
(1951) 03 AP CK 0002
In the Andhra Pradesh High Court

Gesulal and Another

APPELLANT

Vs

State of Hyderabad

RESPONDENT

Date of Decision : 12-03-1951

Acts Referred:

Constitution of India, 1950 — Article 11, 14, 374

Citation : (1951) CriLJ 901

Hon'ble Judges : Srinivasa Chari, J;Shripat Rao, J;Mahomed Ahmed Ansari, J

Bench : Full Bench

Judgement

1. A challan was filed on 21-10.1950 against four persons under Sections 359, 397 & 405 Hyderabad Penal Code, & while the case was pending before the Sp, Mag, Hyderabad, a notfn. was issued by the Secretary, Home Dept., u/s 495, Hyderabad Criminal P.C. transferring the case from the file of the Sp Mag. to that of the Chief City Mag. Hyderabad. This order of transfer of the Govt. was questioned by two of the accused Gesulal & Gajanan before the Chief City Mag. who overruled the objection & posted the case for evidence. Against this order, Gesulal & Gajanan have filed Revn. Petns. to this Ct. & also have invoked the jurisdiction of this Ct. for the issue of a writ of certiorari for quashing the order of transfer. These petns. came for hearing before a D. B. of this Ct. and, having regard to the importance of the constitutional questions involved in the cases, they were referred to this F.B. We heard the arguments of the learned advocates in extense & we must say that the respective advocates have ably argued the cases.

2. The first contention of the learned advocate for the petnrs. is that Section 495, Hyderabad Criminal P.C. is inconsistent with the provisions of the Const. Ind. in that it violates the fundamental rights guaranteed under the Constitution. His main argument is that Article 14, Const. Ind. affords to all persons the equal protection of the laws & by reason of the transfer of the case from the Ct. of the Sp. Mag. to the Chief City Mag. one right of appeal which had accrued to him on the initiation of the criminal proceedings before the Sp. Mag. & which is a

fundamental right had been infringed. He elaborated his argument by saying that if the case was heard by the Sp. Mag. he had the right; of two appeals, namely, one to the Sessions Ct. & the second to the H. O. whereas, on the case being heard & decided by the Chief City Mag. he had the right of only one appeal to the H. C. The deprivation of one right of appeal, according to the learned advocate, was the deprivation of a fundamental right that had accrued to his clients at the time when the criminal proceedings started.

3. We must point out at the outset that the act of the Govt. which is now sought to be impugned is an executive act--an act done by the executive in pursuance of the authority conferred on it by the Legislature. If it is an act done in good faith under the powers vested in it, such an act cannot be interfered with by resort to the extraordinary remedy of certiorari. Therefore, unless it can be established that the act seeks to violate a fundamental right conferred by the Constitution, we cannot interfere.

4. It cannot be gainsaid that any enactment or any provision of law which is inconsistent with the provisions of Part, in Const. Ind. under which the fundamental rights are safeguarded would be void. The question, therefore, is whether a right of appeal itself is in the nature of a fundamental right contemplated by part III, Const. Ind. or whether the depriving of one person of his right of appeal without reasonable ground or under an error of judgment would constitute an infringement of the equal protection of the laws. His Lordship the Chief Justice of India, in the case of A.K. Gopalan Vs. The State of Madras, , has quoted with approval the following observations of Lord Haldane:

But it does not follow that the procedure of every Tribunal must be the same. In the case of a Ct. of Law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what procedure is to be in detail must depend on the nature of a Tribunal.

Therefore, the right of appeal is not a fundamental right.

5. It is well recognised that the right of appeal is one conferred by Statute & not an inherent right. It is settled law that; an appeal does not exist in the nature of things. A right of appeal from the decision of any Ct. or Tribunal must be given by express enactment. It is a creature of statute. As early as 1877, this doctrine was established & Lord Bramwell J. in the case of Sandbach Charity Trustees v. North Staffordshire Ry. Co. (1876) 3 Q.B.D. 1 : 17 L. 3. Q.B.10 enunciated this principle. This observation of Lord Bramwell J. was followed by their Lordships of the P.C. in Rangoon Botatoung Co. v. The Collector, Rangoon, 39 I. A. 197 : 40 Cal. 21 P.C. If the right of appeal is not an inherent right, it cannot come under the category of fundamental rights. The learned advocate for the petitioners laid great emphasis on the fact that this right of appeal partook of the nature of fundamental rights & inasmuch as by reason of the transfer of the case from the Ct. of the Sp. Mag. to the Ct. of the First Mag. City Criminal Ct., his clients had been deprived of the right of one appeal no Ct. could deprive a person of a right

