SUPREME COURT OF INDIA

Ramesh Kumar Soni

Vs.

State of Madhya Pradesh

Crl.A.No.353 of 2013

(T.S. Thakur and Fakkir Mohamed Ibrahim Kalifulla JJ.)

26.02.2013

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. The short question that falls for determination in this appeal is whether the appellant could be tried by the Judicial Magistrate, First Class, for the offences punishable under Sections 408, 420, 467, 468 and 471 of the IPC notwithstanding the fact that the First Schedule of the Code of Criminal Procedure, 1973 as amended by Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007, made offences punishable under Sections 467, 468 and 471 of the Penal Code triable only by the Court of Sessions. The Trial Court of 9th Additional Sessions Judge, Jabalpur has answered that question in the negative and held that after the amendment the appellant could be tried only by the Court of Sessions. That view has been affirmed by the High Court of Madhya Pradesh at Jabalpur in a criminal revision petition filed by the appellant against the order passed by the Trial Court. The factual matrix in which the controversy arises may be summarised as under:

3. Crime No.129 of 2007 for commission of offences punishable under Sections 408, 420, 467, 468 and 471 of the IPC was registered against the appellant on 18th May, 2007, at Bheraghat Police Station. On the date of the registration of the case the offences in question were triable by a Magistrate of First Class in terms of the First Schedule of Code of Criminal Procedure, 1973. That position underwent a

change on account of the Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007 introduced by Madhya Pradesh Act 2 of 2008 which amended the First Schedule of the 1973 Code and among others made offences under Sections 467, 468 and 471 of the IPC triable by the Court of Sessions instead of a Magistrate of First Class. The amendment received the assent of the President on 14th February, 2008 and was published in Madhya Pradesh Gazette (Extraordinary) on 22nd February, 2008. Consequent upon the amendment aforementioned, the Judicial Magistrate, First Class appears to have committed to the Sessions Court all cases involving commission of offences under the above provisions. In one such case the Sessions Judge, Jabalpur, made a reference to the High Court on the following two distinct questions of law:

> 1. Whether the recent amendment dated 22nd February, 2008 in the Schedule-I of the Cr.P.C. is to be applied retrospectively?
>
> 2. Consequently, whether the cases pending before the Magistrate First Class, in which evidence partly or wholly has been recorded, and now have been committed to this Court are to be tried de novo by the Court of Sessions or should be remanded back to the Magistrate First Class for further trial?

4. A Full Bench of the High Court of Madhya Pradesh in Re: Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M. P. Amendment) Act, 2007 2008 (3) MPLJ 311, answered the reference and held that all cases pending before the Court of Judicial Magistrate First Class as on 22nd February, 2008 remained unaffected by the amendment and were triable by the Judicial Magistrate First Class as the Amendment Act did not contain a clear indication that such cases also have to be made over to the Court of Sessions. The Court further held that all such cases as were pending before the Judicial Magistrate First Class and had been committed to the Sessions Court shall be sent back to the Judicial Magistrate First Class in accordance with law. The reference was answered accordingly.

5. Relying upon the decision of the Full Bench the appellant filed an application before the trial Court seeking a similar direction for remission of the case for trial by a Judicial Magistrate. The appellant argued on the authority of the above decision that although the police had not filed a charge-sheet against the appellant and the investigation in the case was pending as on the date the amendment came into force, the appellant had acquired the right of trial by a forum specified in

Schedule I of the 1973 Code. Any amendment to the said provision shifting the forum of trial to the Court of Sessions was not attracted to the appellant's case thereby rendering the committal of the case to the Sessions Court and the proposed trial of the appellant before the Sessions Court illegal. The trial Court, as mentioned earlier, repelled that contention and held that since no charge-sheet had been filed before the Magistrate as on the date the amendment came into force, the case was exclusively triable by the Sessions Court. The High Court has affirmed that view and dismissed the revision petition filed by the appellant, hence the present appeal.

6. The Code of Criminal Procedure (Madhya Pradesh Amendment) Act, 2007 is in the following words:

> "An Act further to amend the Code of Criminal Procedure, 1973 in its application to the State of Madhya Pradesh.
>
> Be it enacted by the Madhya Pradesh Legislature in the Fifty-eighth Year of the Republic of India as follows:
>
> 1. Short title. – (1) This Act may be called the Code of Criminal Procedure (Madhya Pradesh Amendment) Act, 2007.
>
> 2. Amendment of Central Act No.2 of 1974 in its application to the State of Madhya Pradesh – The Code of Criminal Procedure, 1973 (No. 2 of 1974) (hereinafter referred to as the Principal Act), shall in its application to the State of Madhya Pradesh, be amended in the manner hereinafter provided.
>
> 3. Amendment of Section 167 - .....
>
> xxxx xxx xxx
>
> 4. Amendment of the First Schedule – In the First Schedule to the Principal Act, under the heading "I-Offences under the Indian Penal Code" in column 6 against section 317, 318, 326, 363, 363A, 365, 377, 392, 393, 394, 409, 435, 466, 467, 468, 471, 472, 473, 475, 476, 477 and 477A, for the words "Magistrate of First Class" wherever they occur, the words "Court of Sessions" shall be substituted."

