
(2008) 01 DEL CK 0188

In the Delhi High Court

Case No : Writ Petition (C) No's. 17777 and 18093 of 2006 and 141 of 2007

Mahender Singh

APPELLANT

Vs

High Court of Delhi and Another

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Law (Amendment) Act, 1952 — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 115, 2, 31, 374(2), 374(3)
General Clauses Act, 1897 — Section 6, 6(3)
Goa, Daman and Diu Civil Courts Act, 1965 — Section 22, 4
Negotiable Instruments Act, 1881 (NI) — Section 138, 142
Securities and Exchange Board of India Act, 1992 — Section 24(1), 26, 26(2), 27

Citation : (2008) 2 BC 619 : (2009) 151 CompCas 485 : (2010) 102 SCL 20

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Abhay K. Das, for the Appellant; Rajiv Bansal and Sanjay Mann, for Respondent No. 2/SEBI, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Against the petitioners in all these petitions the Securities and Exchange Board of India ("SEBI", for short), which is a statutory body constituted under the SEBI Act, 1992 (hereinafter referred to as "the Act"), has filed complaints u/s 24(1) and Section 27 of the Act. These complaints relate to the alleged offence committed by the petitioners, under the aforesaid provisions of the Act, prior to 29.10.2002. As per the said provisions prevalent at that time, the offences for which the petitioners are being prosecuted contained a maximum term of one year's imprisonment. The complaints filed are in the nature of summons cases and having regard to the aforesaid maximum imprisonment which could be given to the accused held guilty of the offence, these are triable by the Court of Magistrate, Thus, the complaints were filed before the Magistrate who had taken cognizance thereof,

2. The provisions of the Act were amended with effect from 29.10.2002, These very offences, because of the amendment, are now punishable with 10 years imprisonment and, thus, triable by a Sessions Court. There is no dispute that insofar as substantive provision relating to the sentence is concerned, it has prospective operation and it applies to those offences committed after 29.10.2002. However, we are concerned with the procedural aspect and the question which arises for determination is as to whether the pending complaints would now be triable by the Court of Sessions. This issue has arisen in the following backdrop:

3. After the amendment in the SEBI Act by the SEBI (Amendment) Act, 2002 (hereinafter referred to as the "Amendment Act"), as mentioned above, the Registrar (Admn/Judl.) of the High Court of Delhi addressed letter dated 1.12.2004 to the District and Sessions Judge, Delhi informing that the Chief Justice and Judges of this Court had been pleased to order that the SEBI cases be allocated to the Court of Ms. Asha Menon, Addl. Sessions Judge, Tis Hazari, Delhi in addition to her work. On receiving the communication, the then District and Sessions Judge, Delhi passed orders dated 4.12.2004 directing that all SEBI cases pending in the Court of Ms. Madhu Jain, Addl. Chief Metropolitan Magistrate, Delhi stood withdrawn and transferred those cases to the Court of the Addl. Sessions Judge. Thereafter, a clarificatory order dated 12.1.2005 was sent by the Registrar General of the Delhi High Court to the District and Sessions Judge, Delhi informing that the cases filed prior to the date of the above amendment were not required to be withdrawn from the Court of the Magistrate and were not to be transferred to the Court of Addl. Sessions Judge, but only those cases which are filed after coming into force the Amendment Act, i.e. the cases which were filed after 29.10.2002, had to be allocated to the Court of Ms. Asha Menon, Addl. Sessions Judge.

4. On the basis of this communication, the Sessions Judge passed consequential orders dated 13.1.2005. The effect of the aforesaid orders is that the complaints which were filed before 29.10.2002 (and obviously related to the alleged offences committed before the said date) were to remain before the Addl. Chief Metropolitan Magistrate and the complaints which were filed after 29.10.2002 are to be tried by the Sessions Court. There is no quarrel up to this. However, it has left behind gray area which has not been clarified, namely, if the offence allegedly committed relate to the period prior to 29.10.2002, but the complaint is filed after 29.10.2002, who would be the competent Judge to try the same. The purport of the aforesaid order dated 12.1.2005 read with order dated 13.1.2005 is that all the complaints filed after 29.10.2002, whether related to the offences committed before or after that date, are triable by the Court of Addl. Sessions Judge.

