

BOMBAY HIGH COURT

Radhabai Mohandas

Vs.

State of Bombay

Criminal Appln. No. 1182 of 1954

(Chainani and Gokhale, JJ.)

21.04.1955

JUDGMENT

Chainani, J.

1. This is an application in revision against the order passed by the Presidency Magistrate, Bandra, acquitting the respondent.

2. The applicant is the wife of the respondent. She married the respondent in Sind in 1941. After the partition of India the respondent and the applicant came to Bombay. They lived together at Mahim for three years. Disputes then started between them. Since some time in 1951 they have been living separately. On 8-6-1952, the respondent contracted a second marriage at Gwalior. The applicant learnt about this in August 1952 and reported the matter to the police. The police investigated the matter and then sent up a charge-sheet against the respondent under Section 5, Bombay Prevention of Hindu Bigamous Marriages Act, 1946. I will refer to this Act hereafter as "the Act". Section 5 read with Section 4(b) makes it an offence for a person domiciled in the Province of Bombay to contract a marriage during the life time of his spouse, outside the Province. The respondent denied that he had contracted a second marriage at Gwalior. He also denied that he had a domicile in Bombay. He also contended that the trying Magistrate had no jurisdiction to try him for this offence, as it had been committed outside the limits of his territorial jurisdiction. The learned Magistrate found that the respondent had contracted a second marriage with one Ambika at Gwalior on 8-6-1952. He also found that the respondent had been living at Bombay since 1948, that he intended to settle permanently in Bombay and that consequently he had a domicile in the Bombay State. He, however, accepted the respondent's contention that he had no jurisdiction to try him for this offence. He accordingly acquitted the respondent. Against the order of acquittal, which must be construed to be an order of discharge (see - '*Yusofalli Mulla v. King*'), the present application has been filed. The application was supported by the Government Pleader, who appeared for the State.

3. Mr. Mengde, who appeared for the respondent, did not challenge the findings of fact recorded by the learned Magistrate. There is also ample evidence to support these findings. Mr. Mengde, however, contended that Section 4(b) of the Act has no legal

¹ AIR 1949 PC 264

effect, as no proper legal meaning can be given to the words "domiciled in this Province" used in the section. He also contended that Section 4(b) is legislation on the subject of domicile and is consequently ultra vires of the Bombay Legislature. He further urged that the Bombay Legislature was not competent to make an act committed outside the Province a crime and that consequently Section 5 read with Section 4(b) was ultra vires of the Bombay Legislature, in so far as it made it an offence to contract a bigamous marriage outside the limits of the Province. He also urged that the trying Magistrate had no jurisdiction to try this offence, as it had been committed outside Greater Bombay.

4. Before I deal with these arguments, it is necessary to briefly summarise the provisions of the Act. The Act was passed in 1940 and it has been amended on two occasions in 1948 and 1949. The Act consists of 9 sections. The first section states that the Act extends to the whole of the Province of Bombay. The second section provides that the Act shall apply to Hindus only. The third section contains definitions.

5. The important definition is of the term "bigamous marriage" which is defined as meaning the marriage of a person during the life time of his or her spouse, if the marriage of such person with such spouse has not been dissolved or declared void by a Court of competent jurisdiction or has not been dissolved or is not void according to the custom or usage of the community, to which either of the parties to such marriage belongs. Marriages of persons, whose spouses have not been heard of for 7 years or more, are excluded from the definition Section 4 is in the following terms:-

"Notwithstanding any law, custom or usage to the contrary, a bigamous marriage shall be void,-

(a) if it is contracted in this Province after the coming into force of this Act.

(b) if it is contracted beyond the limits of this Province after the coming into force of this Act and either or both the contracting parties to such marriage are domiciled in this Province".

Section 5 states that whoever contracts a bigamous marriage which is void under Section 4 shall on conviction be punishable with imprisonment for a term which may extend to 7 years and shall also be liable to fine.

6. Section 6 makes it an offence to perform, conduct or abet any bigamous marriage in this Province, while Section 7 provides for punishment for the parent or guardian of a minor who

does any act to promote the bigamous marriage of the minor or permits it to be solemnised or negligently fails to prevent it being solemnised. Sections 8 and 8A specify the Courts which can try the offences under the Act. Section 9 provides that the offences under this Act shall be cognizable.

7. The first point raised by Mr. Mengde is that in India there is no such thing as "State domicile", that the only domicile which a person resident in India can have is Indian domicile and that consequently the words "either or both the contracting parties to such marriage are domiciled in this Province" used in Section 4(b) of the Act have no meaning and must be disregarded. Mr. Lulla, who appeared for the applicant, on the other hand, contended that there is a distinction between nationality and domicile, that domicile determines the personal status of a person, that domicile goes with a territory possessing its own system of laws, that as the State Legislatures in India are also empowered to make laws, each State in India has its own particular system of law' and that consequently persons residing in any particular State in India possess the domicile of that State, although they as well as the persons residing in other States are all citizens of the same country, India. There is considerable force in these arguments of Mr. Lulla.

