EAST PUNJAB HIGH COURT

Ram Singh

Vs.

The Crown (East Punjab Court)

Criminal Appeal No. 649 of 1948

(Bhandari, Achhru Ram and Falshaw, JJ.)

20.04.1949. 12.05.1949

JUDGMENT

Falshaw, J.

1. Ram Singh alias Kundan Singh has been convicted by the Sessions Judge, Ludhiana, under Section 302, Penal Code, for the double murder of Diwan Bahadur Diwan Pindi Dass Sabharwal and his wife Shrimati Parvati Devi, and sentenced to death. He has appealed and his case is also before us for confirmation of the death sentence.

2. At the outset the legal objection has been raised that the trial in the Court of the Sessions Judge was illegal. The grounds on which this objection is based are as follows :

3. Since 20th March 1947 the Punjab Public Safety Act, II [2] of 1947, has been in force at first in the United Punjab, and since the partition in the East Punjab. Section 2 (b) of this Act reads, "dangerously disturbed area means any area declared as such by notification, by the Provincial Government, or any part thereof". Under this provision the municipal area of Ludhiana was declared to be a dangerously disturbed area by the Punjab Government by Notification No. 1516 dated 20th March 1947, and subsequently by Notification No. 101-HG/47/175, dated 23rd August 1947 and published in the Gazette of 29th August 1947, the East Punjab Government declared as dangerously disturbed areas all districts in the Jullundur Division except Kangra. This included the district of Ludhiana. Under the Act the declaration of an area as dangerously disturbed involved certain changes in the procedure for the trial of criminal cases which are contained in Chap. IV, the relevant portions of which read as follows :

> "35. (1). All offences under this Act, or under any other law for the time being in force in a dangerously disturbed area, and in any other area all offences under this Act and any other offence under any other law which the Provincial Government may certify to be triable under this Act shall be tried by the Courts and according to the procedure prescribed by the Code :
> Provided that in all cases the procedure prescribed for the trial of summons oases by

Chap. XX of the Code shall be adopted, subject in the case of summary trials to the provisions of Sections 263 to 265 of the Code.

* * * * *

37. For the purpose of trials under this Act, the Code shall be deemed to have been amended as follows :

(1) (i) For Sections 208 to 220 inclusive the following shall be deemed to have been substituted, namely :

"When it appears from a police report that the offence is one triable exclusively by a Court of Session or one which in the opinion of the Magistrate ought to be tried by such Court the Magistrate shall on perusal of the police report or when the accused appears or is brought before him, make over the case to the Sessions Court having jurisdiction and shall forward the accused if in custody and shall send all police reports relating to the case to that Court; and that Court shall thereupon proceed with the trial of the case following the procedure for the trial of summons cases.

(ii) All references in the Code to commitment shall be deemed to refer to the action prescribed by this section.

(2) Section 268 and Section 350 of the Code shall be deemed to have been omitted."

It may be mentioned that Sections 208 to 220, Criminal Procedure Code, comprise all except the first two sections in Chap. XVIII which is headed, "Of enquiry into cases triable by the Court of Session or High Court," and Section 268 occurs in Chap. XXIII, which is headed, "Of trials before High Courts and Courts of Session," and it is prescribed therein that all trials before a Court of Session shall be either by jury, or with the aid of assessors. In other words in an area declared to be dangerously disturbed all cases triable by the Court of Session, or which a Magistrate on perusing the police papers thought should be tried by a Court of Session, were to be sent by the Magistrate direct to the Court of Session with a simple order under Section 37 (1) (i), the ordinary provisions regarding commitment proceedings being done away with altogether, and in the Sessions Court the cases were to be tried by the Sessions Judge according to the procedure prescribed for the trial of summons cases and without the aid of assessors or a jury. The present case, being under Section 302, Penal Code, and therefore ordinarily triable by Court of Session, was quite rightly sent by the Magistrate in whose Court the challan was first presented to the Court of the Sessions Judge by an order dated 30th September 1948 which reads :

"Commitment Order,

This is a challan under Section 302, Penal Code, against Ram Singh alias Kundan Singh.....Under Section 37, Public Safety Act 1947, this case is exclusively triable by the Sessions Court as a summons case. The accused is, therefore, committed to the Court of Session at Ludhiana to stand his trial for the offence abovementioned. Calendar of witnesses is enclosed."

The actual trial, however, in the Court of the Sessions Judge did not start until 18th November 1948, and in the meantime in the East Punjab Government Gazette of 29th October 1948 Notification No. 7146-H dated 22nd October had appeared to the following

effect :

"In exercise of the powers conferred by Clause (b) of Section 2, Punjab Public Safety Act, 1947, and all other powers enabling him in this behalf, the Governor of East Punjab is hereby pleased to cancel the following notifications."

