

(1958) 05 AHC CK 0020
In the Allahabad High Court
Case No : Criminal Revision No. 172 of 1957

Babu Ram and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-05-1958

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1898 (CrPC) — Section 193(2)

Citation : AIR 1958 All 838 : (1958) 28 AWR 616 : (1958) CriLJ 1446

Hon'ble Judges : J.N. Takru, J;B.R. James, J

Bench : Division Bench

Advocate : S.N. Misra, for the Appellant; D.P. Uniyal, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Takru, J.—This revision application is directed against .1 judgment of the learned Sessions Judge of Budaun by which he affirmed in appeal a judgment of the learned Assistant Sessions Judge of that place convicting and sentencing each of the applicants u/s 147 I. P. C. to one and a half years" R. I. and under Sections 295/149 332/149; 333/149 and 188 I. P. C. to one and a half years R. I. two and a half years" R. I., four years" R. I. and six months" R. I. respectively. Shyam Lal was further convicted and sentenced u/s 148 I. P. C. to two and a half years" R, I. and Babu Ram was also convicted u/s 426 I. P. C. and sentenced to three months" R. I. The sentences in all cases were ordered to run concurrently.

2. The revision application first came up for hearing before our brother Vishnu Dutt who referred it to a Division Bench in view of the importance of the question of law involved in it.

3. The prosecution case may be outlined briefly. Every year in the month of Moharram a tazia procession is taken out in village Ahmed-nagar Asauli in the District of Budaun. This procession after passing through village Naithwa terminates at village Balsi. In 1954 that procession was to start in the morning of

9th of September. In order to ensure against all eventualities the police took due precaution and even Section 144 Cr. P. C. was promulgated at various places including village Naithwa.

The case for the prosecution is that on the morning of 9-9-1954 the Tazia procession started from village Ahmadnagar Asauli for village Bilsa accompanied by Sri R. L. Vilodia the officiating Tahsildar of Sahaswan, Sri H. S. Mehrotra, the Station Officer P. S. Bilsa and a number of police constables. When the procession had passed through the Muslim part of village Naithwa and had reached the Hindu Abadi it was faced by a crowd of 20 or 25 Hindu rioters armed with spears, kantas lathis, guns and swords near the house of Sannu and Nannu dhobis as a result of which the procession could not proceed further.

Thereupon the Station Officer and the Tahsildar tried to pacify the rioters and drew their attention to the order which had been promulgated under S, 144 Cr. P. C. but the latter did not pay any heed thereto. One of them by the name of Umrai burnt the Tazia and assaulted Constable Shafiq Ahmad, another by the name of Kewal assaulted constable Daya Shariker with a sword, and cut two of his fingers, a third Balbir set fire at two places; a fourth by the name of Babu Ram set fire to the house of Sannu and Nannu while eight or ten persons indulged in throwing brick-bats from the roofs of the neighbouring houses.

Realising that the situation was out of control the tahsildar ordered the police to open fire. The latter fired six rounds as a result of which Umrai died on the spot while Hem Raj received a few gun-shot injuries. Thereafter the police arrested Hemraj, Babu Ram, Gopi Dwarka, Anokhey and Salik on the spot while the remaining rioters succeeded in running away.

4. A first information report of the incident written by S. O. Mehrotra and signed by Sri Vilodia the Tahsildar was lodged at the police station at 1.1-55 O'clock the same morning in which the main facts of the prosecution case were narrated as stated above and twenty one persons, including the ten applicants of this revision, were nominated as the culprits. As already stated six of them were arrested on the spot. Of the remaining culprits, Khem Karan, Ram Prasad Roshan Lal, Gayan Chandra and Gyan Swarup Brahman surrendered themselves in Court while the remaining culprits were arrested on various dates during the course of the investigation.

5. Five of the prosecution witnesses, namely Nisar, Abdul Muqni, Farzand Alt, Allah Baksh and Sharf Ullah who were members of the tazia procession knew the persons named above from before and hence they were able to supply their names at the time of the writing out of the first information report. Some of the Constables who accompanied the procession also knew some of the rioters. As for the rest, they were put up for identification on various dates and were correctly identified by the police witnesses though a few errors were committed by them here and there.

After completing their investigation, the police submitted a charge-sheet against

nineteen persons. The learned Judicial Officer after conducting a preliminary enquiry committed all those persons to the court of session. The learned Sessions Judge acting u/s 193(2) of the Code of Criminal Procedure transferred the trial of that case to the court of the Assistant Sessions Judge. Of the nineteen who had been sent up for trial, the learned Assistant Sessions Judge convicted and sentenced sixteen under the Various sections referred to above, the imprisonment being less than four years, while he acquitted the remaining three of all the said charges. The convicted persons thereupon filed an appeal before the learned Sessions Judge and the latter by his judgment dated the 17th of January, 1957 maintained the conviction and sentences of ten of them and acquitted the remaining six. The convicted ten have now come up in revision to this Court.