"Domicile.....is an idea of law. It is the relation which the law creates between an individual and a particular locality or country":

see the observations of Lord Westbury in - *'Bell v. Mrs. Kennedy'*².. In the words of Homes, J., in *Bergner and Engel Brewing Co. v. Dreyfus'*³,

"What the law means by domicile is one technically pre-eminent headquarters, which as a result either of fact or of fiction every person is compelled to have in order that by aid of it certain rights and duties which have been attached to it by the law may be determined". (There is a distinction between domicile and nationality. This was pointed out by Lord Westbury in - *'Udny v. Udny'*⁴, where at p.457 he observed:

"The Law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions; one by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status.

The political status may depend on different laws in different countries, whereas the civil status is governed universally by one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status. For it is on this basis that the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy, or intestacy, must depend".

8. It is a settled principle that no man shall be without a domicile, and to secure this result the law attributes to every individual as soon as he is born the domicile of his father, if the child be legitimate, and the domicile of the mother if illegitimate. This has been called the domicile of origin, and is involuntary.

"Other domiciles, including domicile by operation of law, as on marriage, are domiciles of choiceDomicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place with an intention of continuing to reside there for an unlimited time.....There must be a residence freely chosen,.....and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation.

It is true that residence originally temporary, or, intended for a 'united period, may

²(1868) LR 1 HL SC and Div 307

⁴(1889) LR 1 SC and Div 441

³(1898) 172 Mass 154:

afterwards become general and unlimited, and in such a case so soon as the change of purpose, or animus manendi, can be inferred the fact of domicile is established". (Per Lord Westbury in - *'Udny v. Udny*⁵, see also Rule 7 at p.89 in Dicey's Conflict of Laws, 1949 Edn.

"In a strict and legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning". See para.41 in Story's Commentaries on the Conflict to Laws, 8th edition.

In para.44 it is stated:

"Two things, then, must concur to constitute a domicile. First, residence, and secondly the intention of making it the home of the party. There must be the fact and the intent.....it is not the mere act of inhabitancy in a place, which makes it the domicile, but it is the fact coupled with the intention of remaining there, animus manendi".

9. Two things are, therefore, necessary for the existence of a domicile (1) residence in a country, and (2) an intention to settle or reside for ever in that country, see also - *'Central Bank of India Ltd. v. Ram Narain*⁶,

10. The term domicile in its technical sense always Signifies a country or territory subject to one system of law, see note (a) to para.41 in Story's Conflict of Laws. In para 242 of Vol. VI of Halsbury's Laws' of England, 2nd Edn., it is stated:

".....All those persons who have, or whom the law deems to have, their permanent home within the territorial limits of a single system of law are domiciled in the country

over which the system extends; and they are domiciled in the whole of that country, although their home may be fixed at a particular spot within it".

In para.249 dealing with the question of change of domicile of a British subject entering the service of a foreign State, the learned author observes:

".....where that State comprises more than one system of law, a domicile is acquired in that part of the State where the individual resides". In paras.46 and 47 of Story's Conflict of Laws, the learned author gives rules relating to changes of domicile from one place to another within the same country or territorial sovereignty. In note (d) to para.45, it is observed:

"A change of domicile from one country or state to another under the same sovereign or government, as from Scotland to England, or from one of the United States to another, is more easily inferred than a change to a foreign country".

Remarks to the same effect are to be found at p.169 in Cheshire's Private International Law, 1952 Edn.

⁵ pp.457, 458)

⁶ AIR 1955 SC 36

11. Domicile, therefore, "denotes the relation between a person and a particular territorial unit; possessing its own system of law". (Cheshire, p.157). It is different from nationality or citizenship. It determines his personal status and the law applicable to him in matters such as majority or minority, marriage, divorce and succession. The law recognizes separate domicile of each territory or part of a State, which has a uniform system of law.

All persons in a territorial unit with a single system of law have the domicile of that territory, and where a State has more than one system of law. there may be a separate domicile of each part of the State with a uniform system of law. Thus in the United States of America, State domicile is universally recognised. English domicile has also always been regarded as being different from Scotch or Irish domicile, although all the three countries, England, Scotland, and Ireland have the same sovereign and are subject to the authority of the same Parliament: see - '*Whicker v. Hume*⁷' and - '*Ramsay v. Liverpool Royal Infirmary*⁸', The words "domiciled in England" are used in Section 6(1)(d), Bankruptcy Act, 1883. In '*Ex parte Cunningham*'; In re, Mithcell, (1884) 13 QBD 418.

