(1967) 04 BOM CK 0002

In the Bombay High Court

Case No : Criminal Appeal No. 1210 of 1965

Harivansh Lal M. Mehra APPELLANT

Vs

The State RESPONDENT

Date of Decision : 18-04-1967

Acts Referred:

Constitution of India, 1950 — Article 1, 240
Penal Code, 1860 (IPC) — Section 21

Citation : (1967) 69 BOMLR 704 : (1967) MhLj 1001

Hon'ble Judges : Patel, J;Deshmukh, J

Bench : Division Bench

Judgement

Patel, J.—[His Lordship, after setting out the facts and considering the evidence in the case, proceeded.] The first contention is that as the Prevention of Corruption Act did not apply to Goa and as the offence was completed at Goa, the accused could not be prosecuted under the Prevention of Corruption Act. In order to appreciate the contention, a few facts need be noticed.

2. Goa came to be liberated on December 20, 1961, On March 5, 1962, an Ordinance came to be promulgated (Ordinance No. 2 of 1962) for the administration of Goa. This Ordinance recites that the territories of Goa, Daman and Diu were acquired with effect from December 20, 1961, by virtue of Sub-clause (c) of Clause (3) of Article 1 of the Constitution. It then proceeds to the enacting Article Thereafter came on March 27, 1962, the Goa, Daman and Diu (Administration) Act, 1962, which is practically in terms similar to the Ordinance. On this very day was enacted the Constitution (Twelfth Amendment) Act, 1962, by which Goa, Daman and Diu were added to the First Schedule of the Constitution under the heading ".The Union Territories". Similar entry was also inserted in Article 240 of the Constitution. Both the Ordinance and the Administration Act provide, by Section 4, that all laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. Sub-section (2) of Section 4 gives

power to the Central Government to make adaptations and modifications as may be expedient or necessary within two years from the appointed day. Section 5 enables the Central Government, by notification, to extend any enactment in force in a State at the date of the notification to the territories of Goa, Daman and Diu, with such modifications or restrictions as it thinks proper. The argument is: it was only on November 12, 1962, that the President made a Regulation, known as "The Goa, Daman and Diu (Laws) Regulation, 1962", Section 3 of which extended enactments mentioned in the Schedule with some modifications therein to Goa, Daman and Diu. Even this was subject to the proviso that they were to come into force on such date as may be directed by the Lieutenant-Governor of the territory. One of the Acts mentioned in the Schedule is the Prevention of Corruption Act, 1947. In accordance with the power contained in Section 3, the notification at exh. 185 was issued by the Lieutenant-Governor and the Act became applicable on December 27, 1962, much after the completion of the last incident held proved against the accused.

3. (Section 1(2) of the Prevention of Corruption Act is as follows: "It extends to the whole of India except the State of Jammu and Kashmir...." It is argued that "India" included after its liberation Goa, but as the Act did not extend to Goa we should read the first part as "It extends to the whole of India except the State of Jammu and Kashmir and Goa". It is then argued that as the second part applied to all "citizens of India" outside India, the appellant being in India, the condition was not applicable and hence he would fall not within it.

4. The learned trial Judge answered this contention on two grounds. He considered the purpose of this sub-section and held that the section would be rendered absurd by saying that it would apply to all citizens of India outside India, but not to citizens of India within the territories of India merely because the Act was not applied to that territory. Therefore, as a matter of construction, he held that the second part applied to all citizens, whether within or without India, Secondly, the learned Judge said that it is wrong to say that the offence was completed in Goa. According to him, as the offence consisted of several acts, some of which were completed within the State, it could not be said that the offence had occurred in the territories of Goa and, therefore, the appellant could not be prosecuted. As we have seen, admittedly the articles were improperly transported with the object referred to in the Prevention of Corruption Act and ultimately received in Bombay, as deposed to by Savara, which evidence must be accepted, then evidently, the acts were completed in this State and the second answer made by the learned trial Judge cannot possibly be challenged.

5. It is true that ordinarily the intention of the Legislature is to be found from the words used by the Legislature. Mr. Tuli relies upon the decision in M. Narayanan Nambiar Vs. State of Kerala, , where the following observations of the Judicial Committee in Dyke v. Elliott: The "Gauntlet" (1971) L.R. 4 , were cited with approval:

...No doubt all penal Statutes are to be construed strictly, that is to say, the

Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. Bit where the thing is brought within the words and within the spirit, there a penal enactment is to he construed, like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.

