

ANDHRA PRADESH HIGH COURT

Abdur Rahim

Vs

Joseph A Pinto

(Naik, C.J.)

13.11.1950

JUDGEMENT

Naik, C.J.

(1.) I have carefully read through the two judgments of my learned colleagues, Shripatrao and Ansari JJ. I do not feel the necessity of writing a separate elaborate judgment. They have dealt with all the points arising in the cases thoroughly and exhaustively. I entirely agree with the decisions given by them in their separate but concurrent judgments.

(2.) I also hold with them that the guarantee of equality before the law or the equal protection of the laws, contained in Article 14 of our Constitution means substantial equality of treatment under the laws. Equal treatment does not necessarily mean identical treatment. In fact, identical treatment in unequal circumstances amounts to inequality. In other words, in different circumstances the variation in legal procedure is not only permissible but necessary. Equal protection of laws does not mean protection by identical laws. Sometimes, it is necessary to abridge the ordinary procedure in the interests of justice itself. Of course, no abridgment of legal procedure which curtails the essential safeguards can be permitted. A detailed procedure in normal times and in ordinary cases may become harmful in abnormal times, or in extraordinary and special cases³. One of the reasons for appointing a Special Tribunal consisting of three Sessions Judges instead of one is to obviate the chances of error by the abridgment of the normal procedure. It is not always possible to anticipate and enumerate all the circumstances under which a case may be declared fit and proper to be tried by the Special Tribunal instead of by the ordinary Court. It may not be convenient nor advisable for the State to specify them. No fundamental right of an accused is violated in merely leaving the choice of forum to the discretion of proper authorities. Perhaps the better policy would be to state in detail the grounds of the classification but the Courts are concerned with question of law and not with the policy of the Legislature. They have only to see that the fundamental rights under the Constitution are protected. A provision to be declared unconstitutional must be offensive to the provisions of fundamental rights contained in Part III of the Constitution. Procedure is not a vested right, though there are some fundamental provisions even in procedural matters and they have to be insisted upon. It is not for the Court to insist on an elaborate procedure if in the opinion of the legislative authority, the circumstances demand an abridged one, as long as the same substantial

protections are given by both of them. The revisional and appellate powers of the High Court are always there to see whether the procedure adopted has affected any party prejudicially. (3.) THE Regulation under discussion was enacted in abnormal times and to meet an abnormal situation. THE advent of the Constitution and the fundamental rights guaranteed therein have, however, entitled the petitioners to take objection to certain of its provisions, My learned colleagues have carefully considered all the objections urged on behalf of the petitioners and have shown which provisions of the Regulation offend Article 14 of the Constitution and have, therefore, to be deleted. I may mention that some portions of the Regulation now being deleted, were, as a matter of fact, not acted upon by the Special Tribunal and it was following a procedure in accordance with our judgment; for example, in spite of the Regulation doing away with the necessity of taking down the evidence at length and permitting only a memorandum of the substance of what each witness said, this particular Tribunal has been recording the evidence of witnesses in full. Similarly, in spite of the Regulation enjoining the adoption of the procedure prescribed for summary trial and permitting the procedure prescribed for the trial of warrant cases by Magistrates, for reasons to be recorded by it, this Tribunal had adopted only the latter procedure in the cases tried by it. ;