5. These writ petitioners fall in the aforesaid category. They contend that since the offence with which they are charged is of the period prior to 29.10.2002, for which maximum punishment admittedly is one year, they have to be tried by the

Magistrate irrespective as to when the complaint is filed. In fact, the writ petitioner in CWP No. 17777/2006 had even filed an application before Ms. Asha Menon, Addl. Sessions Judge, where his case was transferred, requesting for sending the case back to the Court of Addl. Chief Metropolitan Magistrate, This application is rejected vide orders dated 5.10.2005, which has led the petitioner to file the present writ petition challenging orders dated 1.12.2004 and 12.1.2005 passed by the Delhi High Court and consequential orders dated 4.12.2004 and 13.1.2005 passed by the District and Sessions Judge. Prayer is that they be declared null and void and non est so far as they operate for the offences committed before the Amendment Act and a mandamus be issued for transferring their case back to the Court of ACMM.

6. Before taking note of the rival contentions, we may mention that this very aspect came up for consideration before a learned Single Judge of this Court in the case of Crl.R.P. No. 24-31/2006 entitled Panther Fincap and Management Services Ltd. and Ors. v. Securities and Exchange Board of India. In that case the fact situation was identical, namely, complaint was filed in respect of offences allegedly committed between 24.3.1999 and 21.2.2000, i.e. before the Amendment Act, and complaint was filed on 28.5.2004, i.e. after the coming into force the Amendment Act in the year 2002. Complaint was filed before the Addl. Sessions Judge, Delhi. The question which arose was about the condensation of delay in filing the complaint because of the reason that as per the unamended provision, offence was punishable by maximum imprisonment for one year, limitation for filing the complaint was one year, whereas it was filed beyond the said limitation period prescribed u/s 468 of the Code of Criminal Procedure, 1973. The learned Sessions Judge vide orders dated 5.10.2005 condoned the delay. Against this order, the aforesaid Criminal Revision Petition was filed by the accused persons. Apart from challenging the said order on other grounds, one of the grounds was lack of jurisdiction on the part of the Addl.

7. Sessions Judge raising identical plea which is raised in this petition, namely, the offence u/s 24(1) as per the unamended Act, to which period the alleged act related, it was triable by a Magistrate and Court of Session had no power to pass an order condoning the delay. The submission was that jurisdiction conferred on a Magistrate could not be taken away by an administrative order, as held by a Division Bench of this Court in the case of A.S. Impex Limited and Others Vs. Delhi High Court and Others, . It was also submitted that such transfer of complaints from the Magistrate's Court to the Court of Session also amounted to taking away available remedies of appeal and revision. This contention is specifically noted by the learned Judge in the judgment dated 5.9.2006, as is clear from para 9 thereof, which is to the following effect:

9. The first contention of the petitioners on the question of jurisdiction has been raised on the premise that prior to the amendment which took effect on 29.10.2002, the offence u/s 24(1) was triable by a Magistrate. It is only after the amendment that the said offence is triable by a Court of Session. It is submitted

that had the complaint been filed within the limitation prescribed, the complaint would have fructified into a trial by a Metropolitan Magistrate. It was also submitted that the jurisdiction conferred on a Magistrate could not be taken away as was held in the case of *A.S. Impex v. Delhi High Court* 2003 VIII AD (Delhi) 189 by a Division Bench of this Court. It was also submitted that such transfer of the complaint from the Magistrate's Court to the Court of Session also amounted to taking away available remedies of appeal and revision.

8. In the judgment dated 5.9.2006 rendered by the learned Single Judge (Badar Durrez Ahmed, J.), the aforesaid contention was repelled and held to be unsustainable. The detailed reasons in support of the conclusion that the Court of Sessions was the appropriate Court having requisite jurisdiction to entertain the complaint are contained in paras 15 and 16 of the judgment. Since we are in respectful agreement with the view taken by the learned Single Judge in the said judgment, we deem it proper to reproduce the entire discussion on this aspect, verbatim:

15. Since the petitioners have strongly relied upon the decision of a Division Bench of this Court in the case of *A.S. Impex Ltd.* (supra), I shall take up discussion with regard to that case. The facts were that the High Court, in exercise of its powers on the administrative side, transferred all the cases u/s 138 of the Negotiable Instruments Act, 1881 which were pending as on 31.12.2001 from the Courts of Metropolitan Magistrates to the Courts of Additional Sessions Judges. The said administrative order was gazetted on 13.3.2002. Pursuant to the Gazette Notification, the District Judge by an order dated 21.3.2002 transferred the cases to be tried by Additional Sessions Judges. The said administrative order as well as the order dated 21.3.2002 were challenged before this Court as being violative of the Constitution of India as well as of the legislative provisions. It was contended, inter alia, that only the Metropolitan Magistrates or the Judicial Magistrates, First Class had exclusive jurisdiction to try the complaints u/s 138 of the Negotiable Instruments Act, 1881 and that no jurisdiction vested in the Courts of Additional Sessions Judges to try complaints under the said Section 138. The expediency of issuing such an administrative order was that the High Court on the administrative side, was of the view that the mandate of trying cases u/s 138 of the Negotiable Instruments Act, 1881, expeditiously should be implemented. The High Court found that the number of cases could not be disposed of expeditiously because of lack of judicial officers at the magisterial level. It is in these circumstances that the High Court issued the aforesaid administrative order transferring all the cases u/s 138 of the Negotiable Instruments Act, 1881 which were pending on 31.12.2001 from the Courts of Metropolitan Magistrates to the Courts of Additional Sessions Judges. The Division Bench, after considering the relevant provisions of the Negotiable Instruments Act, 1881 as well as the Code, came to the conclusion that while Section 142(c) of the Negotiable instruments Act, 1881 prescribes that the Metropolitan Magistrate or a Judicial Magistrate, First Class will try cases under the said Section 138, by no stretch of imagination, could it mean that any

superior Court to the Court of Metropolitan Magistrate would also have jurisdiction to try those cases. The Division Bench observed that while the non obstinate clause in Section 142 excluded the jurisdiction of Magistrates inferior to the Metropolitan Magistrate or the Judicial Magistrate, First Class, at the same time, it did not widen the scope of the provision so as to include in its ambit the jurisdiction of Additional Sessions Judges. The Court observed that the jurisdiction to try offences u/s 138 of the Negotiable Instruments Act, 1881 had been specifically conferred on the Metropolitan Magistrates or Judicial Magistrates, First Class and that such jurisdiction could not be taken away by invoking the provisions of Article 227 of the Constitution. The Division Bench categorically held:

The High Court in its plenary jurisdiction cannot bypass the special legislation which empowers the Metropolitan Magistrate or judicial Magistrate, First Class to try the cases.

16. Although the learned Counsel for the petitioners has relied heavily upon the Division Bench decision in A.S. Impex Ltd. (supra), the foregoing discussion indicates that the same is clearly distinguishable and would be inapplicable to the situation which presents itself in the present case. In A.S. Impex Ltd. (supra), there was a pure administrative action on the part of the High Court in purported exercise of its powers under Article 227 of the Constitution of India. The administrative orders were not backed by any legislative provisions. Secondly, the administrative orders were the subject matter of challenge and they were quashed by the Division Bench holding that the High Court in its plenary jurisdiction cannot bypass the special legislation which empowers the Metropolitan Magistrate or Judicial Magistrate, 1st Class, to try the cases. In the present case the scenario is entirely different. The administrative orders passed by the High Court whereby the cases pending before the Metropolitan Magistrate were transferred to the Courts of Additional Sessions Judges was preceded by the amendment in Section 26(2) of the SEBI Act. Prior to its amendment Section 26(2) of the SEBI Act read as under:

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

After the amendment which took effect from 29.10.2002 the said Subsection (2) of Section 26 of the SEBI Act reads as under:

(2) No Court inferior to that of a Court of Session shall try any offence punishable under this Act.

The effect of the amendment was that the offences under the SEBI Act now became triable by a Court of Session and not by any Court inferior to that of a Court of Session. In this background, the High Court passed the administrative order on 4.12.2004 whereby complaints filed by the SEBI after the date of the amendment in the SEBI Act (i.e. 29.10.2002) were assigned to the Sessions Court for trial irrespective of the date of the commission of the offence. It is

subsequent to this administrative order of the High Court that the complaint in this case was transferred to the Court of the Additional Sessions Judge on 7.1.2005. The clear distinction between the present case and that of A.S. Impex Ltd. (supra) is that while in the present case the administrative order has the backing of a statutory provision, in the case of A.S. Impex Ltd. (supra), the administrative order passed by the Court in purported exercise of its powers under Article 227 of the Constitution were held to be an attempt on bypassing the special legislation which empowered Metropolitan Magistrates or Judicial Magistrates of the First Class to try cases. The second distinguishing feature is that while in the case of A.S. Impex Ltd. (supra), the administrative orders were the subject matter of the challenge, in the present case there is no challenge to such orders. Therefore, the decision in A.S. Impex Ltd. (supra) is of no assistance to the petitioners.