7. The First Schedule to the Criminal Procedure Code 1973 classifies offences under the IPC for purposes of determining whether or not a particular offence is cognizable or non-cognizable and bailable or non- bailable. Column 6 of the First Schedule indicates the Court by which the offence in question is triable. The Madhya Pradesh Amendment extracted above has shifted the forum of trial from the Court of a Magistrate of First Class to the Court of Sessions. The question is whether the said amendment is prospective and will be applicable only to offences committed after the date the amendment was notified or would govern cases that were pending on the date of the amendment or may have been filed after the same had become operative. The Full Bench has taken the view that since there is no specific provision contained in the Amendment Act making the amendment applicable to pending cases, the same would not apply to cases that were already filed before the Magistrate. This implies that if a case had not been filed upto the date the Amendment Act came into force, it would be governed by the Amended Code and hence be triable only by the Sessions Court. The Code of Criminal Procedure does not, however, provide any definition of institution of a case. It is, however, trite that a case must be deemed to be instituted only when the Court competent to take cognizance of the offence alleged therein does so. The cognizance can, in turn, be taken by a Magistrate on a complaint of facts filed before him which constitutes such an offence. It may also be taken if a police report is filed before the Magistrate in writing of such facts as would constitute an offence. The Magistrate may also take cognizance of an offence on the basis of his knowledge or suspicion upon receipt of the information from any person other than a police officer. In the case of the Sessions Court, such cognizance is taken on commitment to it by a Magistrate duly empowered in that behalf. All this implies that the case is instituted in the Magistrate's Court when the Magistrate takes cognizance of an offence, in which event the case is one instituted on a complaint or a police report. The decision of this Court in Jamuna Singh and Ors. v. Bahdai Shah AIR 1964 SC 1541, clearly explains the legal position in this regard. To the same effect is the decision of this Court in Devrapally Lakshminarayana Reddy and Ors. v. Narayana Reddy and Ors. (1976) 3 SCC 252 where this Court held that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein and that cognizance can be taken in the manner set out in clauses (a) to (c) of Section 190(1) of the Cr.P.C. We may also refer to the decision of this Court in Kamlapati Trivedi v. State of West Bengal (1980) 2 SCC 91 where this Court interpreted the provisions of Section 190 Cr.P.C. and reiterated the legal position set out in the earlier decisions.

8. Applying the test judicially recognized in the above pronouncements to the case at hand, we have no hesitation in holding that no case was pending before the Magistrate against the appellant as on the date the Amendment Act came into force. That being so, the Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against the appellant was duty bound to commit the case to the Sessions as three of the offences with which he was charged were triable only by the Court of Sessions. The case having been instituted after the Amendment Act had taken effect, there was no need to look for any provision in the Amendment Act for determining whether the amendment was applicable even to pending matters as on the date of the amendment no case had been instituted against the appellant nor was it pending before any Court to necessitate a search for any such provision in the Amendment Act. The Sessions Judge as also the High Court were, in that view, perfectly justified in holding that the order of committal passed by the Magistrate was a legally valid order and the appellant could be tried only by the Court of Sessions to which the case stood committed.

9. Having said so, we may now examine the issue from a slightly different angle. The question whether any law relating to forum of trial is procedural or substantive in nature has been the subject matter of several pronouncements of this Court in the past. We may refer to some of these decisions, no matter briefly. In New India Insurance Company Ltd. v. Smt. Shanti Misra, Adult (1975) 2 SCC 840, this Court was dealing with the claim of payment of compensation under the Motor Vehicles Act. The victim of the accident had passed away because of the vehicular accident before the constitution of the Claims Tribunal under the Motor Vehicles Act, 1939, as amended. The legal heirs of the deceased filed a claim petition for payment of compensation before the Tribunal after the Tribunal was established. The question that arose was whether the claim petition was maintainable having regard to the fact that the cause of action had arisen prior to the change of the forum for trial of a claim for payment of compensation. This Court held that the change of law operates retrospectively even if the cause of action or right of action had accrued prior to the change of forum. The claimant shall, therefore, have to approach the forum as per the amended law. The claimant, observed this Court, had a "vested right of action" but not a "vested right of forum". It also held that unless by express words the new forum is available only to causes of action arising after the creation of the forum, the general rule is to make it retrospective. The following passages are in this regard apposite:

> "5. On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of

forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well- established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective. The expressions "arising out of an accident" occurring in sub- section (1) and "over the area in which the accident occurred", mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in sub-section (3) created an obstacle in the straight application of the well- established principle of law. If the accident had occurred within 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power to condone the delay under the proviso. But if the accident occurred more than 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110-A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay under the proviso to sub-section (3), and led others to say that the tribunal will have no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110-F of the Act. While taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110-A and 110-F was a law relating to the change of forum.