6. The defence of the applicants was as follows :

Babu Ram, Tika Ram, Hemraj, and Ram Prasad denied the prosecution case and offered a counter version of the incident. According to them when the Tazia procession reached near the house of the former the police demanded the removal of the Chappar of his house as it was said to come in the way of the procession. Babu Ram refused, whereupon the S. O. got very angry and asked the police constables to burn the chappar. Thereupon the Chappar was set fire to.

Just then Tika Ram, Hemraj, Ram Prasad, Kewal, Umrai the deceased along with four or five other persons happened to arrive there and Babu Ram drew :heir attention to the highhandedness of the police. Thereupon they attacked the police constables and :he processionists presumably in the exercise of their right of private defence of property. They admitted that Kewal had a sword with which he assaulted constable Daya Shankar, and that the Tahsildar thereupon ordered firing. They denied the promulgation of any order u/s 144 Cr. P. G. The other applicants also denied the prosecution case and stated mat they were not present on the spot and had been falsely implicated.

7. In support of their case, the prosecution examined fifteen witnesses while the applicants examined eleven. Both the courts below after a careful perusal of the record were agreed that the case had been fully established under all the counts against all the ten applicants and the latter were therefore convicted and sentenced as stated above.

8. The first point which was urged before us by Sri S. N. Misra learned counsel for the applicants, was that inasmuch as the power which is given to a Sessions Judge u/s 193(2) Cr. P. C. to transfer a case to an Assistant Sessions Judge is unguided and unfettered it is discriminatory in nature and as such is hit by Article 14 of the Constitution of India and is ultra vires. The relevant portion of Section 193 Cr. P. C. runs thus :

"(2).....Assistant Sessions Judge shall try such cases only as the Sessions Judge of the division, by general or special order, may make over to them for trial".

9. Sri Misra's contention was that inasmuch as that section did not lay down any rules or directions for the guidance of a Sessions Judge in the matter of transferring cases, so that he could pick out the case of one accused from those of others in a like situation without giving any reason therefore and thereby deprive an accused "whose case had been transferred of his right to prefer an appeal to the High Court while others similarly situated would continue to possess that right, the said section was hit by Article 14 of the Constitution and was ultra vires.

As such, he contended, the trial and conviction of the applicants in the present case were unsustainable and were liable to be set aside. Sri D. P. Uniyal, learned counsel for the State, refuted this contention and urged that the power given to Sessions Judge u/s 193 (2) Cr. P. C. is not a naked and arbitrary power, since there is a valid classification implicit in it which controls the exercise of that power. The classification being based upon the question of sentence which in the opinion of a Sessions Judge is likely to be imposed in a particular case.

Since u/s 31 (3) of the Cr. P. C. an Assistant Sessions Judge is not empowered to pass a sentence of imprisonment for a term exceeding ten years, the classification consists of cases in which the Sessions Judge is of the opinion that sentences exceeding ten years are likely to be imposed and cases in which they are likely to be ten years or less. There being this classification, learned counsel for the State contended that there was no room for the argument that a particular accused was discriminated against with reference to others similarly situated.

10. In support of these rival contentions a number of decisions of the Supreme Court and of the Bombay High Court were cited at the bar. Sri S. N. Misra relied inter alia upon *The State of West Bengal Vs. Anwar Ali Sarkar*, ; *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, . *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another*, ; *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, .

While Sri D. P. Uniyal relied upon *Ratilal Panachand Gandhi Vs. State of Bombay*, ; *The State of Punjab Vs. Ajaib Singh and Another*, . *Pannalal Binjraj Vs. Union of India (UOI)*, , and *Asgarali Nazarali Singaporawalla Vs. The State of Bombay*, .

11. We have examined the cases referred to above and note that the common feature of all the cases cited by Sri Misra is that the provisions which were impugned therein were provisions which conferred powers upon a State Government or an Administrative Tribunal or an executive authority and they did not lay down any rules or directions subject to which those powers were to be exercised. None of those cases deals with powers which under similar circumstances, are conferred upon a regular judicial authority. The point raised by Sri Misra, though a large one, has fortunately ceased to be res integra ever since the decision of the Supreme Court in (S) *Pannalal Binjraj Vs. Union of India*

(UOI), , As such a consideration of the other decisions cited by learned counsel is no longer necessary. In the case of Panna Lal Binjraj (G), the constitutionality of Section 5 (7-A) of the Income Tax Act, 1922, was challenged on the ground of discrimination akin to that raised in the present case. The relevant portion of the said section runs as follows :--

"5(7-A); The Commissioner of Income Tax may transfer any case from one I.T.O. subordinate to him to another, and the Central Board of Revenue may transfer any case from any one I.T.O. to another Such transfer may be made at any stage of the proceedings and shall not render necessary the re-issue of any notice already issued by the I.T.O. from whom the case is transferred."