12. Provincial domicile is also recognized in Canada. In - '*Attorney General for Alberta v. Cook*⁹', the question involved in. appeal was whether a wife, whose husband's domicile was Ontario, could sue for divorce in Alberta where she had been residing. An argument advanced before the Privy Council was that (p.448)-

"the domicil of persons settled in one of the Provinces of the Dominion of Canada is domicile not in the particular Province, but in the Dominion, in such sense that rights

dependent upon domicile within the Dominion may be determined in any Court in the Dominion having jurisdiction locally over the subject-matter, and that each such Court may summon before it a person domiciled within the Dominion and deal with such person in matters of status according to the laws in force within the territorial area of its jurisdiction".

This argument was not accepted and it was held that the domicile of a person settled in one of the Provinces of Canada is that particular Province and that the wife was not entitled to sue for divorce in a Court other than that of her husband's domicile, which was Ontario. At p.450, their Lordships observed:

"Uniformity of law, civil institutions existing within ascertained territorial limits, and juristic authority in being there for the administration of the law under which rights attributable to domicile are claimed, are indicia of domicile, all of which are found in the Provinces. Unity of law in respect of the matters which depend on domicile does not at present extend to the dominion. The rights of the respective spouses in this litigation, therefore, cannot be dealt with on the footing that they have a common domicile in Canada, but must be determined upon the footing of the rights of the parties and the remedies available to them under the municipal laws of one or other of the Provinces".

13. In Australia also there is no Australian or Commonwealth domicile and each state is regarded as a separate unit for this purpose. See Paton's Commonwealth of Australia, Vol.

⁷11858) 7 HLC 124 ⁹1926 AC 444
⁸1930 AC 588

II, 1952 Edn., pages 32, 130 and 133. The Matrimonial Causes Act, 1945, enacted by the Australian Parliament in 1945 gives right to a person "domiciled in a State" and resident in "some other State" to institute proceedings in a matrimonial cause in "that other State" under certain conditions. (See 5, 10 of the Act).

14. Under the Government of India Act and also under the Constitution each State in the Indian Union has its own Legislature, which is empowered to enact laws on certain subjects. Although therefore the laws passed by the Central Legislature may apply to all the States, each State has its own system of laws. The State Legislatures are also competent to legislate on matters such as marriage, divorce, succession, testacy, or intestacy, rights in regard to which depend upon domicile. There is no unity of laws in the Union in regard to many of these matters. In the words of the Privy Council in *'Attorney General for Alberta v. Cook*, the indicia of domicile, "uniformity of law, civil institutions existing within ascertained territorial limits, and juristic authority in being there for the administration of the law under which rights attributable to domicile are claimed" are all found in the Provinces or States. The persons residing in any State, such as the State of Bombay, and having an intention to continue residence in that State for an unlimited time or to make their permanent home in that State can therefore be said to have the domicile of that State.

15. Mr. Mengde invited cur attention to Article 5 of the Constitution, which states that at the commencement of the Constitution every person who has his "domicile in the territory of India" shall be a citizen of India. This article does not create common Indian domicile, nor is it inconsistent with there being separate State domiciles. It only specifies persons, who at the commencement of the Constitution, were to be regarded as citizens of India. They include persons, who had a domicile in the territory of India, i.e., in any part or State of India.

16. We are accordingly of the opinion that the domicile of a person voluntarily residing in a State in India and who intends to make his permanent home therein is that State. In any case the words "domiciled in this Province" used in Section 4 can be given a definite legal meaning. They signify persons who reside in the Bombay State and who have an intention to reside for ever in that State.

17. The words "domiciled in the Province of Bombay" are also used in Sub-Section (4) of Section 5 and Sub-Section (1) of Section 23 Bombay Beggars Act, 1945. In - *Vithal Maruti v. State*¹⁰, they were to mean "residence in the Province of Bombay without present intention of removing it from the Province of Bombay". There are observations in the judgment that "before the Constitution of India came into force, there was nothing like domicile in the Province of Bombay", that "there was only one domicile and that was the domicile of India". These remarks are obiter. The point does not appear to have been argued and there is no discussion of it in the judgment.

18. The respondent was residing in Bombay at the time he contracted the second marriage. The evidence also shows that he intends to settle permanently in Bombay. He is therefore a person domiciled in the State of Bombay within the meaning of Section 4(b) of the Act.

¹⁰ AIR 1952 Bom 451

19. The next point urged by Mr. Mengde was that Section 4(b) of the Act is ultra vires for two reasons. He argued that it contains legislation on the subject of domicile, a subject with regard to which a Provincial Legislature is not competent to enact any law. He also contended that it is beyond the powers of the Bombay Legislature to make an act done outside the limits of its territorial jurisdiction a criminal offence. The first argument may be disposed of briefly. The Act contains no provision as to when, how and by whom the Bombay State domicile may be acquired. In fact there is no definition of the expression "domiciled in this Province" in the Act. The whole Act deals with the subject of marriage and the words "either or both the contracting parties to such marriage are domiciled in this Province" merely describe the class of persons, to whom the provisions of the Act are made applicable. The Act therefore cannot be regarded as a legislation on the subject of domicile.