Then follows a list of four notifications including the two to which I have referred above declaring the municipal area and the district of Ludhiana to be dangerously disturbed areas. The learned Sessions Judge proceeded with the trial of the case on 18th November 1948 and following days in accordance with the procedure prescribed for the trial of summons cases, and it was only after the defense evidence had closed and the case was at the stage of arguments on 26th November that the objection was raised on behalf of the accused that in consequence of the fact that the district of Ludhiana had ceased to be a dangerously disturbed area by the notification appearing in the gazette of 29th October 1948 the regular procedure for the trial of Sessions cases ought to have been followed. The learned Sessions Judge in a separate order dated 27th November rejected this objection principally on the grounds that the offence had taken place within the limits of the district while it was still a dangerously disturbed area and the case had been committed to the Sessions Court on 30th September before the notification cancelling the previous notification had appeared, and he then proceeded to record his judgment on the merits of the case convicting and sentencing the accused to death.

4. The learned counsel for the appellant has again raised the objection that once the district of Ludhiana had ceased to be a dangerously disturbed area, since the offence was not one under the Punjab Public Safety Act or any other law certified by the Provincial Government to be triable under the Act, the ordinary provisions of the Criminal Procedure Code regarding commitment proceedings and the procedure for the trial of sessions cases with the aid of assessors at once came into force again and, therefore, ought to have been followed. In fact, it is his case that the order of the Magistrate forwarding the case to the Sessions Court under Section 37 (1) of the Act dated 30th September 1948 even though it was legal at the time it was passed, had become illegal, and the case ought to have been sent back by the learned Sessions Judge for proper commitment proceedings. It is obviously to be regretted that the point was not raised in the lower Court until after the voluminous evidence of 37 prosecution witnesses and 2 defence witnesses had been recorded, but although the point might well have been raised at an earlier stage than that at which it was raised, it is a point which obviously has to be dealt with at whatever stage it is raised, and moreover it is a point which is bound to arise in connection with several other appeals pending in this Court in cases in which it has never yet been raised at all. The position adopted on behalf of the Crown is that once the case was legally committed to the Sessions Court by an order under Section 37 (1) (i), Public Safety Act, it was quite legal for the learned Sessions Judge to continue with the trial according to the further provisions of the section in spite of the fact that the district had ceased in the meantime to be a dangerously disturbed area. The learned Advocate-General relied in support of his contention chiefly on the provisions of Section 6 (e), General Clauses Act X [10] of 1897, and the similar provisions contained in Section 4, Punjab General Clauses Act. Section 6, General Clauses Act, begins with the words "where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not" –

and sub-sections (e) reads,

"effect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The opening words of Section 4, Punjab General Clauses Act, I [1] of 1898, are :

"Where this Act or any Punjab Act repeals any enactment then, unless a different intention appears, the repeal shall not" and the words of sub-sections (e) are identical with those of the sub-section in the Central Act except that the words "or Regulation" are omitted. It is contended that the cancellation of the notifications declaring the town and District of Ludhiana to be dangerously disturbed areas is tantamount to the repeal of the relevant provisions regarding procedure contained in the Public Safety Act, and that since the present case was a legal proceeding which was pending at the time of the repeal the case could be continued as if the repeal had not taken place. In support of this reliance is placed on the observation of Spens, C.J., in the case reported as *Piare Dusadh v. Emperor*[1], to the effect that on the principle embodied in Section 6 (e) the result of the repeal of an enactment on cases pending at the time of the repeal would be that they would continue as if the enactment had not been repealed. It was, however, further observed that this is subject to the qualification that the repealing enactment contains no provision or indication to the contrary. The reply to this argument, however, appears to be that in the first place a notification under Section 2 (b), Public Safety Act, cancelling a previous notification under the same section is not in any sense a repealing Act, and in fact the Public Safety Act still remains in force, and in the second place, even if such a notification were to be treated as equivalent to a repealing Act no void was left in the law relating to procedure, since the effect of the repeal was the immediate restoration of the relevant provisions of the Criminal Procedure Code. The main point of contention appears to be whether the General Clauses Act in any way affects mere changes in procedure or in other words whether either party, the prosecution or the accused, has any 'right' in any particular form of procedure within the meaning of the word used in Section 6 (e) of the Central Act and Section 4 (e), Punjab Act. Three cases have been cited which actually relate to Sessions cases. The first of these, which was cited by the learned Advocate General, is *Srinivasachari v. The Queen*[2], The facts in that case were that a number of accused were on trial on charges of which some were at the time the trial commenced triable by a jury and others were not so triable and in accordance with the practice then obtaining, the jurors were empanelled as assessors in respect of the charges

[1] AIR 1944 FC 1 : (45 Cr LJ 413)

[2] 6 Mad 336

they were not competent to try as jurors. The trial was protracted and

while it was actually going on the Code of Criminal Procedure of 1882 came into force, it

