

(1954) 09 BOM CK 0017
In the Bombay High Court

Govind Kesheo Powar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-09-1954

Acts Referred:

Central Provinces and Berar Local Government Act, 1948 — Section 10(m)
Criminal Procedure Code, 1898 (CrPC) — Section 311

Citation : (1955) CriLJ 1275

Hon'ble Judges : Mudholkar, J;Deo, J

Bench : Division Bench

Judgement

1. The point raised in this petition under Article 226 of the Constitution is whether respondent 4 Shankar who has been declared elected .as a councillor of the Janapada Sabha, Pusad, at the election held on 14-12-1953 was disqualified from offering his candidature in view of Section 10 (m) C. P. and Berar Local Government Act which runs thus:

10, No person shall be eligible for election or selection or appointment as a councillor of a Sabha, if such person

x x x

(m) has been sentenced by any Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation;

It is said on behalf of the petitioner that Shankar was convicted under Rule 72(4), Defence of Hyderabad Rules by a Magistrate in the Hyderabad State- sometime in the year 1943 and sentenced to pay a fine of Rs. 10/- and to undergo imprisonment till the rising of the Court. It is Further said that the offence under the aforesaid provision is punishable with imprisonment for a term extending to a period of three years and that therefore respondent 4 was, by virtue of the provisions of Section 10(m), C. P. and Berar Local Government Act, disqualified from being a councillor.

2. Rule 72(4), Defence of Hyderabad Rules (which corresponds to Rule 81(4), Defence of India Rules) reads thus:

If any person contravenes any order made under this rule (amended by No. 11 of the year 52 Fasli Volume No. 4), he shall be punishable with imprisonment for a term which may extend to three years; he shall be punishable with fine also or with both the punishments and if the order so provides any Court trying such contravention may direct any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to the Government provided that the Court shall declare against it on the special grounds which will be recorded in writing.

This rule like Rule 81(4), Defence of India Rules merely prescribes a penalty for the contravention of an order but does not set out all the orders made under the Defence of Hyderabad Rules. The judgment, a certified copy of which has been filed, states that Shankar was convicted under Rule 72(4), Defence of Hyderabad Rules but does not state what particular order made under the Defence of Hyderabad Rules was contravened by him.

It would, however, appear from his return, from the certified copy of his statement as also from the statement of the police "that his offence was that he was in possession of a bag of sugar when he was apprehended by the Hyderabad military police near the border of the State.

3. It has not been established in this case that the act held to have been committed by respondent 4 was in contravention of any order made under the Defence of Hyderabad Rules. There is thus no adequate material before us on the basis of which we could find that respondent 4 had actually contravened any order made under the Defence of Hyderabad Rules. However we are prepared to assume for the purpose of this case that the certified copy of the judgment filed by the petitioner is conclusive in so far as the factum of the contravention of an order by respondent 4 is concerned as also of his conviction therefore .

4. The question, however, is whether this conviction of respondent 4 can be taken notice of u/s 10(m), C. P. and Berar Local Government Act, It must be remembered that when respondent 4 was convicted Hyderabad was not a part of the Indian Union, His conviction was thus by a foreign Court, It cannot be presumed that it was within the contemplation of the Legislature to take account of such a conviction. It is however said on behalf of the petitioner that after the integration of Hyderabad in the Indian Union and the promulgation of the Constitution the position is so altered that a judgment rendered in the former State of Hyderabad must be given in the same efficacy as those rendered in the provinces of British India.

In support of his argument the learned Counsel primarily relied on Article 261 of the Constitution and in addition referred to Sections 42, 43, 57, 35, 74 and 84, Evidence Act. He also referred to Section 311, Criminal P. C.