20. The Act was passed in 1946 the powers of the Provincial Legislature to enact such laws were then derived from Sections 99 and 100, Government of India Act 1935. They correspond to

Articles 245 and 246 of the Constitution. Sub-section (1) of Section 99 provided, "the Federal Legislature may make laws for the whole or any part of British India or for any Federal State and the Provincial Legislature may make laws for the Province or any part thereof". Sub-section (2) of this section provided that "no Federal law shall on the ground that it would have extra-territorial operation be deemed to be invalid in so far as it applies" to certain persons and matters specified in this sub-section. There is no similar provision with regard to a law passed by the Provincial Legislature. But as pointed out by the Privy Council in - "*Wallace Bros. and Co. Ltd. v. Commr. of I.T., Bombay*"¹¹, at pp.120-121 Sub-Section (2) of Section 99 does no more than assume that there may be some laws having an extra-territorial operation validly made pursuant to Sub-Section (1) and that it is no help one way or another in determining the authorised area of legislation.

21. Sub-section (2) of Section 100 stated that the Federal Legislature and a Provincial Legislature also had power to make laws with respect to any of the matters enumerated in list III in Schedule 7 to the Act, called the "Concurrent Legislative List". One of the matters included in entry No.6 in this list was marriage. Section 99 read with Section 100 therefore empowered the Provincial Legislature to make laws for the Province or any part thereof with respect to marriage. The Provincial Legislature could therefore make laws for all persons residing in the Province. In - *Jefferys v. Boosey*¹², Baron Parke observed (p. 926):

"The Legislature has no power over any persons except its own subjects, that is, persons natural-born subjects, or resident, or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them; and when legislating for the benefit of persons, must prima facie, be considered to mean the benefit of those who owe obedience to outlaws, and whose interests the Legislature is under a correlative obligation to protect".

The question for consideration is whether under this power the Provincial Legislature could prohibit a person amenable to its jurisdiction from contracting a marriage outside

¹¹ AIR 1948 PC 118

¹²(1854) 4 HLC 815

the limits of the Province during the life-time of his spouse.

22. The matter may first be considered apart from authority. The Provincial Legislature had power to enact a law with respect to marriage for the whole Province. It could make such laws applicable to all persons residing within its jurisdiction. It could prohibit them from performing a bigamous marriage within the Province. It could also say that no Court or authority in the Province shall recognise such marriage, whether performed within or outside the Province. It is difficult to see why it could not also require persons domiciled, i.e., having a permanent home in the Province, to obey the law even when they went outside the province temporarily for the consequences of their actions were likely to arise within the Province. The object of Section 4(b) is to compel permanent residents of the Province to obey the Provincial law with regard to

marriage and to prevent its evasion by the commission of bigamy outside the Province. It is legislation for the welfare and benefit of persons residing in the Province, and consequently a law for the Province within the legislative competence of the Provincial Legislature. The wide powers conferred by the Constitution on a State Legislature should not be interpreted so as to allow its laws to be defeated by the simple expedient of crossing the State boundary and doing the prohibited act on the other side of the border.

23. The case on which Mr. Mengde strongly relied is that of - '*Macleod v. Attorney General for New South Wales*¹³', In this case the appellant Macleod had been convicted in the Colony of New South Wales for bigamy for having married in the United States, whilst his first wife by a legal marriage was alive. The conviction was under Section 54 of the Criminal Law Amendment Act, 1883, which enacted:

"Whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage takes place shall be liable to penal servitude for seven years".

The Lord Chancellor. Lord Halsbury, in his judgment observed that if their Lordships construed the statute as it stood, and upon the bare words,

"any person, married to any other person, who marries a second time anywhere in the habitable globe" would be amenable to the criminal jurisdiction of New South Wales, if he could be caught in that Colony. That seemed to their Lordships to be an impossible construction of the statute; the Colony could have no such jurisdiction and their Lordships did

"not desire to attribute to the Colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a colony, and, indeed, inconsistent with the most familiar principles of international law" (p.457).

It was therefore necessary to limit the words so general. The words "whosoever being married" were therefore held to mean "whosoever being married, and who is amenable, at the time of the offence committed, to the jurisdiction of the Colony of New South Wales". A restricted meaning was also given to the word "whosoever" and this was "wheresoever in this Colony the offence is committed".

¹³1891 AC 485

As the offence of bigamy had been committed outside the limits of the Colony, it was held that there was no jurisdiction to try him for this offence in the Colony, and the conviction of the appellant was accordingly set aside. The Lord Chancellor also considered the constitutional position, which would have arisen if the restricted construction had not been adopted and observed:

".....Their Lordships think it right to add that they are of opinion that if the wider construction had been applied to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the bar, it would have been beyond the jurisdiction of the Colony to enact such a law.