being provided in Section 269 thereof that where on a trial some charges are triable by a jury and others are not ordinarily so triable, all the charges should be tried by a jury. It was also provided in the same Act, that the provisions of the Act were to be applied, as far as may be, to all cases pending in any criminal Court on 1st January 1883. In the circumstances the Sessions Judge converted the persons empanelled as assessors into jurors in respect of the charges they commenced to try as assessors. It was held by a Division Bench that by virtue of Section 6, General Clauses Act, the trial must be conducted under the rules of procedure in force at the commencement of the trial. The second case, also cited by the learned Advocate General, is *Emperor v. Fitzmaurice*[3], The facts in that case were that a European Quarter-Master Sergeant was prosecuted along with an Indian accused on charges under Sections 420 and 477-A, Penal Code, and on his first appearance before the commit ting Magistrate on 7th May 1923 the Quarter-Master Sergeant claimed to be tried as a European. The commitment order was passed on 11th June 1923, when the provisions of chap. XXXIII, Criminal Procedure Code of 1898, relating to trials of European British subjects by jury were in force, but this right was taken away by Act XII [12] of 1923, which came into force on 1st September 1923. The trial came on in the Court of an Additional Sessions Judge in October 1923 and after that the objection was raised on behalf of the prosecution that the accused was no longer entitled to trial by a jury but should be tried only with assessors. This contention was overruled by the Additional Sessions Judge on the ground that the trial had commenced from the date of commitment, i. e. before Act XII [12] of 1923 came into force, but although this view of the law was overruled by Zafar Ali and Scott-Smith, JJ., who held that clearly the trial of an accused person in the Court of Session only begins when he appears in that Court, and after the assessors or jurors have been chosen, they went on to hold that the right of trial by a jury vested in the accused by the Criminal Procedure Code of 1898 was a substantive right and not a mere matter of procedure and, therefore, where the commitment was made prior to the coming into force of the new Code of 1923, but the trial in the Sessions Court was held after its coming into force, the accused's right of trial by jury was not lost. On the other hand the learned counsel for the appellant has cited the Full Bench decision reported as *Shreekant Pandurang v. Emperor*[4], In that case a number of accused were arrested on 6th September 1942 and on 5th October they were produced in the Court of a Magistrate. As some of the charges against them were exclusively triable by Court of Session the Magistrate on 31st October committed the accused for trial in the Court of the Sessions Judge of Thana, where cases were triable with a jury. The Special Criminal Courts Ordinance II [2] of 1942 was applied to the Province of Bombay from 26th October and on 7th December the Government of Bombay made an order under Section 5 of the Ordinance directing the Assistant Judge of Thana, who was a Special Judge appointed under the Ordinance, to try the accused. Some revision applications filed on behalf of the accused in the High

[3] AIR 1925 Lah 446 : (27 Cr LJ 421)

[4] AIR 1943 Bom 169: (44 Cr LJ 616 FB)

Court at Bombay were dealt with by a Full Bench consisting of Beaumont, C.J., and

Divatia and Weston, JJ., We are not concerned with the portion of their judgment dealing with the attack which was made on the validity of the Special Criminal Courts Ordinance as a whole but only with the contention raised on behalf of the accused that the provisions of the Ordinance could not be applied to their case after it had been committed to the Sessions Court in the ordinary way. On this point Beaumont, C.J., observed :

"To my mind, any case or offence which is awaiting trial can be placed for trial before a Special Judge. If the trial bad commenced difficulty might arise, but in the present case the trial had not commenced. It is not necessary to express any opinion as to whether a case can be put before a Special Judge, the trial of which has already commenced in one of the ordinary Courts. But if the trial has not commenced, it seems to me plain, that under Section 5, the case can be placed before a Special Judge, and I see no reason why this Court should not give effect to the plain and natural meaning of the words used. The view of the Patna High Court, with which the other High Courts seem to agree, that a case cannot be transferred after the Magistrate has taken cognizance, is based on the ground that the Ordinance must be construed so as not to interfere with vested rights, and if that view is wrong, as I think it is, the basis of the decision falls to the ground."

The matter is more fully dealt with in his judgment by Divatia, J., who has observed :

"On the second point about the applicability of the Ordinance to the present case, the contention on behalf of the petitioner is that although the Ordinance relates to criminal procedure, it cannot divest the accused of certain vested rights which they had when the Government order applying the Ordinance to the present case was made. The contention is that certain rights relating to the trial, viz., trial by jury, the right of appeal in case of conviction and even the right of bail throughout the pendency of the criminal proceedings, are substantive and vested rights in the accused which could not be taken away by changing the procedure after the commencement of the criminal proceedings. On this point reliance has been placed not only in the arguments before us but also in the several judgments recently given by other High Courts on the analogy between civil actions and criminal proceedings. It may be taken as established that a right of appeal, a right to be tried by jury and even a right to get bail are substantive rights. The question, however, is at what stage they would come into existence in the sense of being such vested rights as cannot be taken away by subsequent legislation. The analogy of trial of civil cases on that point does not seem to me to be quite appropriate. As held in *Colonial Sugar Refining Co. Ltd. v. Irving*[5], it is quite true that the right to appeal would begin on the date of the trial of the civil suit, and to the same effect is the decision of the Calcutta High Court in *Sadar Ali v. Dalimuddin*[6], in which it is observed that a suit, appeal and second appeal are really but steps in a series of proceedings connected by an intricate unity. When we come, however, to the application of this principle to criminal cases, the difficulty is that it is not in

[5]1905 AC 369 : (74 LJPC 77)