5. Article 261 of the Constitution reads as follows :

1. Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State,
2. The manner in which and the conditions under which the acts, records and proceedings referred to in Clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.
3. Final judgments or orders delivered or passed by civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

It appears in Chap. II, Part XI of the Constitution. The heading of Part XI is "Relations between the Union and the States" and of the Chapter is "Administrative Relations". It will thus be seen that this Article deals with the state of affairs which would arise after the commencement of the Constitution. Neither Clause (1) nor Clause (2) purports to give any efficacy to a proceeding or judgment rendered in a former Indian State or the present States. They only deal with the question of proof. No doubt Clause (3) deals with the question of giving effect to the judgments or orders but they are those rendered by civil Court,

No reference is even made in the article to judgments or orders of criminal Courts. The provisions of the Evidence Act relied on deal with matters such as relevance of the judgment, the mode of proof, the presumption as to the genuineness to be drawn and so on, but they do not deal with the question of the binding nature of the judgments or even of the effect of those judgments.

6. Section 311, Criminal P. C. to which reference was made is of no assistance to the petitioner. What the section deals with is as to when evidence of a previous conviction may be given, and according to this provision, such evidence can be given only if it is relevant under the Evidence Act and in the manner and circumstances provided for in the Act. There is nothing in this provision to show that the conviction had in any Court could be deemed to be a previous conviction under the Criminal Procedure Code.

The words "previous conviction" occurring in Section 310 of the Code which deal with the procedure in the case of a previous conviction, must necessarily mean a conviction for an act which is an offence under the Criminal Procedure Code. Offence as defined in Section 4(o) of the Code means "any act or omission made punishable by any law for the time being in force" These last words necessarily postulate that the law must be in force in the territories of India. Defence of Hyderabad Rules were at no point of time in force in the territories of India or in any other part thereof.

7. What remains to consider is whether the language used in Section 10(m), Local Government Act is wide enough to include an offence committed in a foreign territory. For the purpose of ascertaining tills it would be useful to refer to

the principles of International Law. Story in Section 620 of his Commentaries of the Conflict of Law (1872) states:

The common law considers crimes as altogether local, and cognizable and punishable exclusively in the country where they are committed. No other nation therefore has any right to punish them; "or is under any obligation to take notice of, or to enforce any judgment rendered in such cases by the tribunals having authority to hold jurisdiction within the territory where they are committed. Hence it is, that a criminal sentence of attainder in the Courts of one sovereign, although it there creates a personal disability to sue, does not carry the same disability with the person into other countries.

It will thus be clear that in the opinion of the learned jurist the Courts are not bound even to take notice of a foreign judgment in a criminal case. Lord Loughborough quoted by the learned author stated in "Folliott v. Ogden (1789) 1 H Bl 124 (A).

Penal laws of foreign countries are strictly local, and affect nothing more than they can reach, and can be seized by virtue of their authority

In the appeal arising out of that case Buller J, stated:

It is a general principle that the penal laws of one country cannot be taken notice of in an" other.

The same doctrine was affirmed by Lord Ellen-borough in "Wolff v. Oxholm (1817) 6 M and Section 92 at p. 99 (B)."In "Warrender v. Warrender (1834) 9 BNS 89 (C) Lord Brougham stated:

The "lex loci", must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction.

As pointed out by the learned author in Section 621:

The same doctrine has been frequency recognized by America. On one occasion, where the subject underwent a good deal of discussion, Marshall C. J., in delivering the opinion of the Supreme Court, said: "The Courts of no country execute the penal laws of another." On another occasion, in New York, Spencer C. J. said "We are required to give effect to a law (of Connecticut), which inflicts a penalty for acquiring a right to a "chose in action". The defendant cannot take advantage of, nor expect the Court to enforce, the criminal laws of another State.

The penal acts of one State can have no operation in another State. They are strictly local, and affect nothing more than they can reach. Upon the same ground also, the Supreme Court of Massachusetts have held that a person convicted of an infamous offence in one State is not thereby rendered incompetent as a witness in other States.

8. From what we have quoted, it will be abundantly clear that the effect of a crime committed by a person does not travel beyond the State in which it was

committed. Since that is the general principle, it must be presumed that the Legislature when it enacted Section 10(m), C. P. and Berar Local Government Act did not intend to include therein offences committed by the citizens of Madhya Pradesh in foreign territories.

9. In this view, we hold that respondent 4 has not incurred any disqualification and that his election is not void. The petition is accordingly dismissed with costs. Counsel's fee Rs. 150/-.