
(1970) 11 AHC CK 0002

In the Allahabad High Court

Case No : Criminal Ref. No. 241 of 1969 and Cr. Miscellaneous No. 2488 of 1969

Jain Transport and General Trading Co.

APPELLANT

Vs

State of UP

RESPONDENT

Date of Decision : 06-11-1970

Acts Referred:

Constitution of India, 1950 — Article 154
Criminal Procedure Code, 1898 (CrPC) — Section 14
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Criminal Procedure Code, 1898 (CrPC) — Section 14

Citation : (1970) 40 AWR 883

Hon'ble Judges : Mohd Hamid Husain, J

Bench : Single Bench

Advocate : L.P. Naithani and C.P. Ghildiyal, for the Appellant; S.N. Sinha for opposite party, for the Respondent

Final Decision : Dismissed

Judgement

Mohd Hamid Husain, J.—This is a reference made by Sri B.G. Jainhari, Temp. Sessions Judge, Mathura, recommending to this Court that the Government Order No. 2813/6-285/1967 dated 9-10-1967 offends Article 14 of the Constitution of India and is also in excess of the powers conferred u/s 14 of the Code of Criminal Procedure and therefore, the aforesaid Government Order be struck down as illegal and unconstitutional.

2. The facts giving rise to the reference are, that Sri Satya Prakash Srivastava, a Magistrate 1st Class at Agra was appointed by the aforesaid Government Order, a Regional Transport Magistrate empowered to try cases for the infringement of the provisions of the UP Passenger Tax Act in respect of six districts, namely, Agra, Mathura, Mainpuri, Aligarh, Bulandshahr and Etah and Sri S.P. Srivastava was required to try at Agra, the cases pertaining to the districts of Agra, Mathura and Mainpuri. The Applicant Jain Transport and General Trading Company, Mathura,

was prosecuted for contravening the provisions of the UP Passenger Tax Act on Mathura-Goverdhan Road in the district of Mathura. On 21-9-1968 an application was presented by the Applicant before the Regional Transport Magistrate, Agra, objecting to the holding of the trial in respect of the offence at Agra instead of at Mathura and the prayer in the application was to the effect that:

It is, therefore, prayed that this learned court be pleased to throw out the case for want of jurisdiction.

On this application the following order was passed on the same date:

In view of the G.O. No. 2813/6-285/1967 dated 9-10-67 this Court is empowered to hear cases of Mathura district at Agra under UP Passenger Tax Act. The application is, therefore, rejected.

Sd. Illegible 21--9 R.T.M. Agra.

Against this order the Applicant went up in revision to the Sessions Judge, Mathura, who has referred the same to this Court with his recommendation for holding the Government Order invalid as it offends Article 14 of the Constitution of India.

3. The learned Sessions Judge is of the opinion that since the Government Order does not disclose the reasons which prompted the Governor to issue the said order and deviating from the normal procedure as contemplated in Section 177 of the Code of Criminal Procedure. The learned Sessions Judge has relied on a decision reported in *The State of West Bengal Vs. Anwar Ali Sarkar*, , This decision of the Supreme Court was considered in the case reported in *M.K. Gopalan and Another Vs. The State of Madhya Pradesh*, and therein it was observed that the view taken in *The State of West Bengal Vs. Anwar Ali Sarkar*, was applicable only to a case where a special court was authorised to conduct the trial of an individual case, by a procedure substantially different from the normal procedure applicable to other person (for) similar offences. In the instant case the impugned Government Order does not single out the case of the Applicant to be tried at Agra but the said order fixes Agra as the place of trial of all persons who may be found, within the district of Mathura, infringing any of the provisions of the UP Passenger Tax Act.