[6]56 Cal 512 : AIR 1928 Cal 640 FB

every criminal case that the trial begins when cognizance of the complaint is taken by a Magistrate. In cases which could be tried by a Magistrate, the trial may begin when cognisance was taken but in cases which are exclusively triable by a Court of Session the trial does not begin unless and until an order of commitment is made. All the previous proceedings before the commitment are stages of enquiry at the end of which the accused may or may not be committed. It is only if the accused is not thus discharged either under Section 209 or under Section 213, sub-sections (2), that the order of commitment to the Sessions Court is made, and thereafter the trial takes place. It is really when the trial begins that the right to be tried by a jury and the right of appeal might arise. Till then they are not acquired rights because at any stage the accused, might be discharged by the Magistrate. That being so, if the law relating to the procedure of the trial is changed before the date of the trial, the accused is liable to be tried by the amended procedure as he has not acquired any vested right to be tried by the original law. It is only if the law is changed after the trial begins that an accused might claim to be tried by the original law as the right had vested in him. The general principle is that a statute is not to be construed to have a greater retrospective operation than its language renders necessary, and that no person has a vested right in any course of procedure, and therefore, alterations in procedure are to be retrospective unless there is some good reason against it."

5. The present case is the converse of that case in the sense that the change in the law during the pendency of the case was in favor of the accused and it is the prosecution which is claiming that the shorter and more summary form of procedure was rightly adopted although at the time of the trial the ordinary provisions of the Criminal Procedure Code have been restored and were again in full operation. The principle involved, however, is the same and the authorities cited show that the question involved is clearly one of some difficulty, and in view of this fact and also the fact that quite a considerable number of cases will be affected by the decision we consider that the question should be referred to a larger Bench. We would accordingly lay the case before my Lord the Chief Justice for the appointment of a larger Bench to decide the following questions :

"(1) When a case is sent to the Court of Sessions under the provisions of Section 37 (1), Punjab Public Safety Act at a time when the district is declared to be a dangerously disturbed area, and before the trial in the Court of Session actually commences the district ceases to be a dangerously disturbed area, should a Sessions Judge continue with the trial under the provisions of Section 37 (1) of the Act or is the trial to be governed by the ordinary provisions of the Code of Criminal Procedure regarding sessions trial?

(2) If the latter view is correct, is it necessary that the case should be sent back to the Magistrate for commitment proceedings under Chap. 18, Civil Procedure Code, or can the order of commitment under Section 37 (1) be treated as a proper order of commitment and should only the provisions of Chap. 23 relating to the trial of cases in the Court of Session be applied from the stage of the commencement of the actual trial in the Sessions Court?

Since the decision may necessitate the retrial of a considerable number of cases it is desirable that the Bench which is to consider the matter should be constituted as early as possible.

Bhandari, J.

6. I agree.

Judgment of the Full Bench

Achhru Ram, J.

7. The facts giving rise to this reference lie within a very narrow compass and may be briefly stated as follows :

8. The appellant is charged with having committed, during the night between 31st July and 1st August 1948, the murder of Diwan Bahadur Pindi Dass and his wife in the railway train at some place within Ludhiana District. At the time of the alleged commission of the offence a notification issued by the Provincial Government under Clause (b) of Section 2, Punjab Public Safety Act of 1947, declaring Ludhiana District to be a dangerously disturbed area was in force. In accordance with the provisions contained in Section 37 of the aforesaid Act the Magistrate made over the case to the Sessions Court at Ludhiana on 30th September 1948. Before the trial of the case could be started in the Sessions Court, on 20th October 1948 the Government of the East Punjab issued a notification cancelling the notification by means of which Ludhiana District had been declared to be a dangerously disturbed area. This notification was published in the Provincial Gazette on 29th October 1948. The trial started in the Sessions Court at Ludhiana on 18th November 1948 and by means of his judgment delivered on 8th December 1948 the learned Sessions Judge convicted the appellant and sentenced him to death subject to confirmation of the sentence by this Court. When the appeal came up for hearing before a Division Bench consisting of my learned brothers Bhandari and Falshaw, JJ., the learned counsel for the appellant urged that Ludhiana District having ceased to be a dangerously disturbed area before the commencement of the trial, it was not open to the learned Sessions Judge to try the case in accordance with the procedure laid down for the trial of summons cases and that the whole trial, and consequently also the conviction, were accordingly vitiated. A similar objection to the procedure adopted for the trial of the case seems also to have been taken before the learned Sessions Judge, although not before the conclusion of the trial, and to have been overruled by him. The Bench after hearing the learned counsel for the parties at length has referred the following two questions to a Full Bench for decision;

> (1) When a case is sent to the Court of Session under the provisions of Section 37 (1), Punjab Public Safety Act, at a time when the district is declared to be a dangerously disturbed area, and before the trial in the Court of Session actually commences the district ceases to be a dangerously disturbed area, should a Sessions Judge continue with the trial under the provisions of Section 37 (1) of the Act or is the trial to be governed by the ordinary provisions of the Code of Criminal Procedure regarding sessions trials ?
> (2) If the latter view is correct, is it necessary that the case should be sent back to the Magistrate for commitment proceedings under Chap. 18, Criminal Procedure Code, or

can the order of commitment under Section 37 (1) be treated as a proper order of commitment and should only the provisions of Chap. 23 relating to the trial of cases in the Court of Session be applied from the stage of the commencement of the actual trial in the Sessions Court?