of appeal rested in him. His next argument was that the right of appeal had vested in his clients on the date of the institution of the proceedings & no subsequent law or notification having the force of law could deprive them of a right which had vested in them prior to the passing of the law or the issuing of the notification. In support of this argument, he relied upon the leading case of *The Colonial Sugar Refining Co. Ltd. v. Irving* (1905) A.C. 339 : 74 L.J. F. 0. 77 & other cases which followed the decision in the above case. In this connection, it must be observed that what was decided in the case of *The Colonial Sugar Refining Co. Ltd. v. Irving* (1905) A.C. 369 : 74 L.J. P.C. 77 was that statutes should not be held to act retrospectively, a result of which would be to interfere with existing rights. Their Lordships of the P.C. held that the Judiciary Act was not retrospective by express enactment or by necessary intendment & that the right to appeal to His Majesty in Council was a right vested in the appellants at the date of passing of the Act & was not a matter of procedure. This case was adverted to in AIR 1927 242 (Privy Council)

wherein their Lordships of the P.C. observed that:

the provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

These cases have been referred to in other decisions of the Indian H. Cs & the ratio decidendi of all these decisions is only this: that the right of appeal is not a mere matter of procedure but is a vested right which inheres in a party from the commencement of action in the Ct. of first instance. This is subject to the power of transfer given by law to any authority. We are fortified in this view by the following remarks of Cooley, the celebrated author in his treatise "Constitutional Limitations" vol. II, P. 754, Change in Remedies:

Every State has complete control over the remedies which it offers to suitors in its courts ... Laws ... abolishing one remedy where two or more existing may be perfectly valid even though the new or the remaining remedy be less convenient than that which was abolished, or less prompt and speedy.

6. The question then arises as to whether the Govt. was competent to issue any notification the result of which was that the petitioners had only one right of appeal to the H. C. We are afraid there is a fallacy in the Advocate's argument. A potential power has been vested in the Govt. u/s 495, Criminal P.C. to transfer a case from one Ct. to another. Similar power has been vested in the H.C. u/s 494 of the Code. The Courts of law do not sit as Judges to scrutinise the wisdom or policy of any particular legislation so long as it does not contravene the Constitution. The Criminal P.C. has vested certain authorities with powers of transfer & we do not think that these powers contravene any provision of the Constitution.

7. Mr. Bangachar tried to make out that even if the Govt. had any such authority prior to the coming into force of the Constitution, it could not do so after the Const. Ind. was passed, inasmuch as it offended Art-14 of the Constitution.

Article 14 of the Constitution reads as under:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

This article appears in part in, Const. Ind. wherein the Fundamental Rights are set out. Mr. Rangachar argues that the effect of the notfn issued by the Govt. has resulted in this: that, while in cases which were before the Sp. Mag. the party could have the right of appeal in the first instance to the Ses. J. & against the decision of the Ses. J. to the II. C. in the case of his clients by reason of the case having been transferred to the Chief City Mag his clients had only one right of appeal to the H C. as there was no appeal provided to any Ses. J. This, according to him was an inequality which was not allowed under the Const. Ind. Dicey laid the greatest emphasis on legal equality. He defined "equality before law" as "universal subjection of all classes to the same law administered by the ordinary Cts." He further explained it by saying that every official from the Prime Minister down to a Constable must be held to be under the same responsibility for every act done without legal justification.

8. The guiding principle of this guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred & liabilities imposed. A guarantee of equal protection in legal proceedings does not secure to all persons the same laws & remedies. It does not prevent the State from fixing the venue of actions. Equal protection of the laws is secured when the law assures to everyone the same rules of evidence & rules of procedure. It does not deny the right of the State to determine the jurisdiction of its Cts. or to provide (or appellate procedure. For our guidance in this matter, the recent judgment of the S.C. in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, would be very useful. Fazl Ali. J. observed that:

a law applying to one person or one class of persons is constitutional, if there is sufficient basis or reason for it.