Their jurisdiction is confined within their own territories, and the maxim which has been more than once quoted, 'Extra territorium jus dicenti impune non paretur', would be applicable to such a case.....All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and, except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever". These observations support Mr. Mengde's argument that the Bombay Legislature cannot punish an act committed outside the territories over which it has jurisdiction. These observations must however be read in the context of the facts which the Privy Council had to consider, Mr. Lulla has invited our attention to the facts of the case given in 17 Cox's Criminal Law Cases at pp. 341, 342 and to the following passage in the judgment of King, J., in 'In re, Criminal Code. Sections Relating To Bigamy', 1897-27 Canada SCR 461 at p.485 (N) from which it would appear that the appellant Macleod was not at the time of the offence a person domiciled in the Colony:

"Mr. Newcombe draws attention to the fact, appearing from the report of the case below, that the person there charged was at the time of the commission of the alleged offence (and probably at the time of the passing of the Colonial Act) a person not domiciled in the colony at all".

24. King, J., also relied on the following sentence in Lord Halsbury's judgment, which also suggests that Macleod did not have a domicile in the Colony and was therefore not amenable to its jurisdiction at the time of the offence:

"It appears to their Lordships that the effect of giving the wider interpretation to this statute necessary to sustain this indictment would be to comprehend a great deal more than her Majesty's subjects, more than any person who may be within the jurisdiction of the colony by any means whatsoever."

25. The decision of the Privy Council in 'Macleod's Case (M)' therefore was that it is not open to a subordinate Legislature like that of the Colony of New South Wales to punish for an offence committed outside the limits of the Colony of a person not domiciled in its jurisdiction and not owing allegiance to it at the time of the offence. This is in accordance with the well recognised principle that in respect of crimes committed abroad, the State exercises jurisdiction only with regard to its own subjects. A law will therefore as far as possible be construed so as not to make it applicable to foreigners in respect of acts committed outside the State. This was pointed out in - *'The Queen v. Jameson'*¹⁴, where

¹⁴(1896) 2 QB 425

Lord Chief Justice Russell of Killowen said (p.430):

".....One other general canon of construction is this that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting. That is a rule based on international law by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory".

26. The decision of the Privy Council in 'Macleod's case' will therefore not assist the respondent in this case, because he had a domicile in the Bombay State at the time he committed bigamy.

27. The question about the scope of powers conferred by Sections 99 and 100, Government of India Act, 1935, on the Central Legislature arose before the Privy Council in 'AIR 1948 PC 118'. The appellant in that case was a company incorporated in the United Kingdom. The control and management of its affairs were situated exclusively in the United Kingdom. It was a member of the firm of Wallace and Co., which carried on business in Bombay. In the previous year for the purposes of income tax the income of the company arising in British India was Rs. 17,85,831 and its income arising without British India was Rs. 7,48,427. There was no connection between the Company and British India excepting the derivation from British India of the major part of the income during the previous year and the question in issue in appeal was whether the provisions of the Indian Income-tax Act, 1922-1939, by virtue of which the whole income of the company, including that which arose without British India, was subjected to income-tax, were valid. The question was answered in the affirmative by the Privy Council. Dealing with the contention that the Legislation in regard to income-tax having an extra territorial operation was 'ultra vires' of the Central Legislature, Lord Uthwatt observed (p. 120):

"Their Lordships do not approach the matter on the formal lines embodied in these contentions. There is no rule of law that the territorial limits of a subordinate legislature define the possible scope of its legislative enactments or mark the field open to its vision. The ambit of the powers possessed by a subordinate legislature depends upon/ the proper construction of the statute conferring those powers. No doubt the enabling statute has to be read against the background that only a defined territory has been committed to the charge of the legislature.

Concern by a subordinate legislature with affairs or persons outside its own territory may therefore suggest a query whether the legislature is in truth minding its own business. It does not compel the conclusion that it is not. The enabling statute has to be fairly construed". At p. 121, it was observed:

".....The principle - sufficient territorial connection - not the rule giving effect to that principle-residence is implicit in the power conferred by the Government of India Act,

1935.

The result is that the validity of the legislation in question depends on the sufficiency for the purpose for which it is used of the territorial connection set forth in the impugned portion of the statutory test. Their Lordships propose to confine themselves to that short point and do not propose to lay down any general formula defining what territorial connection is necessary. In their view the derivation from British India of the major part of its income for a year gives to the company as respects that year a territorial connection sufficient to justify the company being treated as at home in British India for all purposes relating to taxation on its income for that year from whatever source that income may be derived. If it is so at home in British India, it is a person properly subject to the jurisdiction of the Central Indian Legislature".

28. The principle laid down by the Privy Council in this case therefore is that the territorial limits of a subordinate Legislature do not define the possible scope of its legislation and that the validity of a law made by it depends on there being sufficient territorial connection between the person, object, thing or matter, to which the law is made applicable, and the territory subject to the jurisdiction of the Legislature .