9. The case was accordingly laid before us and we have heard Mr. Harbans Singh Doabia, counsel for the appellant, and Mr. Sarv Mitter Sikri, counsel for the Crown, at considerable length in support of their respective contentions.

10. After giving due weight to the arguments advanced by Mr. Doabia I have no doubt in my mind that the answer to the first question referred to the Pull Bench should be that in the circumstances mentioned in the question the Sessions Judge should continue with the trial under the provisions of Section 37 (1), Punjab Public Safety Act.

11. Chapter 18 in the Code of Criminal Procedure prescribes the procedure to be followed in relation to inquiry into cases triable exclusively by the Court of Session. This chapter consists of Sections 206 to 220. Section 206 describes the classes of Magistrates who are invested with jurisdiction to commit a person for trial to the Court of Session or High Court for any offence triable by such Court. The power to commit any person for the purpose is conferred on a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class or any Magistrate not being a Magistrate of the third class empowered in this behalf by the Provincial Government. Sections 207 to 220 lay down the procedure which a Magistrate holding an inquiry into a case in which any person is accused of having committed an offence triable exclusively by the Court of Session or by the High Court should follow. Section 208 provides for the Magistrate hearing the complainant and any evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate himself. Section 209 provides that when the evidence referred to in the preceding section has been taken, and the Magistrate has if necessary examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, if he finds that there are not sufficient grounds for committing the accused person for trial, he may discharge him after recording his reasons for the same. The section also empowers the Magistrate to discharge the accused at any previous stage of the case if, for reasons to be recorded by him, he considers the charge to be groundless. Section 210 provides for a charge being framed in a case where, upon evidence taken by him and the examination of the accused, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial. Section 211 provides for the accused against whom a charge has been framed under the preceding section being required at once to give in orally or in writing a list of the persons, if any, whom he wishes to give evidence on his trial. The section also contains a provision for the Magistrate in his discretion allowing the accused to give in any further list of witnesses at a subsequent time. Section 212 empowers the Magistrate in his discretion to summon and examine any witness named in any list given in to him under the preceding section. Section 213 provides for the Magistrate making an order committing the accused for trial by the Sessions Court or the High Court, as the case may be, when the accused, on being required to give in a list of his witnesses under Section 211, has declined to do so, or when he has given in such list and the witnesses, if any, included therein whom the Magistrate desires to examine have been summoned and examined under Section 212, the Magistrate having the power to cancel the charge and discharge the accused if, after hearing

the witnesses for the defence, he is satisfied that there are not sufficient grounds for committing the accused to take his trial before the Court of Session or the High Court, as the case may be. Section 215 provides for a commitment made under Section 213 by a competent Magistrate being quashed by the High Court on a point of law. Section 216 provides for summons being issued to witnesses for the defense to appear before the Court to which the accused has been committed to take his trial. Section 217 provides for steps being taken to assure the attendance of the complainants, witnesses for the prosecution and witnesses for the defense before the Court to which the accused has been committed to take his trial. Section 218 provides for the commitment being notified to any person appointed by the Provincial Government in this behalf and for sending the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence to the Court to which the accused has been committed for trial. Section 219 empowers the Magistrate committing an accused to the Court of Session or to the High Court, as the case may be, to summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over to appear and give evidence in the Court to which the accused has been committed. Section 220 provides for the Magistrate committing the accused by warrant to custody until and during the trial, subject to the provisions of the Code regarding the taking of bail. Chapter 23 of the Code prescribes the procedure to be followed in trials before High Courts and Courts of Session. It is not necessary to examine in detail all the provisions of this Chapter. Reference for the purposes of the present case seems to be necessary only to just a few of them.

12. Section 268 provides that all trials before a Court of Session shall be either by jury, or with the aid of assessors. Section 271 lays down that when the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. Sections 284 and 285 provide for the choosing of the assessors. Sections 286 to 296 lay down the procedure to be followed after the commencement of the trial. Section 309 prescribes the procedure to be followed at the conclusion of trials in cases tried with assessors.

13. Chapter 20 lays down the procedure to be followed at the trial of summons cases by Magistrates.

14. Section 35, Punjab Public Safety Act, reads as follows :

> "(1) All offences under this Act, or under any other law for the time being in force in a dangerously disturbed area, and in any other area all offences under this Act and any ether offence under any other law which the Provincial Government may certify to be triable under this Act shall be tried by the Courts and according to the procedure prescribed by the Code;
>
> Provided that in all cases the procedure prescribed for the trial of summons cases by Chapter 20 of the Code shall be adopted, subject in the case of summary trials to the provisions of Sections 263 to 265 of the Code.
>
> (2) For the avoidance of doubt, It is hereby declared that the provisions of sub-sections (1) shall apply to the trial of offences mentioned therein committed before the commencement of this Act, and in a dangerously disturbed area committed before the

date of the notification under Clause (b) of Section 2 in respect of it."

