State says that the word "difficulty" in Section 8 of the Regulation has to be interpreted in a very narrow sense and in this connection relies on the following observations of Hidayatullah, J., as he then was, in *Jalan Trading Co. (Private) Ltd. v. Mill Mazdoor Union* : ((1967) 1 SCR 15 at 59)

"The order, of course, would be passed within the four corners of the Parliamentary legislation and would only apply the Act to concrete cases as the courts do when they

consider the application of an Act."

He says that there was no concrete case arising in this case and, therefore, the impugned order cannot be justified by reference to Section 8 of the Regulation. But Hidayatullah, J., was in minority and Shah, J. speaking for the majority, proceeded on the basis that the section under consideration authorised the Government to determine for itself what the purposes of the Act were and to make provisions for removal of doubts or difficulties. Shah J., did not give any limited meaning to the word "difficulty" in that case.

9. We may mention here that neither the appellant nor the respondent has urged before us that Section 8 of the Regulation itself is invalid.

10. It seems to us that difficulty was bound to arise in giving effect to the Code of Criminal Procedure because this code contemplates investigation and trial under the Code. If investigations had been done under the Portugese Criminal Procedure Code, unless there was some clear provision to deem that investigation as investigation under the Code of Criminal Procedure, fresh investigations under the Code of Criminal Procedure would have to be undertaken. Be that as it may, whatever the difficulties which impelled the Lt. Governor to act, he was competent to make provisions to remove the difficulties.

11. We may mention that although Section 8 of the Regulation enables the Central Government to remove the difficulty, by reading the definition of the "Central Government" in the General Clauses Act, the Administrator of Goa, Daman and Diu is entitled to exercise the powers of the Central Government, and the Lt. Governor is the Administrator of Goa, Daman and Diu. We are accordingly of the opinion that the impugned order is valid and the prosecution must be conducted in accordance with its provisions.

12. In the result the appeal is allowed, the judgment and order of the Judicial Commissioner set aside and that of the learned Session Judge restored.

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