29. This principle has been applied by the Australian High Court in - '*Broken Hill South Ltd. v. Commissioner of Taxation (N. S. W.*¹⁵)', It was held in that case that Acts passed by the Parliament of New South Wales, under which interest realised outside this State on debentures, secured by the mortgage of properties within the limits of the State, was made liable to tax, were within the constitutional power of the Parliament of New South Wales to make laws for the peace, welfare and good government of the State. Dixon, J., in his judgment at p. 375 observed:

"The power to make laws for the peace, order and good government of a State does not enable the State Parliament to impose by reference to some act, matter or thing occurring outside the State a liability upon a person unconnected with the State whether by domicile, residence or otherwise. But it is within the competence of the State legislature to make any fact, circumstance, occurrence or thing in or connected with the territory the occasion of the imposition upon any person concerned therein of a liability to taxation or of any other liability.

It is also within the competence of the legislature to base the imposition of liability on no more than the relation of the person to that territory. The relation may consist in presence within the territory, residence, domicile, carrying on business there, or even remoter connections. If a connection exists, it is for legislature to decide how far it should go in the exercise of its powers". In that case the only connection between the territory and the income, which was made the occasion of the tax, was that it was interest on money secured by the mortgage of property in New South Wales. It was held that this connection was sufficient to make it competent for the State Parliament to tax this income.

30. The Supreme Court has taken the same view. In - '*State of Bombay v. United Motors (India) Ltd*¹⁵;', it was held that it is competent for a State to tax sales or purchases made outside the State, that the expression "for such State or any part thereof" in Article 246 (3) of the Constitution cannot be taken to import into entry 54 of List II the restriction that

¹⁵(1936-37) 56 CLR 337

¹⁶ AIR 1953 SC 252

the sale or purchase referred to must take place within the territory of that State, and that all that this expression means is that the laws which a State is empowered to make must be for the purposes of that State. Reference was made to the decision of the Privy Council in '*AIR 1948 PC 118*', and at p. 256, Patanjali Shastri, C.J., observed that the institutional validity of an Act does not "turn on the possession by the Legislature of extraterritorial powers but on the existence of a sufficient territorial connection between the taxing State and what it seeks to tax". This principle was reaffirmed in - '*Poppatal Shah v. State of Madras*¹⁷', At page 276 Mukherjea, J., observed:

"The entry in the Provincial List that is relevant for our purpose is Entry No.48 and that speaks of 'taxes on the sale of goods and on advertisements'. The entry does not suggest that a legislation imposing tax on sale of goods can be made only in respect of sales taking place within the boundaries of the Province; and all that Section 100(3) provides is that a law could be passed by a Provincial Legislature for purposes of the Province itself. It admits of no dispute that a Provincial Legislature could not pass a taxation statute which would be binding on any other part of India outside the limits of the province, but it would be quite competent to enact a legislation imposing taxes on transactions concluded outside the province, provided that there was sufficient and a real territorial nexus between such transactions and the taxing province".

31. In '*State of Bombay v. Chamarbaugwala*¹⁸', the learned Chief Justice stated (p.320):

"In our opinion, the correct principle which should be applied in order to ascertain whether the State Legislature is competent to pass an impugned piece of legislation is in the first place to look at the Lists annexed to the Seventh Schedule of the Constitution in order to determine whether the Legislature has legislated upon a topic within its competence But even if it has legislated upon a topic within its competence, the next question that must arise is whether there is a territorial nexus between the subject matter and the State....."

If therefore a person affected by the legislation were to challenge it on the ground that he is affected by the legislation, although he or his business or the transaction in which he is engaged has no connection with the State at all, then it would be open to the Court to say that the legislation is extra territorial in its effect". According to these observations, therefore a law is not to be regarded as having extra-territorial effect, if there is territorial nexus between the person or his business or transaction to which the law is made applicable, and the State.

32. It is clear from these authorities that the words "for the Province or any part thereof" in Section 99, Government of India Act mean "for the purposes of the Province or any part thereof", that it is competent for a State Legislature to apply its law to acts done outside the State and that the validity of such a law would depend not upon the possession by the Legislature of extraterritorial powers, but upon there being sufficient territorial connection between the State and the act to which it seeks to make the law applicable.

Mr. Mengde has urged that all these cases were decided with regard to the powers of the

¹⁷ AIR 1953 SC 274

¹⁸ 57 Bom LR 288

Legislature relating to taxation and that the principle laid down therein should not be extended. The principle is with regard to the scope and ambit of powers of the Legislature. It will therefore apply in respect of all subjects in regard to which the Legislature is empowered to make laws. The principle is that it is open to the Legislature to attach within its territorial limits legal consequences to certain acts done outside these limits.