According to the provisions of this section all offences under the Act are to be tried by the Courts competent to try such offences under the provisions of the Code of Criminal Procedure in accordance with the manner provided by that Code in Chapter 20 for the trial of summons cases, subject of course in the case of summary trials to the provisions of Sections 263 to 265 of the said Code. In areas declared to be dangerously disturbed areas under Section 2 (b) of the Act offences under other laws for the time being in force are also to be similarly tried. The section also gives the Provincial Government the power to certify any other offences under laws other than the Punjab Public Safety Act for being tried similarly even in areas which have not been declared to be dangerously disturbed areas.
Section 37 of the Act reads as follows :

"For the purpose of trials under this Act, the Code shall be deemed to have been amended as follows :
(1) (i) For Sections 208 to 220 inclusive the following shall be deemed to have been substituted, namely -
When it appears from a police report that the offence is one triable exclusively by a Court of Session or one which in the opinion of the Magistrate ought to be tried by such Court the Magistrate shall on perusal of the police report or when the accused appears or is brought before him, make over the case to the Sessions Court having jurisdiction and shall forward the accused, if in custody and shall send all police reports relating to the case to that Court; and that Court shall thereupon proceed with the trial of the case following the procedure for the trial of summons cases.
(ii) All references in the Code to commitment shall be deemed to refer to the action prescribed by this section.
(2) Section 268 and Section 350 of the Code shall be deemed to have been omitted. . . ."

The remaining part of the section is not material for the purposes of the present case.

15. It will appear from the relevant portions of Section 37 quoted above that where in a case triable exclusively by a Court of Session the police report is put before a Magistrate having under Section 206 of the Code the power to commit any person accused of that offence for trial to the Court of Session, or the accused appears or is brought before him, such Magistrate has to make over the case to the Sessions Court having jurisdiction and to forward the accused if in custody and send all police reports relating to the case to that Court without holding any inquiry and without framing any charge as provided in Sections 208 to 220 and without complying with any of the other provisions contained in those sections and the Sessions Court is thereupon to proceed with the trial of the case, following the procedure for the trial of summons cases. The section further provides that in all relevant provisions of the Code relating to such a case any reference to commitment is to be deemed to refer to the making over of the case by the Magistrate to the Sessions Court. According to the second sub-section the Sessions Judge is to try the case alone and not with the assessors by reason of Section 268 being deemed to have been omitted.

16. In the present case, it is indisputable that the Magistrate rightly acted in accordance with the provisions of sub-sections (1) of Section 37 in making over the case to the Sessions Court at Ludhiana. As a result of the action taken by the Magistrate on 30th September 1948 under sub-sections (1), the learned Sessions Judge, Ludhiana, became properly seized of the case as from that date and it is quite clear that if the trial had started before 20th October 1948, when the notification declaring Ludhiana District to be a dangerously disturbed area was cancelled, the case would have bad to be tried in accordance with the procedure laid down in the Code for the trial of summons cases. The question which we are required to consider in the present case is whether the case had to be tried or could be tried as otherwise than a summons case by reason of the cancellation of the said notification and by reason of Ludhiana District having ceased to be a dangerously disturbed area before the commencement of the trial.

17. The effect of Ludhiana District being declared to be a dangerously disturbed area within the meaning of Section 2 (b), Punjab Public Safety Act, may reasonably be taken, in view of the provisions of Sections 35 and 37 of the Act to be virtually to repeal the provisions of the Code of Criminal Procedure contained in Sections 208 to 220 and 268 in so far as the said district was concerned and also to enact a new provision applying the procedure provided by the Code for trial of summons cases also to cases exclusively triable by the Sessions Court. Similarly the cancellation of the notification declaring Ludhiana District to be a dangerously disturbed area may reasonably be taken as resulting in the above-mentioned provisions of the Criminal Procedure Code, which for the time being had remained in a state of suspended animation, being revived and re-applied to the said district, and in the repeal of the provisions applying the procedure prescribed for trial of summons cases to the trial of cases triable exclusively by a Sessions Court.

18. A large body of authority was cited before us by the learned counsel for the appellant in support of the proposition that procedure in judicial proceedings, including criminal trials, has to be governed by the law in force at the time the proceedings take place and that any change in the law of procedure must govern the proceedings pending at the time of such change. This proposition of the law is wholly unexceptionable and the learned counsel for the Crown did not challenge it. It is well settled that no one has any vested right in any procedural rule and that, therefore, any change in the procedural law has a retrospective effect in the sense of being applicable even to judicial proceedings initiated before the change, provided of course this can be done without affecting any substantive rights acquired by any of the parties to the proceedings before the change. It is, however, equally well-settled that the validity or operation of any order validly passed or any act validly done by a judicial tribunal under the procedural law for the time being in force cannot be affected by any subsequent change in the said law. It, therefore, follows that the action taken by the Magistrate under the provisions of sub-section (1) of Section 37, on 30th September 1948, in making over the case to the Sessions Court cannot be affected by the subsequent cancellation of the notification under Section 2 (b), in respect of Ludhiana District and the consequent change of procedure applicable to the trial of cases like the present in the said district. By reason of that action the learned Sessions Judge was properly and validly seized of the case on the day the Provincial Government chose to make an order for the cancellation of the notification and he continued to be seized of that case even after the said Government had cancelled the notification.