It will thus be seen that except for difference in names the material part of that section is *pari materia* with the provisions of section 193 (2) Cr. P. C. quoted earlier in this judgment. Their Lordships of the Supreme Court repelled the contentions based upon inequality and discrimination which were raised on, behalf of the appellant. We reproduce below the relevant excerpts from their judgment in order to highlight the points decided by them. Say their Lordships :

"The infringement of a right u/s 64 (1)) and (2) (This section we may mention, confers a right on an assessee to be assessed by the Income Tax Officer of the particular area where he resides or carries on his business) by the order of transfer u/s 5(7-A) of the Act is not a material infringement. It is only a deviation of a minor character from the general standard and does not necessarily involve a denial of equal rights for the simple reason that even after such transfer the case is dealt with under the normal procedure which is prescribed in the Act. The production and investigation of the books of account, the enquiries to be made by the Income Tax Officer and the whole of the procedure as to assessment including the further appeals after the assessment is made by the Income Tax Officer are the same in a transferred case as in others which remain with the Income Tax Officer of the area in which the other assessee resides or carry on business. There is thus no differential treatment and no scope for the argument that the particular assessee is discriminated against with reference to others similarly situated"

again they say :

"Though Section 5 (7-A) is a provision for administrative convenience, nevertheless this power which is given to the commissioner of Income Tax and the Central Board of Revenue has to be exercised in a manner which is not discriminatory. No rules or directions having been laid down in regard to the exercise of that power in particular cases, the appropriate authority has to determine what are the proper cases in which such power should be exercised having regard to the object of the Act and the ends to be achieved.

The cases of the assessee which come for assessment before the income tax authorities are of various types and no one case is similar to another. There are complications introduced by the very nature of the business which is carried on

by the assesseees and there may be, in particular cases, Such widespread activities and large ramifications or interrelated transactions as might require for the convenient assessment of Income Tax the transfer of such cases from one Income Tax officer to another.

"In such cases the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, has to exercise its discretion with due regard to the exigencies of tax collection. Such discretion would necessarily have to be vested in the authority concerned and merely because the case of a particular assessee is transferred from the Income Tax Officer of an area within which he resides or carries on business to another Income Tax Officer, whether within or without the State will not by itself be sufficient to characterize the exercise of the discretion as discriminatory.

Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation." It may also be remembered that this power is vested not in minor officials but in top ranking authorities like the Commissioner of Income Tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officers concerned.

"This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. There is, however, a presumption that public officials will discharge their duties honestly and in accordance with the rules of law".

at another place they say;

"There may be cases where improper execution-of power will result in injustice to the parties. However, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation & where there is an abuse of such power the parties aggrieved are not without ample remedies under the law What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the owner itself

and finally they observe :

"The power which is vested in the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, u/s 5 (7-A) of the Act is not a naked and arbitrary power, unfettered, unguided or uncontrolled so as to enable the authority to pick and choose one assessee out of those similarly circumstanced thus subjecting him to discriminatory treatment as compared with others who fall within the same category. The power is guided and controlled by the purpose which is to be achieved by the Act itself, viz., the charge of Income Tax, the assessment and collection thereof, and is to be exercised for the more convenient and efficient collection of the tax. "A wide discretion is given to the authorities concerned, for the achievement of that purpose, in the matter of the transfer of the cases of the assesseees from one Income Tax Officer to another

and it cannot be urged that such power which is vested in the authorities is discriminatory in its nature." (The italics here into " ") are ours).

12. In our opinion the aforesaid observations apply mutatis mutandis to Section 193(2) of the Code of Criminal Procedure. If in the said observations we were to substitute the words "Sessions Judge" in place of the "Commissioner of Income Tax" and "Assistant Sessions Judge" in place of the "Income Tax Officer", "they would apply with equal, if not greater force, to the contention of Sri Misra in regard to Section 193 sub-s. (2) of the Criminal Procedure Code. The Supreme Court held in favour of the constitutionality of Section 5(7-A) of the Income Tax Act even though the authority exercising the powers under that section was of a quasi judicial nature. It follows, therefore, that the power, which u/s 193 (2) Cr. P. C. is exercised by a regular judicial authority and which power is further subject to the classification implied therein, as urged by Sri Uniyal, would a fortiori be constitutional. We are consequently satisfied that Section 193(2) of the Code of Criminal Procedure is not hit by Article 14 of the Constitution and is not ultra vires.

13. Learned counsel for the applicants did not seriously address us on the merits of his revision application. Nevertheless by way of abundant caution we perused the judgment of the learned Sessions Judge and his discussion of the individual cases of the applicants and as a result of our perusal we are satisfied that there is ample evidence on the record both oral and documentary for holding that the prosecution had succeeded in establishing their case against all the applicants beyond reasonable doubt The conviction of the applicants was therefore fully justified and must be upheld. As for the sentences we are satisfied from the facts and circumstances of the case that they do not err on the side of severity Hence no question of their mitigation arises.

14. For the reasons stated above we affirm the conviction and sentences , of the applicants and dis miss their revision application. Applicants Shyam, Lal, Tika Ram, Hemraj, Khem Karan, Gayan Swarup, Ram Prasad, Gayan Chandra and Roshau Lal were granted bail for the pendency of this revision application. They shall surrender forthwith and serve out the sentences imposed upon them.