33. In this case, the Act has been made applicable to certain marriages contracted outside the State of Bombay. These are marriages, either or both the contracting parties to which are domiciled in the State. There is sufficient territorial connection between such marriages and the Bombay State. That connection is provided by a party to the marriage possessing the domicile of the Bombay State. In enacting Section 4(b), the Legislature cannot therefore be said to have exceeded the territorial limits of its powers. The Legislation is with regard to the marriage of persons domiciled in the Province. It is therefore a law for the Province, which the Provincial Legislature was competent to enact.

34. We are therefore of the opinion that Section 5 read with Section 4 (b) of the Act, in so far as it makes it an offence for a person domiciled in the Bombay State to contract a bigamous marriage beyond the limits of the State, is 'intra vires'. The question, whether the section, in so far as it punishes a person not domiciled in the State for contracting a bigamous marriage outside the State is intra vires' is not a question which we are called upon to decide in this appeal and we do not decide it.

35. The last point, which arises for determination, is whether the learned Presidency Magistrate had jurisdiction to try the respondent for the offence with which he was charged. The learned Magistrate has followed, as indeed he was bound to the decision of Shah, J., in - '*Bai Nirmalabai v. Revadas*¹⁹', Mr. Justice Shah held in that case that the only effect of Section 8 is to make the offences under Section 5 triable by a Presidency Magistrate or by a Magistrate of the First Class, but that it does not dispense with the necessity of such Magistrate having territorial jurisdiction to try the offences. The learned Government Pleader and Mr. Lulla have urged that the view taken by Shah, J., requires reconsideration. Section 5, Criminal Procedure Code is in the following terms:

"(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any 'other' law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but 'subject' to any 'enactment' for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences".

The trial of the offences under a law other than the Indian Penal Code is therefore to be held in accordance with the provisions of the special law. If it does not contain any such provisions, it would be held according to the provisions of the Code of Criminal Procedure. Sections 28 to 30 of the Code specify the Courts which can try different kinds of offences, while Chap. XV contains provisions for determining the place where any offence is to be tried.

¹⁹ AIR 1954 Bom 337

36. Section 29 provides:

"(1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by 'such' Court.

(2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable." Under Sub-Section (1) therefore, if a special law mentions a Court, then the offences under that law are to be tried by that Court and the provisions of the Code in this regard will not apply.

37. There are three kinds of offences under the Prevention of Hindu Bigamous Marriages Act. These are mentioned in Sections 5, 6 and 7 of the Act. Section 5 as it originally stood stated.

"..... whoever not being a minor contracts a bigamous marriage which is void under Section 4 shall be deemed to have committed an offence under Section 494 of the Indian Penal Code."

As the offences under this section were punishable under Section 494, Indian Penal Code, it was not necessary to make any provision in the Act for the trial of such offences. Provision was therefore only made for the offences punishable under Sections 6 and 7 of the Act. This was contained in Section 8 which was in these terms:

"Notwithstanding anything contained in Section 190 of the Code of Criminal Procedure, 1898, no court other than that of a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence punishable under Section 6 or 7 of this Act."

Offences under Sections 6 and 7 are punishable with imprisonment which may extend to six

months. If no provision had been made for the trial of these offences in the Act, then under Section 29(2) read with the Second Schedule to the Code, these offences would have been triable by any Magistrate, including a Magistrate of 2nd or 3rd class. The effect of Section 8 therefore was that only a Court of a Presidency Magistrate or a Magistrate of the First Class could take cognizance of these offences. There was no provision in the Act regulating the place of trial. Under Section 5(2) of the Code, the place of the trial was therefore to be determined in accordance with the provisions of the Code.

38. In 1948, the Act was amended. Section 5 as amended provides,

"whoever not being a minor contracts a bigamous marriage which is void under Section 4, shall on conviction be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine."

The original Section 8 was also repealed in 1948, and replaced by two new Sections 8 and 8A. They are in the following terms:

"8. Notwithstanding anything contained in the Code of Criminal Procedure, V of 1898, an offence under Section 5 may be tried by any Court of a Presidency Magistrate or a Magistrate of the First Class.

Notwithstanding anything contained in the Code of a Criminal Procedure, V of 1898, no Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under Section 6 or 7." These sections are worded differently from each other and also from the original Section 8. The Legislature must have made the change with some purpose. The interpretation of Section 8A does not present much difficulty. It only excludes the jurisdiction of 2nd and 3rd Class Magistrates to try offences punishable under Sections 6 and 7.