4. It appears that the attention of the learned Sessions Judge was not drawn to a decision of the Division Bench of this Court in *Ibadat Husain v. State of UP* 1956 AWR 300, wherein similar question arose as in the instant case. In that case by a notification dated 23-2-1953 issued u/s 14 of the Code of Criminal Procedure, the Governor conferred upon the Regional Transport Magistrate, Allahabad, the power to try at Allahabad, all cases under the Motor Vehicles Act, 1939, arising within the districts of Allahabad, Mirzapur, Pratapgarh, Sultanpur and Faizabad. Proceedings were taken against Ibadat Husain for contravening the provisions of Motor Vehicles Act in the court of the Regional Transport Magistrate, at Allahabad. The power of the Governor directing by notification the special

magistrate to hold his Court at Allahabad was challenged in a writ petition which was dismissed. A Special Appeal was preferred against the dismissal of the writ petition and the Division Bench consisting of Mootham, C.J. and Agarwala, J. held that:

The executive power of the Governor which is invested in him by Article 154, includes the superintendence, direction and control of the civil Government of the State and that it is within the ambit of this power that a Governor may direct at what place or places the officers of Government shall perform their duties, including the place or places at which special magistrate shall exercise powers conferred upon him by a notification u/s 14 of the Code of Criminal Procedure.

5. Sri Naithani, learned Counsel for the Applicant, has contended that the decision of the Division Bench of this Court reported in 1956 AWR 308 is not applicable to the instant case as it did not consider Sections 5(2) and 177 of the Code of Criminal Procedure.

6. Section 5(2) of the Code of Criminal Procedure runs thus:

All offences under any other law shall be investigated, enquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences.

7. A plain reading of the above quoted Sub-clause (2) of Section 5 of the Code makes it amply clear that instead of placing any restrictions, it safeguards the powers of the Government as contemplated u/s 14 of the Code.

8. Similarly Section 177 Code of Criminal Procedure is no bar to the Government fixing the place where a Special Magistrate will hold court within the local limits of his jurisdiction. Section 177 Code of Criminal Procedure reads thus:

Every offence shall ordinarily be enquired into and tried by a court within the local limits of whose jurisdiction it was committed.

9. In Section 177 Code of Criminal Procedure the emphasis is on the court which can inquire into or try the case and not on the place of sitting of such a court. u/s 14 Code of Criminal Procedure the Government is empowered to appoint Special Magistrate to try particular cases or particular class or classes of cases or in regard to the cases generally in any local area. In the case of Hari Das Mundhra Vs. The State, V.D. Bhargava, J. following an earlier decision of Raghubar Dayal, J. AIR 1952 AIL 70 held that the expression "local area" is wide enough and would include even the entire State. After considering the two decisions of the Supreme Court reported in The State of West Bengal Vs. Anwar Ali Sarkar, and AIR 195 SC 362, V.D. Bhargava, J. further held that the provision of Section 14 Code of Criminal Procedure were not discriminatory and were not affected by Article 14 of the Constitution. It was also held by Bhargava, J. that Section 177 Code of Criminal Procedure refers to the court and not to its place of sitting and the Special Magistrate could hold court anywhere within the local limits of his

jurisdiction and he was not required to hold court within the local limits where the offence has been committed.

10. Having considered the arguments advanced by St Naithani, learned Counsel for the Applicant, I hold that Under Article 154 of the Constitution of India the Governor was fully empowered to issue the impugned notification appointing Sri Srivastava as Special Magistrate to try at Agra cases under the UP Passenger Tax Act pertaining to the districts Agra, Mathura and Mainpuri. Though there may be harassment and monetary loss to the Applicant in having to defend himself at Agra but that is no ground to hold the impugned notification illegal and unconstitutional. In the case reported in 1956 AWR 300, the question of harassment and Financial loss was also considered by the Division Bench which was of the view that the holding of the court at distant places would entail harassment and financial loss to a person of limited resources but inspite of having felt so, the Division Bench still held the Government Order issued u/s 14 of the Code of Criminal Procedure appointing Special Magistrate and specifying the place at which the magistrate was to hold his Court as a valid order.

11. Accordingly, the reference made by the Sessions Judge is rejected. The judicial record of the case shall be sent down to the court below within a month from the date of this order.