It is contended that the learned Judge has stretched the language of the Act and brought within the scope of the Act persons not intended to be brought within it.

6. The decision, however, does not mean that the Court should shut its eyes to all normal rules of construction of statutes and adopt a restricted construction of the sections contrary to the sense and the spirit of the provision. Every statute, whatever its nature, must be construed fairly and reasonably as a whole, and it is only if there are two possible meanings that can be assigned to it, that the rule of strict construction in the ease of a penal provision can obtain.

7. The question will be, what is the meaning to be assigned to the word "India" in this Act. In the Act, the word is not denned. For the State, Mr. Khambatta contends that the word should receive a limited construction and ought to carry the sense it had when enacted.

8. When the Act was enacted the Indian states and these other territories were foreign to India, As enacted in 1047, it extended to the whole of British India and it applied to all British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be.

9. By the Adaptation of Laws Order (January 26, 1950), Section 1(2) became:

It extends to the whole of India except Part B States; and it applies also to all citizens of India outside India.

Later, by Section 3 of Act III of 1931 and Schedule E, the words "except the State of Jammu and Kashmir" were substituted for the words "except part B States",

10. Originally the Act applied to British India and was later applied to the whole of India except part B States and then to India except Jammu and Kashmir. Words in sections which provide for the application or the extent of the Act can only have meaning which they have on the date of their enactment and cannot be extended from time to time though this may not be so with respect to other sections for the obvious reason that the very purpose of the section is to provide

the extent of the Act on the day of its enactment and subsequent extensions arc provided for by special provisions. "India" has been denned by the General Clauses Act, Section 3(28), to mean: "As respects any period after the commencement of the'' Constitution all territories for the time being comprised in the territory of India". The word "India" could mean such territories as were comprised in the territory of India on January 26, 1950, and not such territories as may be brought into it in future, for it is hardly possible to hold that all laws become applicable merely because fresh territories are brought within the Indian territory. See Maxwell on the> Interpretation of Statutes (9th edn.), p. 62.

11. The word "India" having limited meaning, the latter half of the section "and it applies also to all citizens of India outside India" becomes applicable. The appellant being a citizen of India will be reached by the Act, as he was in a territory which was "outside" India though for the purposes of the Constitution and other purposes it was within India.

12. In this connection, it is also necessary to consider Section 2 of the Act which gives the words "public servant" the same meaning they have in the Penal Code. Section 21 of the Indian Penal Code defines "public servant" to mean a person falling under any of the categories therein mentioned, Twelfth Clause of which says that:

Every person in the service or pay of the Government or remunerated by foes or commission for the performance of any public duty by the Government.

The combined effect of Section 1(2), latter part, and the definition of "public servant" contained in Section 2 read with Section 21 of the Indian Penal Code must bring in every public servant placed even outside India also within the ambit of the Act and render him liable to prosecution for an offence u/s 5 of the Prevention of Corruption Act.

13. In this connection, we must refer to the Goa, Daman and Diu (Administration) Act. 1962. Section 8, which reproduces the language of Section 6 of the Ordinance, is as below:

For the purpose of facilitating the application of any law in relation to Goa, Daman and Diu, any Court or other authority may construe any such law in such manner not affecting the Substance, as may be necessary or proper to adapt it to the matter before the Court or other authority.

Difficulties in the application of several Acts apparently appear to have been foreseen by the authorities enacting the Act and that is why a provision has been made, enabling the Court to construe the law. If the intention in enacting Section 1(2) was to apply the Act to public servants even outside India, it is unthinkable to impute an intention to exempt the public servants from the application of the Act within the territories of India. We would, therefore, be justified in holding that the word "India" in the Act included such territories as were within it on January 26, 1950.

14. It is, however, contended that if this construction, is adopted, Section 188 of the Code of Criminal Procedure may come in the way of the prosecution. The section enables a citizen of India to be tried wherever found for any offence committed by him outside "India". Mr. Mirchandani relies on the proviso which says: "...no charge as to any such, offence shall be enquired into in India unless... the sanction of the State Government shall be required."