39. The language used in new Section 8, which makes provision for the trial of offences under Section 5, is, however, materially different. If this section had not been there, then under Section 29 read with the Second Schedule to the Code these offences would have been triable only by a Court of Session, for they are punishable with imprisonment for 7 years. Section 8, however, states that they may be tried by any Court of a Presidency-Magistrate or a Magistrate of the First Class. In order to make them so triable, it was not necessary to use the words "notwithstanding anything contained in the Code of Criminal Procedure" in Section 8. If the only object of the Legislature in enacting this section was that an offence under Section 5 may only be taken cognizance of by either a Presidency Magistrate or a Magistrate of the First Class, it would have been sufficient to say that an offence under Section 5 may be tried by any Court of a Presidency Magistrate or a Magistrate of the First Class. Under Section 29(1) of the Code, only these Magistrates would then have been competent to take cognizance of and try this offence and the provisions of the Code in this behalf would not have applied. Also in that case it was not necessary for the Legislature to repeal the original Section 8 and to enact two new separate

sections in its place. The object would have been achieved by inserting the figure "5" before the figure "6" in the original Section 8. That amendment would have been sufficient to secure that an offence under Section 5 should be tried only by a Presidency Magistrate or a Magistrate of the First Class.

40. Mr. Lulla has urged and we are inclined to accept his submission that the words "notwithstanding anything contained in the Code of Criminal Procedure" in the present Section 8 were inserted with some other purpose and that is to make an offence under Section 5 triable at any place within the State. Such a provision is necessary in the case of offences committed outside the State, which are also made punishable by Section 5.

41. The words "Notwithstanding anything contained in the Code" are very wide and would include even the provisions of the Code contained in Chap XV relating to the place of trial. If these provisions do not apply, then an offence under Section 5 can, be tried by any Presidency Magistrate or any Magistrate of the First Class, regardless of the place where it is committed.

42. Under Section 5 of the Act the Legislature has made it an offence to contract a bigamous marriage outside the State, if either or both the contracting parties to such marriage are domiciled in the State. By this section, the Legislature has created a new offence. It must therefore be deemed to have intended to provide for the trial of such offences. If it is held that the words "Notwithstanding anything contained in the Code" in Section 8 do not include the provisions of Chap XV and that the place of trial of an offence under Section 5 is to be determined in accordance with the provisions of the Code, then as the offence of bigamy committed outside the State is wholly committed outside the local limits of jurisdiction of any Court in the State and as no consequence of it, such as is referred to in Section 179, ensues in the State, the offence cannot be taken cognizance of by any Court in the State. Such an interpretation would defeat the Legislature's object in enacting Section 4(b) and creating this special offence.

43. Mr. Mengde has urged that the Legislature could not have intended to depart from the ordinary provisions of law, so far as the offences committed within the State are concerned. But the Legislature had also to make provision for offences committed outside the State. As these could not be said to have been committed within the jurisdiction of any particular Court in the State, the Legislature evidently thought that the best course would be to make them triable by any Presidency Magistrate or any Magistrate of the First Class. The words used in Section 8 'Notwithstanding anything, contained in the Code' are wide and unambiguous and would include the provisions of Chap XV. There is no justification for restricting the words so general as referring to Section 29 only. A statute ought to be so construed that no part of it shall be "superfluous, void or nugatory" - *The Queen v. Bishop of Oxford*²⁰, at p. 261 (U). Section 8 must therefore be interpreted so as to avoid Section 4(b) being rendered nugatory. This can only be done by giving the words "notwithstanding anything contained in the Code" in Section 8 of the Act their plain meaning, and that is "notwithstanding anything contained in any section in the

Code". The provisions of the Code for determination of the place of trial will therefore not apply in the case of offences punishable under Section 5. Such offences will consequently be justiciable throughout the State.

44. With respect, we therefore do not agree with the view taken by Mr. Justice Shah in 'AIR 1954 Bombay 337. In our opinion an offence under Section 5 can be tried by any Presidency Magistrate or any Magistrate of the First Class, whether it is committed within the territorial limits of his jurisdiction or outside it.

45. Under Section 182, Criminal Procedure Code where an offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. The learned Government Pleader and Mr. Lulla both contended that in the case of a bigamous marriage contracted outside the State by a person domiciled in the Bombay State, one of the ingredients of the offence under Section 5 read with Section 4(b) of the Act is that the offender must have a domicile in Bombay.

It was therefore urged that as one of the acts constituting the offence with which the respondent was charged, viz., taking up residence in the Bombay State with intent to continue such residence permanently, was done in Bombay, the offence could be tried in Bombay under Section 182 of the Code. We do not think there is much force in this argument. Possessing a domicile in the State of Bombay cannot in our opinion be regarded as one of the several acts constituting the offence within the meaning of Section 182 of the Code. The offence essentially consists in contracting a bigamous marriage. The criminal act is the marriage and not the possession of Bombay State domicile. When such a marriage is performed outside the Bombay State, no part of the offence can be said to

²⁰(1879) 4 QBD 245

have taken place in the Bombay State.

46. In view of our finding that the learned Magistrate had jurisdiction to try this offence, the application must succeed. Accordingly we set aside the order acquitting the respondent, and direct that the learned Magistrate should proceed further with the case in accordance with law.

47. We are thankful to the learned advocates, who appeared in this case and particularly to Mr. Lulla, for the assistance we received from them in this case.

Application allowed.