
(1950) 08 AP CK 0009
In the Andhra Pradesh High Court

Hyderabad State

APPELLANT

Vs

Chandar

RESPONDENT

Date of Decision : 28-08-1950

Acts Referred:

Constitution of India, 1950 — Article 1, 2, 225, 330, 375

Citation : (1951) CriLJ 1398

Hon'ble Judges : Manohar Pershad, J; Ahmed Ansari, J

Bench : Division Bench

Judgement

1. This is a reference by the Magistrate of Nalourg, wherein a legal question has been referred to this Court, for proper direction. The facts, as they appear from the letter of reference, are that a person was challenged for contravention of Section 272, Hyderabad Penal Code. which section is similar to Section 832, Indian Penal Code. The act is alleged to have occurred at a place called Deygaon in Tuljapur Taluka, and the date of the occurrence is said to be 28th Mehar 1359F., (28-8-1949). The case is at the argument stage and an objection on behalf of the accused has been raised that as the village, where the crime is alleged to have been committed, has been transferred to the Bombay State, the Court in the Hyderabad State has lost jurisdiction. Reliance is placed on Articles 225 and 330 of the Constitution of India The Magistrate appears to agree with the contention and is of opinion that the proceeding should be terminated.

2. In this connection it is necessary to ascertain the circumstances in which the transfer took place. On 23-1-1950, an agreement relating to the mutual exchange of enclaves was entered into between the Governor-General of India and the Nizam of Hyderabad. By Article 1 of the Agreement, among other things, the term "Hyderabad Enclaves in Bombay" has been defined as the area specified in Part B of the Schedule attached to the Agreement. Item 9 of this Part B enumerates the villages in the Tuljapur Taluka, in Osmanabad District and the village Deygaon appears in the lists of the villages so specified. By Clause (a) of Article 2 of the Agreement, the Hyderabad enclaves in Bombay were to cease to

form part of Hyderabad and were to be included in and form part of the territories of the Dominion of India from the appointed day. This day has been defined under Article 1 of the Agreement to mean 25-1-1950. Later the Governor General promulgated an Order which is called the India and Hyderabad Exchanges of Enclaves Order, 1950. By Section 2 of this Order the Hyderabad enclaves in Bombay were included and made part of the Province of Bombay and this term according to Section 2 (e) of the Order is to have the same meaning as that of the Agreement. It is, therefore, clear that the transfer of the enclaves became effective before the Constitution of India came into force. The articles relied upon by the Magistrate refer to transfers after the Constitution came into force and are, therefore, inapplicable in a case where it has become effective before the Constitution came into force. It is also clear that before the transfer became effective the Magistrate of Naldurga has become vested with the jurisdiction to proceed with trial of the case. The question which has to be determined is, what are the effects of the subsequent transfer of territory on the jurisdiction of a Court in cases pending before it.

3. There are two cases of the Allahabad High Court which support the view that such a transfer of territory does not affect the vested jurisdiction of a criminal Court. The first is *Emperor v. Ganga*, (1920) ILR 42 All. 257 : 13 Cri LJ. 525, and the other is *Emperor v Ramnaresh Singh* 34 ALL. 118 : 13 I. C. 921 . These cases are further supported by the general rule that jurisdiction once acquired usually continues until the action is disposed of, and that the jurisdiction over criminal cases stands on the same footing as over civil actions. In a civil case reported in AIR 1943 24 (Federal Court) it was held that a right to continue a duly instituted suit is in the nature of a vested right and it cannot be taken away except by a clear indication of intention to that effect and in the absence of such a clear indication a Court in British India continues to have jurisdiction to proceed with the trial of a suit already pending before it even with respect to properties situated in Burma before its separation. There is, therefore ample authority in support of the view that in the absence of clear intention to the contrary subsequent changes in matters relating to jurisdiction do not affect the pending cases.

4. We have next to ascertain whether from the different sections of the Governor General's Order of 1950, contrary intention can be inferred. Section 7 of the Order says that all laws in force in the enclave immediately before the appointed day were to cease and to be in force, and further all laws in force in the absorbing Province from that day were to be extended to and made applicable in that enclave. The result of the repeal, on the principle embodied in Section 6 (e), Indian General Clauses Act would on cases pending at that time of the repeal be that they would continue as if the enactment had not been repealed, Contrary intention does not appear either in Section 7, or in its proviso or in any other sections of the Order. The result is that the Magistrate who has become vested with the jurisdiction of trying the criminal case before 25-1-1950, can continue the proceeding pending before him notwithstanding the transfer of the territory.

Presumably the accused is still in the custody of the Court and because of this personal jurisdiction also over the accused the case can be continued. If subsequent transfer does not affect vested jurisdiction, then under Article 375 of the Constitution such jurisdiction is preserved. This reply of ours be sent to the Magistrate.