19. When it is said that a change in the procedural law has a retrospective operation, it only

implies that the new rules of procedure coming into existence as a result of the change should be applied even to the pending proceedings. These new rules, however, can be applied only to such pending proceedings as are actually covered by them. They cannot be applied to proceedings for which they do not even purport to provide and to which they are otherwise clearly inapplicable. If there are any proceedings which are not covered by the new rules or for which the new rules do not provide, it is obvious that the Courts shall have to deal with those proceedings in accordance with the law in force at the time of initiation of those proceedings. The retrospective operation given to a rule of adjective law cannot be taken to destroy the operation of another rule of the same law in relation to proceedings for which the new rule does not provide which proceedings had been properly and legally initiated in accordance with that other rule and at a time when the said rule was actually in force.

20. In The *Crown v. Akbar Ali Shah*[7], sanction for the prosecution of the respondent under Section 194, Penal Code, had been obtained at a time when the old Section 195, Criminal Procedure Code, of 1898, as it existed before the amendment of 1923, was in force. That section provided that a Court could take cognisance of an offence punishable under Section 194, Penal Code with the sanction of the Court in which or in relation to any proceedings in which the said offence had been committed. Even a complaint had been instituted in pursuance of that sanction by the party concerned before the amendment of 1923 came into force. By the amending Act 18 of 1923 which came into force on 1st September 1923 it was enacted that no Court was to take cognizance of an offence punishable under Section 194, Penal Code, when such offence was alleged to have been committed in, or in relation to, any proceedings in any Court, except on the complaint in writing of such Court or of some other Court to which such Court was subordinate. Although the Court in which or in relation to the proceeding in which the offence was alleged to have been committed had sanctioned the prosecution of the accused on 4th December 1922 and a complaint had been filed in pursuance of that sanction on 4th June 1923 by reason of certain delays in the Court to which the complaint had been made over for trial the case did not in fact come on for hearing till sometime after the coming into force of the aforesaid amending Act. The question arose whether the case was governed by the amended

[7]7 Lah 99 : (AIR 1926 Lah 134)

Section 195 and could not proceed in the absence of a complaint by the Court in which or in relation to the proceeding in which the offence was alleged to have been committed. Harrison, J., negatived the contention that the case wag governed by the amended section and held that the change in the law during the pendency of the case did not take away the jurisdiction of the Court to proceed with the trial of the complaint which had been properly instituted and that the proceedings in the case were governed by the old Code. The reason for the decision is obvious. Although the amendment in the Code being an amendment in the procedural law was normally to have a retrospective operation, it did not contain any provision applicable to a case in which a complaint had already been filed by a private individual after obtaining the requisite sanction, and therefore that case could not be affected by it even if the widest possible retrospectivity was given to its provisions.

21. A somewhat similar question arose before a Full Bench of the High Court of Madras in *Ramakrishna Iyer v. Sithai Ammal*[8], In that case, a Sub-Magistrate had granted sanction under Section 195, Criminal Procedure Code, as it stood before the amendment of 1923 for prosecuting a person under Section 211, Penal Code, for preferring a false charge of dacoity against another, and in pursuance of the sanction, a prosecution had been instituted before the amendment of the

Code repealing Section 195 came into force. Under the provisions of Clause (b) of Section 195 as it existed before the amendment, the District Magistrate had jurisdiction to revoke the sanction, The District Magistrate was moved to revoke the sanction granted by the Sub-Magistrate but after the amending Act of 1923 had come into force : Under the new Act the District Magistrate had no power to pass an order revoking any sanction. The question that the Full Bench was called upon to decide was whether in the circumstances of the case the District Magistrate could entertain the petition and on such petition make an order revoking the sanction. The Full Bench answered the question in the affirmative. Although the decision of the Full Bench proceeded on the ground that the right of a person to apply to higher authorities to revoke a sanction against him was not a matter of mere procedure, but was a substantive right, and could not, therefore, be affected by a later amending statute in the absence of express words to that effect, in delivering the judgment of the Full Bench Coutts-Trotter, C.J., referred with approval to some dicta of Lord Blackburn in *James Gardner v. Edward A, Lucas*[9], which seem to be of more general application. Those dicta are quoted at p. 603 of the report and run as follows :

> "The general rule, not merely of England and Scotland but, I believe, of every civilized nation, is expressed in the maxim nova constitution futuris formam imponere debet non prceteritis. Prima facie any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think, it is perfectly settled that, if the Legislature intended to frame a new procedure that instead of proceeding in this form or that, you should proceed in another and a different way, clearly there by-gone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of

[8]48 Mad 620 : (AIR 1925 Mad 911 : 27 Cr LJ 91 FB)

[9](1878) 3 AC 582

> procedure are always retrospective unless there is some good reason or other why they should not be...."

In Maxwell on Interpretation of Statutes, 9th Edn., we find the following observations at p. 233 :

> "The general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it."