6. In our opinion in view of the clear and unambiguous language of Sections 110-A and 110-F it is not reasonable and proper to allow the law of change of forum give way to the bar of limitation provided in sub-section (3) of Section 110-A. It must be vice versa. The change of the procedural law of forum must be given effect to. The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have a cheap remedy of approaching the claims tribunal on

payment of a nominal court fee whereas a large amount of ad valorem court fee was required to be paid in civil court."

10. In Hitendra Vishnu Thakur and Ors. etc. ect. v. State of Maharashtra and Ors. (1994) 4 SCC 602, one of the questions which this Court was examining was whether clause (bb) of Section 20(4) of Terrorist and Disruptive Activities (Prevention) Act, 1987 introduced by an Amendment Act governing Section 167(2) of the Cr.P.C. in relation to TADA matters was in the realm of procedural law and if so, whether the same would be applicable to pending cases. Answering the question in the affirmative this Court speaking through A.S. Anand, J. (as His Lordship then was), held that Amendment Act 43 of 1993 was retrospective in operation and that clauses (b) and (bb) of sub-section (4) of Section 20 of TADA apply to the cases which were pending investigation on the date when the amendment came into force. The Court summed up the legal position with regard to the procedural law being retrospective in its operation and the right of a litigant to claim that he be tried by a particular Court, in the following words:

"26. xxx xxx

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature. (iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

11. We may also refer to the decision of this Court in Sudhir G. Angur and Ors. v. M. Sanjeev and Ors. (2006) 1 SCC 141 where a three-Judge Bench of this Court approved the decision of the Bombay High Court in Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass and Ors. (1952) 54 Bom LR 330 and observed:

> "12....It has been held that a Court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a Court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations..."
> (emphasis supplied)

12. In Shiv Bhagwan Moti Ram Saraoji's case (supra) the Bombay High Court has held procedural laws to be in force unless the legislatures expressly provide to the contrary. The Court observed:

> "...Now, I think it may be stated as a general principle that no party has a vested right to a particular proceeding or to a particular forum, and it is also well settled that all procedural laws are retrospective unless the Legislature expressly states to the contrary. Therefore, procedural laws in force must be applied at the date when a suit or proceeding comes on for trial or disposal..."
> (emphasis supplied)

13. The amendment to the Criminal Procedure Code in the instant case has the effect of shifting the forum of trial of the accused from the Court of Magistrate First Class to the Court of Sessions. Apart from the fact that as on the date the amendment came into force no case had been instituted against the appellant nor the Magistrate had taken cognizance against the appellant, any amendment shifting the forum of the trial had to be on principle retrospective in nature in the absence of any indication in the Amendment Act to the contrary. The appellant could not claim a vested right of forum for his trial for no such right is recognised. The High Court was, in that view of the matter, justified in interfering with the order passed by the Trial Court.

14. The questions formulated by the Full Bench of the High Court were answered in the negative holding that all cases pending in the Court of Judicial Magistrate

First Class as on 22nd February, 2008 when the amendment to the First Schedule to the Cr.P.C. became operative, will remain unaffected by the said amendment and such matters as were, in the meanwhile committed to the Court of Sessions, will be sent back to the Judicial Magistrate First Class for trial in accordance with law. In coming to that conclusion the Full Bench placed reliance upon three decisions of this Court inManujendra Dutt. v. Purnedu Prosad Roy Chowdhury Ors. AIR 1967 SC 1419,Commissioner of Income-tax, Bangalore v. Smt. R. Sharadamma (1996) 8 SCC 388 and R. Kapilanath(Dead) through L.R. v. Krishna (2003) 1 SCC 444. The ratio of the above decisions, in our opinion, was not directly applicable to the fact situation before the Full Bench. The Full Bench of the High Court was concerned with cases where evidence had been wholly or partly recorded before the Judicial Magistrate First Class when the same were committed to the Court of Sessions pursuant to the amendment to the Code of Criminal Procedure. The decisions upon which the High Court placed reliance did not, however, deal with those kind of fact situations. In Manujendra Dutt's case (supra) the proceedings in the Court in which the suit was instituted had concluded. At any rate, no vested right could be claimed for a particular forum for litigation. The decisions of this Court referred to by us earlier settle the legal position which bears no repetition. It is also noteworthy that the decision in Manujendra Dutt's case (supra) was subsequently overruled by a seven-Judge Bench of this Court in V. Dhanapal Chettiar v. Yesodai Ammal though on a different legal point.