9. We may point out at this stage that learned Counsel for the petitioners had made fervent plea that the aforesaid judgment would not be of any consequence as the learned Judge was influenced by the fact that administrative orders were not the subject matter of challenge in the said revision petition, whereas in the present case these orders are specifically challenged. This argument, however, would not help the petitioners. We say so for the following two reasons:

(i) the Court specifically held that the administrative orders were backed by legislative provisions, which was not the position in A.S. Impex Ltd. (supra). The other reason given by the learned Single Judge that these administrative orders were not the subject matter of challenge in the said writ petition was the additional reason and even if that is ignored, it is sufficient to rest the conclusion on the basis of the first reason given by the Court in the said case.

(ii) the Court in that case also interpreted the effect of the amendment carried out in Section 26 of the Act. Section 26(2) of the Act, prior to the amendment, provided that no Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate (First Class) shall try any offence punishable under the said Act. Post amendment, this provision stipulates that no Court inferior to that of the Court of Session shall try any offence punishable under the Act. On this basis, the Court concluded that the complaint filed after the amendment, even though related to the offence of a period prior to the amendment, would be filed in the Court of Session, This opinion was predicated on treating amendment to Sub-section (2) of Section 26 as procedural in nature relating to the forum. This is clear from the discussion contained in paras 17, 18 and 19 of the judgment and we do no more than reproducing the meticulous treatment given to this aspect in those paras by the learned Single Judge:

17. With regard to the submission that as the complaint had already been filed prior to the date of amendment, the same would have to be tried by the Metropolitan Magistrate or a Judicial Magistrate of the First class, it must be noted that the question of operation of amendments in a statute are considered differently with regard to the amendments which affect substantive rights and

amendments which are only procedural in nature. The scope has been clearly laid down by the Supreme Court in the case of *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, wherein, it observed:

...From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to Forum and limitation is procedural in nature, (98) whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law,

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

18. The amendment that has been brought about in Section 26 of the SEBI Act is only an amendment relating to the Forum and, Therefore, in view of Clause (ii) mentioned in the aforesaid extract from the Supreme Court decision in *Hitendera Vishnu Thakur (supra)*, the amendment would be only of a procedural nature, Since the amendment merely affects procedure and there is nothing in the language used to enable us to take a contrary view, it must be presumed to have retrospective application.

19. A reference to another decision of the Supreme Court would also be apposite. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, held as under:

5. On the plain language of Sections 110A and 110F there should be no difficulty in taking the view that the change in law was merely a change of Forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new Forum even if his cause of action or right of action accrued prior to the change of Forum. He will have a vested right of action but not a vested right of forum. If by express words the new Forum is made

available only to causes of action arising after the creation of the Forum then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective.

Therefore, the transfer of the case to the Additional Sessions Judge and his passing of the impugned order would not be without jurisdiction. I am also in agreement with the submission made on behalf of the learned Counsel for the respondents that since the amendment insofar as the substantive rights are concerned, would only be prospective, the unamended Section 24(1) of the SEBI Act would apply. Indicating thereby that the term of imprisonment would be one year or with fine or with both. This, read with the definitions contained in Sections 2(w) and 2(x) of the Code, which define "summons-case" and "warrant-case" (respectively), clearly goes to show that the present case would not be a warrant case inasmuch as a warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Clearly, the present case would fall in the category of "summons-case" and would have to be tried as such following the procedure under Chapter XX of the Code. It is an altogether different matter that the Sessions Court would be trying the offences in view of the special provisions of Section 26(2) of the SEBI Act. It would all the same remain a summons trial.