His Lordship observed that it would be objectionable only if the classification is arbitrary without there being any basis for the classification. This is more tersely put by Das J. in the following words: "If there is a classification, the Ct. will not hold it invalid merely because the law might have been extended to other persons who, in some respects, resemble the class for which the law is made; for, the Legislature is the best Judge of the needs of the particular class." It has been well recognised both by the S.C. of America & by the S.C. of India that a State in enacting legislation is not prevented from making classification which is reasonable in public interest. In the case before us, the legislation of the Section cannot be regarded as a legislation purporting to classify persons with regard to the remedies open to them. As was so emphatically put by their Lordships of the S.C. in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , the fact that such an order was not made in the case of another accused would not make this order a discriminatory one so as to attract the provisions of Article 14,

Const. Ind, Professor Willis in dealing with the question of classification in exercise of Police power says:

In determining the question of reasonableness" of a particular piece of legislation "the Cts. must find some economic, political or other source of interest to be secured. The fact that only one person .is affected Is no proof of denial of the equal protection of the laws.

Thus, it would follow that where the Legislature or, as in this case, the Executive, for purposes of expediency chooses to confer a power on the Executive to transfer a case from one Ct, to another & by reason of such transfer out of the right of two appeals the party is given only one such right of appeal, it would not necessarily be discriminatory offending the principle of equality before the law". A reference to the F.B. case of this H. C. in Abdul Rahim v. Joseph Pinto, 1951 H. L. R. 1 : AIR 1951 Hyd. 11 F.B. would also show that the authority of the Govt, to transfer a Case from one Mag. to another could not be regarded as arbitrary. In the case refd. to above, the question was whether the power of the Chief Minister to transfer a case under the Special Tribunals" Regulations to a particular Tribunal would amount to a discrimination between subject & subject & it was held that it did not amount to a discrimination in the application of the law between one citizen & another.

9. The mandate of the equal protection of the laws is binding not only on the Legislature & the Judiciary but also on the Executive. Therefore, in exercising powers conferred under any statute the Executive has also to guard against discrimination. Under Article 374 of his Constitutional Law, Weaver, in dealing with Discrimination in the Administration of the Laws, says:

Discrimination may exist in the administration of the laws & it is the purpose of the equal protection clause to secure all the inhabitants of the state from intentional & arbitrary discrimination arising in their improper or prejudiced execution, as well as by the express terms of the law itself. The validity or invalidity of a statute often depends on how it is construed & applied. It may be valid when given a particular appln. & invalid when given another.

At p. 405, referring to equal protection of the laws, Weaver further Bays that "in order to regard an act as amounting to an intentional violation of the essential principle of constitutional equality, minor Inequalities or mere errors of judgment by officials will not do." In this connection, he farther states:

It is not sufficient to show that the officers failed to enforce an ordinance against one corporation in the same manner as it was enforced against another.

Therefore, in order to make out a case of discrimination it would be essential to show that the petnrs. bad been deliberately singled out in the exercise of the power vested in the Govt. u/s 495. As observed in Charanjit Lal v. The Union of India AIR 1851 S.C. 41 : 1960 S.C.R. 869, there is always a presumption in favour of the constitutionality of an order of the Govt. & the burden is upon the

person who attacks it to show that there was a clear transgression of the constitutional principles. We are of opinion that the petnrs. Advocate has not been able to satisfy us that there has been intentional discrimination made by the Govt. in transferring the case from the Sp. Mag. to the Chief City Mag.

10. Section 495 was not enacted for any individual person. It gave power to the Govt. to transfer a case from one Ct. to another in the interests of expediency. Mr. N. S. Raghavan appearing for the Govt. read before us the proceedings of the Home Secretariat in order to show what reasons weighed with the Executive to transfer the case to the Chief City Mag. The proceedings would show that two reasons weighed with the Executive : the first was that all the records in the case were in English & the Sp. Mag. was not as well up in English as the Chief Mag. was, The second reason was that at this time there were proposals regarding the transfer of the Sp. Mag. & the Govt. thought it fit to send the case to the Chief City Mag. We are thus of opinion that no mala fides on the part of the Govt. could be held to have been established in this case & therefore there could be no question of intentional discrimination.

11. We therefore, hold that there has been no violation of the principle of "equality before the law" or "equal protection of the laws" as contemplated by Article 11, Const. Ind. & inasmuch as no case has been made out for the issue of a writ of certiorari or to interfere in revn. we dismiss these applns. Advocate's fee Rs. 100.

12. This order will cover Appln. No. 4 of 1951.