15. It is sufficient to say that the present enquiry and the proceedings are not under the Code of Criminal Procedure, but under the special Act, that is, the Prevention of Corruption Act, which contains its own provisions regarding sanctions in respect of prosecutions under the Act. Section 1(2) of the Code of Criminal Procedure which extends it to the whole of India also provides that nothing contained in it shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force etc. Section 188 of the Code of Criminal Procedure, therefore, docs not affect the prosecution of the accused under the Prevention of Corruption Act.

16. The second contention was that no customs duty was leviable and, therefore, the charge that the accused transmitted these articles in the particular manner in order to avoid the customs duty, must fail. It is argued that Goa formed part of an Indian territory and as there could not be any liability to customs duty on articles brought from one part of the country to another part of the country, no duty was recoverable.

17. In order to examine the validity of this argument, we have again to go to the Land Customs Act, 1924. Section 1(2) as amended by Act XXV of 1950 is:

It extends to the whole of India except the State of Jammu and Kashmir.

Section 4 relates to establishment of Land Customs stations and determination of routes. Section 5 relates to permit for goods passing across frontier and requires that every person desiring to pass any goods, whether dutiable or not, by land out of or into any foreign territory shall apply in writing, in such form as the Chief Customs Authority may by notification in the Official Gazette prescribe, for a permit for the passage thereof, to the Land Customs Officer in charge of a land customs station established in a land customs area adjoining the foreign frontier across which the goods are to pass. Sub-section (2) of Section 5 says that when the duty on such goods has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer shall grant a permit certifying that duty has been paid on such goods or that goods are free of duty, as the case may be. "What we have said in respect of the Prevention of Corruption Act must apply in this case. Immediately the territory of Goa formed part of Indian territory, machinery under the Indian Sea Customs Act could never have been brought into force. In order that the commercial stability may not be disturbed in both territories, it would not have been advisable to immediately remove the customs barriers. We must, therefore, construe the word "India" in

Section 1 to include all such territories as were comprised in it on April 1, 1950, from which date the amendment became effective. Goa being outside the territory, customs duty was leviable until such time as Goa became part of Indian territory for the purposes of the Act.

18. There is another way of looking at the matter. Section 5 of the Land Customs Act refers to goods passing out of or into foreign territory, and land customs area adjoining the foreign frontier. In order that this section should apply, goods must come from foreign territory into India, or must go out from India to foreign territory, and must pass land customs area adjoining foreign frontier. "Foreign territory" has been-defined in Section 2(f) to mean any territory which has been declared u/s 5 of the Indian Tariff Act, 1934 (XXXII of 1934) to be foreign territory for the purposes of that Act. u/s 5 of the Indian Tariff Act, a notification has been issued by the Ministry of Commerce, Government of India, being notification No: 34/T-A/22/50, dated April 1, 1950, by which Goa, Daman and Diu were declared to be foreign territories. "Foreign frontier" has been defined by Section 2(e) of the Land Customs Act to mean the frontier separating any foreign territory from any part of India. Unless, therefore, under the Tariff Act, 1934, the above referred to Government notification has been withdrawn, Goa, Daman and Diu must continue to be foreign territories as defined by the Land Customs Act, notwithstanding the fact that for other purposes these territories formed part of India after its incorporation into Indian territories. No notification has been brought to our notice withdrawing the notification referred to above. Under these circumstances, the frontier adjoining the territories of Goa, Daman and Diu, must be regarded as the boundary line between the Indian territory and foreign territory. As a result, Section 5 becomes at once applicable.

19. It is argued that the Land Customs Act and the Indian Tariff Act are both taxing statutes and, therefore, they must be construed strictly and taxing provisions should not be extended by construction. Before the Court goes to the rule of construction, the Court must ascertain what is the fair and reasonable meaning of the statute required to be construed and it is only where there is ambiguity in the language used, that there is scope for construction, either strict or liberal. For the reasons stated above, it is obvious that customs duty was rightly leviable by the Government on articles being brought into India. Though, therefore, we do not agree with the learned trial Judge when be says that the customs duty was rightly being levied, merely because an officer of customs said so, we hold that the customs duty was leviable on the articles that were imported from Goa into India.

20. [The rest of the judgment is not material to this report.]