10. We record our concurrence with the aforesaid view rendered by the learned Single Judge, which is based on the principles of law laid down by the Apex Court. In this behalf, it will also be prudent to refer to another judgment of the Supreme Court in the case of *Rajendra Kumar Vs. Kalyan (D)* by Lrs., . In paras 21 and 22 thereof, the legal position was explained in an erudite language as under:

21. Still later this Court in *Gurbachan Singh Vs. Satpal Singh and others*, , expressed in the similar vein as regards the element of retrospectivity. The English Courts also laid that the rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect the vested rights; it does not apply to statutes which alter the form of procedure or the admissibility of evidence, or the effect which the Courts give to evidence; if the new Act affects matters of procedure only, then, *prima facie*, it applies to all actions pending as well as future (see in this context the decisions of the House of Lords in the case of *Blyth v. Blyth* (1966) 1 All ER 524; *A.G. v. Vernazza* (1960) 3 All ER 97. In *Halsbury's Laws of England* (4th Edn., Vol. 44, para 925, p. 574) upon reference to *Wright v. Hale* (1960) 6 H & N 227 and *Gardner v. Lucas* (1878) 3 AC 582 along with some later cases including *Blyth v. Blyth* it has been stated:

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

22. The law thus seems to be well settled that no person has, in fact, a vested

right in procedural aspect, one has only a right of prosecution or defense in the manner as prescribed by the law for the time being and in the event of any change of procedure by an Act of Parliament one cannot possibly have any right to proceed with the pending proceeding excepting as altered by the new legislation and as such we need not dilate on the issue any further.

11. We may point out that learned Counsel for the petitioners had submitted that if the case is tried by the Court of Session the petitioners would be losing their legal right of statutory appeal and/or revision before the higher Court. This submission was grouted on the premise that if the case is dealt with by the Magistrate, there would be a statutory right of appeal before the Sessions Court u/s 374(3)(c) of the Cr.P.C. and thereafter statutory remedy of revision before the High Court u/s 397(1) of the Cr.P.C. On the other hand, when the case is tried by the Court of Sessions, the remedy would either be statutory appeal or the revision as either would be maintainable only in the High Court and this would prevent the petitioner from invoking both the remedies.

12. It was, thus, argued that such a right could not Have been taken away in view of the judgment of the Supreme Court in A.R. Antulay Vs. R.S. Nayak and Another, . We are, however, not impressed by this contention of learned Counsel for the petitioners. In case the Court of Sessions tries the complaint and records any conviction against the petitioners, the petitioners would have the right to appeal u/s 374(2) of the Cr.P.C. to the High Court. It is well settled that change of Forum of appeal does not amount to denial of right to appeal and is no manner vocative of the Constitution. The accused in such complaints, if convicted, is given the right to appeal and has no vested right to appeal to a particular Court or class of Courts. If such a right had been taken together, there could have been some substance in the grievance raised. However, when right to appeal remains and only Forum of appeal changes, no such grievance can be raised. In Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others, , the Supreme Court had dealt with this aspect in the following manner:

5. On the question as to where the appeal could be lodged we are clearly of the view that the forum was governed by the provisions of the Goa, Daman and Diu (Extension of Code of Civil Procedure, 1908 and Arbitration Act, 1940) Act, 1965 (Central Act XXX of 1965) read with the provisions of the Goa, Daman and Diu Civil Court Act, 1965 (Goa Act XVI of 1965) both of which came into force simultaneously on June 15, 1966 and the appeal was required to be filed in the Judicial Commissioner's Court. Under the Central Act XXX of 1965 with effect from June 15, 1966 the provisions of the Indian CPC were extended to the Union Territories of Goa, Daman and Diu and the corresponding provisions of the Portuguese Code were repealed while under the Goa Act XVI of 1965 the instant suit which was pending before the Comarca Court at Margao was continued and decreed by corresponding Court of the Senior Civil Judge, who ultimately decreed it on March 8, 1968. Under the Indian CPC read with Section 22 of the Goa Act

since the property involved in the suit was of the value exceeding Rs. 10,000 the appeal clearly lay to the Judicial Commissioner's Court. The contention that since the right of appeal had been conferred by Portuguese Code, the Forum where it could be lodged was also governed by the Portuguese Code cannot be accepted. It is no doubt well-settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commenced in the Court of the first instance, and such right or any remedy in respect thereof will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary implication takes away such right or remedy in respect thereof.