Obviously where a procedural law is inapplicable to a particular proceeding pending at the time it comes into force, it may be said that there are good reasons against the proceedings not being allowed to be affected by it and in favour of such proceedings being carried to their logical conclusion in accordance with the law under which they came into existence. In *Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commissioner, Delhi*[10], their Lordships of the Judicial Committee made certain observations at p. 290 which appear to lead to the same conclusion. Their Lordships said :

> "The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the *Colonial Sugar Refining Co. v. Irving*[11], where it is in effect laid down that, while provisions of a statute dealing merely with

> matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them....."

22. Where the provisions of a statute dealing with matters of procedure are inapplicable to a certain proceeding pending at the time the statute came into force, they must be regarded as textually inadmissible so far as those proceedings are concerned.

23. The provisions of the Code of Criminal Procedure which were in a state of suspended animation in Ludhiana District at the time the learned Sessions Judge of that district became seized of the present case, and which were resuscitated as a result of the cancellation of the notification declaring Ludhiana District to be a dangerously disturbed area, do not contain any provision in accordance with which the learned Sessions Judge could deal with or dispose of the case. It cannot be seriously contended that it was not his duty to dispose of the case of which he was seized and that he could allow it to remain pending and undisposed of for an indefinite period. If he were to try the case in accordance with the procedure laid down in Chap. XXIII for the trial of Sessions cases the accused had to be arraigned before him under Section 271. No trial in a Sessions case can commence before a Sessions Judge without compliance with the provisions of the aforesaid section which requires that when the Court is ready to commence the trial, the accused shall appear or be brought before it; and the charge shall be read out in Court and explained to him and he shall be asked whether he is guilty of the offence charged, or claims to be tried. No charge having been framed against the accused in the present case, Section 271 could not be

[10]9 Lah 284 : (AIR 1927 PC 242)
[11](1905 AC 369 : 74 LJPC 77)

complied with and as a result the procedure prescribed in the following sections could not be followed. It was urged by the learned counsel for the appellant that the learned Sessions Judge could himself frame a charge against the accused under the provisions of Section 226. That section runs as follows :

> "When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges."

This section is applicable only when a person has been committed for trial without a charge or with an imperfect or erroneous charge. The words "committed for trial without a charge" evidently appear to have a reference to commitments provided for in Sections 437 and 526 of the Code. Section 437 provides that when, on examining the record of any case under Section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge of District Magistrate, improperly discharged. Section 526 provides that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any criminal Court subordinate

thereto, or that some question of law of unusual difficulty is likely to arise, or that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or that an order under this section will tend to the general convenience of the parties or witnesses, or that such an order is expedient for the ends of justice, or is required by any provision of this Code, it may inter alia order that an accused person be committed for trial to a Court of Session. Inasmuch as in both these cases the commitments will take place without any charge being framed against the accused a provision had to be made for a charge being framed against him before the commencement of the trial in accordance with the provisions of Section 271 and the provision in Section 226 seems clearly to be intended to cover such cases. The Sessions Judge could not frame a charge under the aforesaid section in the present case for the simple reason that the accused had not been committed to his Court for trial. An order made under sub-sections (1) of Section 37, Punjab Public Safety Act cannot be considered to be an order of commitment. It is merely an order, or, to be more accurate, an executive act of the Magistrate by which he made over the case to the Sessions Court. Section 226 presupposes a commitment for trial without a charge or with an imperfect or erroneous charge. In the absence of any commitment the section does not become applicable.

24. It was urged by the learned counsel for the appellant that in view of the provisions of Clause (2) of sub-sections (1) of Section 37 reference to commitment in Section 226 should be deemed to refer to the making over of the case by the Magistrate to the Sessions Court. This contention of the learned counsel is, however, manifestly fallacious, According to him on cancellation of the notification under Section 2 (b), Section 37 ceased to have any application. It could not, therefore, be resorted to for the purpose of interpreting Section 226.

25. If the contention of the learned counsel for the appellant were to be accepted and it were to be held that after the cancellation of the notification the present case could not be tried in accordance with the manner provided in Section 35, Punjab Public Safety Act, even though the learned Sessions Judge was already seized of it, a deadlock will result which will be incapable of solution. The procedure provided in the Code for the trial of sessions cases will be inapplicable, and there will be no other procedure according to which the learned Sessions Judge will be able to hear and dispose of the case.

26. For the reasons given above, I am clearly of the opinion that, the first question referred to this Full Bench should be answered in the manner indicated above.

27. In view of the answer proposed by me to the first question, the second question does not arise. I may, however, say that even if my answer to the first question had been that on the cancellation of the notification under Section 2 (b), the case should not be tried by the learned Sessions Judge in accordance with the provisions of Section 37 (1) of the Act and that the trial was to be governed by the ordinary provisions of the Code of Criminal Procedure regarding Sessions trials, I would have held that in the absence of any provision in the Code to that effect the case could not be sent back to the Magistrate for taking commitment proceedings under Chap. XVIII of the Code. The Magistrate having duly made over the case to the learned Sessions Judge in accordance with the provisions of the law then in force and the Code containing no provision for the remission of the case by the learned Sessions Judge to the Magistrate with a direction for taking proceedings under Chap. XVIII, the learned Sessions Judge could not be deemed to have any power to make an order to that effect.

Bhandari, J.

28. I agree.

Falshaw, J.

29. I agree.
Answer accordingly.