

CALCUTTA HIGH COURT

Sukumar Pyne

Vs.

Union of India

Civil Revn. No.1428 of 1958

(J.P. Mitter, J.)

10.08.1961

ORDER

J.P. Mitter, J.

1. This Rule is the sequel to a notice by the Director of Enforcement to show cause why adjudication proceedings should not be held against the petitioner for an alleged contravention of the provisions of Section 4(1) of the Foreign Exchange Regulation Act, 1947, as modified up to 1st July, 1959. The provisions relating to such adjudication proceedings are contained in Sections 23 and 23D of the said Act.

2. Following the recovery of some foreign currency at No.311, Bow Bazar Street, Calcutta, where the petitioner along with his mother and brother carried on the business of jewellers, the said Director of Enforcement issued a notice upon the petitioner to show cause why adjudication proceedings in respect of the contravention alleged should not be held. The petitioner showed cause.

3. The petitioner's objection to the said proceedings is founded upon two grounds:

(a) Section 23(1)(a) as well as Section 23D offend against Article 14 of the Constitution and

(b) section 23(1)(a) having been substituted by an amendment of 1957, it cannot have retrospective operation in respect of the offence, if any, which took place in 1954.

4. As to the first point, there is no doubt that the amended section violates the provisions of Article 14 of the Constitution. The power which is vested in the Director of Enforcement appears to be unfettered and thus enables him to pick and choose one offender out of a number of similarly circumstanced offenders for being proceeded against under one or other of the two

modes now obtainable. The opportunities open to an offender to defend himself must vary according as he is tried by a Court or is proceeded against by the Director. This is obvious. For the same offence an offender may only be fined whereas another may be punished with imprisonment as well as with fine. The law of the matter appears to me to be now well settled by a series of decisions of the Supreme Court. I am conscious that in determining the question of the validity or otherwise of a Statute the Court will not strike down the law out of hand only because no classification appears on the face of it or because a discretion is given to Government to make the selection or classification. In such a case the Court Will examine if the impugned Statute has laid down any principle or policy for the guidance of the exercise of discretion in the matter of selection or classification. If the Statute does not lay down any principle or policy for such guidance, as here, the Court will strike down the Statute on the ground that discrimination is inherent in the Statute itself. In my view, Section 23(1)(a) offends against Article 14 of the Constitution and is accordingly Ultra vires the Constitution. That being the position, the relative provisions of Section 23D must also be condemned.

5. As to the second point, there is no doubt 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. It may be said that the amendment concerned has merely changed the venue of trial from a Magistrate to the Director of Enforcement and that, therefore, Section 23(1)(a) is merely procedural. It is to be observed, however, that whether an offender is to be dealt with by the Director of Enforcement or; is to be tried by a Court of law depends upon the unfettered discretion of the Director and that the change is not a mere change of venue of trial. The right to be tried by a Court with such other rights as may still be open to an offender can be frustrated by the Director by deciding to deal with the matter himself. In my view, where a vested right is affected, prima facie it is not a question of procedure must, therefore, hold that the provision as to an adjudication, by the Director of Enforcement cannot have any retrospective operation. 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 or by necessary intendment.

6. That being the position, the adjudication proceeding are without jurisdiction and must be quashed. I direct accordingly. The opposite parties are to pay the costs of this Rule, - hearing fee being assessed at ten gold mohurs.

7. Leave to appeal under Article 132(1) of the Constitution is granted.

Order accordingly.