ALLAHABAD HIGH COURT

Bhai Singh

Vs.

State (Allahabad)

Criminal Revn. No. 606 of 1958. against judgment of Civil and S.J. Budaun,

(O.H. Mootham, C.J., Raghubar Dayal and S.N. Dwivedi, JJ.)

15.03.1958. 18.12.1959

JUDGMENT

O.H. Mootham, C.J.

1. This is an application for the revision of an order of the Civil and Sessions Judge, Budaun, dated 15-3-1958, dismissing an appeal from an order of a learned Magistrate convicting the applicant of an offence under Section 19, clause (f), of the Indian Arms Act, 1878, and sentencing him to undergo rigorous imprisonment for one year.

2. The offence was committed in village Palia Danda, and as that village is north of the river Ganga the applicant was prosecuted without the sanction of the District Magistrate. It is common ground that under Section 29 of the Act the sanction of the District Magistrate for the institution of proceedings under Section 19, clause (f) is not necessary if the offence is committed north of the Ganga, although it is necessary if it be committed south of that river. The applicant contended that the descrimination made in Section 29 between the two classes of offences was unconstitutional, and he relied on *Mehar Chand v. State* [1]In that case a Division Bench of this Court held that the discrimination made in Section 29 contravened Article 14 of the Constitution and that in consequence sanction was necessary in the case of all prosecutions under Section 19, clause (f), so much of Section 29 as rendered this procedure unnecessary being void. The correctness of that decision! having been doubted, this application has been referred to this Bench.

3. At the outset of the argument the learned Advocate General informed the Court that the State did not propose to challenge the opinion expressed in Mehar Chand's case, 1959 All LJ 464 : (AIR 1959 Allahabad 660'; that Section 29 of the Act created a classification which was unconstitutional but it did question the correctness of the finding of the Court that in all cases under Section 19, clause (f), the sanction of the District Magistrate must be obtained. The

Advocate-General's contention is that the necessary consequence of the conclusion that the classification is unconstitutional is that the entire section is invalid and that the sanction of the District Magistrate is not required in any case. In the circumstances therefore we do not consider it necessary for this Bench to consider further the question of the constitutionality of the impugned

[1]1959 All LJ 464 : (AIR 1959 All 660)

section.

4. Section 29 reads thus :

> "29. Sanction required to certain proceedings under Section 19 clause (f). - Where an offence punishable under Section 19, clause (f), has been committed within three months from the date on which this Act comes into force in any State, district or place to which Section 32, clause 2 of the Act XXXI of 1860 applies at such date, or where such an offence has been committed in any part of India not being such a district, State or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency town, of the Commissioner of Police." The section therefore provides that sanction is required in two classes of cases, namely (a) where the offence has been committed within three months from the date on which the Act comes into force in any of the areas referred to in the section, and (b) where the offence has been committed elsewhere. Clause (a) has now ceased to be of practical importance, and it will be observed that this section does not provide, in respect of cases not falling in either class (a) or class (b), that the prosecution can be launched without first obtaining sanction. That is a consequence of the general law contained in Section 190 read with Section 5 of the Criminal Procedure Code

5. The unconstitutional distinction between persons charged with an offence under Section 19. clause (f), committed north of the Ganga and persons charged with the same offence committed south of that river was made by Section 29 itself. The section divides offences into two classes according to where they are committed; that division is ex hypothesi unjustified; and we can see no valid ground for holding one class to be good in law and the other bad. It is the classification itself which is bad. In our opinion the whole of the section must be held to be invalid.

6. An argument has been addressed to us, founded on that part of Article 14 of the Constitution which refers to "the equal protection of the laws", that as one of the two classes into which Section 29 divides offences provides protection to a citizen by restricting his prosecution for an offence under Section 19, clause (f), to those cases in which sanction is obtained, it is that one of the two opposing classes which should be preferred, and that accordingly the requirement of prior sanction must be regarded as the general rule. It appears to us this argument is based on a mis-conception. Protection is not in fact given only by one part of the section. Protection is given to persons residing south of the Ganga who are liable to be charged with an offence under Section 19, clause (f); it is also given to the ordinary citizen living north of the river whose

interest is best served by the prompt prosecution of persons contravening the clause in question. The phrase "equal protection of the laws" means in essence the right to equal treatment in similar circumstances. It does not provide a guide as to what those circumstances shall be. The right is equally observed if the law makes all prosecutions for a particular offence subject to the sanction of a prescribed authority or if it provides that no such sanction is necessary. It is violated if, without reasonable grounds, it provides that sanction shall be necessary, in some cases and not in others.

7. It was clearly the intention of the Legislature that sanction for a prosecution under Section 19, clause (f), should not be necessary in certain areas in the present case, north of the Ganga. The Court has held that the classification made by Section 29 is unreasonable; and that, in our opinion, is as far as it can go. The necessary consequence of holding the classification to be unreasonable is that Section 29 is unconstitutional and therefore invalid. It is we think for the Legislature then to decide what course it shall adopt. The Court in Mehar Chand's case. 1959 All LJ 464 : (AIR 1959 Allahabad 660) in declaring sanction to be necessary in all cases of a prosecution under Section 19. clause (f), has, in our opinion, altered the law and thereby encroached on the legislative power.

8. We are accordingly of opinion, with great respect, that the deduction which the Division Bench drew from its conclusion that Section 29 created an unjustified discrimination is erroneous. In our opinion the correct view is that Section 29 is invalid and that consequently the sanction of the District Magistrate to the instituting of proceedings under Section 19 (f) is no longer necessary.

9. No other point has been raised before us, and accordingly this application fails and is dismissed.
Revision dismissed.