15. So also the decision of this Court in Smt. R. Sharadamma's case (supra) relied upon by the Full Bench was distinguishable on facts. The question there related to a liability incurred under a repealed enactment. Proceedings in the forum in which the case was instituted had concluded and the matter had been referred to Inspecting Assistant Commissioner before the dispute regarding jurisdiction arose.

16. The decision of this Court in R. Kapilanath's case (supra), relied upon by the Full Bench was also distinguishable since that was a case where the eviction proceedings before the Court of Munsif under the Karnataka Rent Control Act, 1961 had concluded when the Karnataka Rent Control (Amendment) Act, 1994 came into force. By that amendment, the Court of Munsif was deprived of jurisdiction in such cases. This Court held that the change of forum did not affect pending proceedings. This Court further held that the challenge to the competence of the forum was raised for the first time, that too as an additional ground before this Court and that, for other factors, the Court was inclined to uphold the jurisdiction of the Court of Munsif to entertain and adjudicate upon the eviction matter. The fact situation was thus different in this case.

17. Even otherwise the Full Bench failed to notice the law declared by this Court in a series of pronouncements on the subject to which we may briefly refer at this stage. In Nani Gopal Mitra v. State of Bihar AIR 1970 SC 1636, this Court declared that amendments relating to procedure operated retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure. In that case the trial of the appellant had been taken up by Special Judge, Santhal Paraganas when Section 5(3) of the Prevention of Corruption Act, 1947 was still operative. The appellant was convicted by the Special Judge before the Amendment Act repealing Section 5(3) was promulgated. This Court held that the conviction pronounced by the Special Judge could not be termed illegal just because there was an amendment to the procedural law on 18th December 1964. The following passage is, in this regard, apposite:

> "…. It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force--(See In re a Debtor,and In re Vernazza. The same principle is embodied in Section6of the General Clauses Act which is to the following effect:
>
> xx xx xx (Section 6 is quoted) xx xx xx
>
> …. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhal Parganus long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption

under Section 5(3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case."

(emphasis supplied)

18. Reference may also be made upon the decision of this Court in Anant Gopal Sheorey v. State of Bombay AIR 1958 SC 915 where the legal position was stated in the following words:

"4. The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. See Maxwell on Interpretation of Statutes on p. 225; The Colonial Sugar Refining Co. Ltd. v. Irving (1905) A.C. 369, 372). In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective."

19. The upshot of the above discussion is that the view taken by the Full Bench holding the amended provision to be applicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from Sessions Court to the Court of Magistrate First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us.

20. The principle of prospective overruling has been invoked by this Court, no matter sparingly, to avoid unnecessary hardship and anomalies. That doctrine was first invoked by this Court in I.C. Golak Nath and Ors. v. State of Punjab and Ors. AIR 1967 SC 1643 followed by the decision of this Court in Ashok Kumar Gupta and Anr. v. State of U.P. and Ors. (1997) 5 SCC 201.

21. In Baburam v. C.C. Jacob and Ors. (1999) 3 SCC 362, this Court invoked and adopted a device for avoiding reopening of settled issues, multiplicity of proceedings and avoidable litigation. The Court said:

> "5. The prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law…"
>
> (emphasis supplied)

22. To the same effect is the decision of this Court in Harish Dhingra v. State of Haryana Ors. (2001) 9 SCC 550 where this Court observed:

> "7. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation."
>
> (emphasis supplied)

23. In Sarwan Kumar and Anr. v. Madan Lal Aggarwal (2003) 4 SCC 147, this Court held that though the doctrine of prospective overruling was initially made applicable to the matters arising under the Constitution but subsequent decisions

have made the same applicable even to cases under different statutes. The Court observed:

> "15. The doctrine of prospective overruling was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of prospective overruling the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of doctrine of prospective overruling is left to the discretion of the court to mould with the justice of the cause or the matter before the court."
>
> (emphasis supplied)

24. In Rajasthan State Road Transport Corporation and Anr. v. Bal Mukund Bairwa (2009) 4 SCC 299, this Court relied upon the observations made by Justice Benjamin N. Cardozo in his famous compilation of lectures The Nature of Judicial Process – that " in the vast majority of cases, a judgment would be retrospective. It is only where the hardships are too great that retrospective operation is withheld."

25. The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the Madhya Pradesh High Court will not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision.

26. With the above observations, this appeal fails and is hereby dismissed.