This position has been made clear by Clauses (b) and (c) of the proviso to Section 4 of the Central Act XXX of 1965 which substantially correspond to Clauses (c) and (e) of Section 6 of the General Clauses Act, 1897. This position has also been settled by the decisions of the Privy Council and this Court (vide *The Colonial Sugar Refining Company Ltd. v. Irving* 1905 AC 369 and *Garikapatti Veeraya Vs. N. Subbiah Choudhury*,) but the Forum where such appeal can be lodged is indubitably a procedural matter and, Therefore, the appeal, the right to which has arisen under a repealed Act, will have to be lodged in a Forum provided for by the repealing Act. That the Forum of Appeal, and also the limitation for it, are matters pertaining to procedural law will be clear from the following passage appearing at page 462 of Salmond's Jurisprudence (12th Edn.):

Whether I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice; but in what Courts and within what time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the Courts fulfil their functions.

It is true that under Clause (c) of the proviso to Section 4 of the Central Act XXX of 1965 [which corresponds to Section 6(e) of the General Clauses Act, 1897] it is provided that a remedy or legal proceeding in respect of a vested right like a right to an appeal may be instituted, continued or enforced as it this Act (meaning the repealing Act) had not been passed. But this provision merely saves the remedy or legal proceeding in respect of such vested right which it is open to the litigant to adopt notwithstanding the repeal but this provision has nothing to do with the Forum where the remedy or legal proceeding has to be pursued. If the repealing Act provides new Forum where the remedy or the legal proceeding in respect of such vested right can be pursued after the repeal, the Forum must be as provided in the repealing Act. We may point out that such a view of Section 6(3) of the General Clauses Act, 1897 has been taken by the Rajasthan High Court in the case of *Purshotam Singh v. Narain Singh and State of Rajasthan* AIR 1955 Raj 203. It is thus clear that under the repealing enactment (Act XXX of 1965) read with Goa Enactment (Act XVI of 1965) the appeal lay to the Judicial Commissioner's Court and the same was accordingly

filed in the proper Court.

13. To the same effect is the judgment of the Apex Court in Shanti Mathur (supra), relevant portion whereof is already extracted above while reproducing the discussion of the learned Single Judge in the case of Panther Fincap (supra).

14. Reliance by the petitioners on the judgment of the Supreme Court in A.R. Antulay (ibid) may not be of any help. Going through the said judgment, it would be clear that in the said case the Supreme Court was considering the effect of its earlier judgment dated 16.12.1984 which resulted in the transfer of cases pending before the Special Court for trial to a sitting Judge of the High Court and this had deprived the appellant therein the right of making any appeal whatsoever. The Court further noted in that case that the appellant's right to prefer statutory revision u/s 9 of the Code of Criminal Procedure, 1973 had also been taken away by transferring the case to a sitting Judge of the High Court.

15. Insofar as the deprivation of the petitioner's right to file revision is concerned, such an argument may be attractive in the first blush but it loses its sheen when the matter is considered in its right perspective. As pointed out above, the submission of the petitioners is that against the order of the Magistrate they will have right to file appeal before the Sessions Court and thereafter revision petition before the High Court. As already noticed above, once the case is tried by the Court of Session right to appeal, which is a statutory right, remains intact. After the exhaustion of remedy of appeal which is available to the petitioners in any case what has to be seen is as to whether there is any "legal right" in preferring the revision. We have to answer this question in the negative.

16. Provisions of Section 397 of the Cr.P.C. do not confer any right upon a person to seek such revision. This provision, in fact, retains and conserves the right of the Court to revise an order passed by the Court of Session or the Magistrate, as the case may be. Nature of this provision came up for discussion before the Kerala High Court in C. Kunnamad v. C. Abdul Kader (1978) CrI. LJ. 19 : 1977 KLT 840, and it was opined that a revision is not a right and is only a procedural facility afforded to a party, while appeal is a statutory right conferred on a party. It was further held that a revision is not a continuation of the suit, appeal or trial. It is only a step in aid for invoking the powers of superintendence by the Sessions Judge and the High Court for correcting irregularities, if any, in the judgments and orders of the subordinate Courts. In coming to this conclusion, the Kerala High Court in the said case, though it was a judgment of the Single Judge, followed its earlier judgment rendered by a Division Bench in Raman Pillay v. Dakshayni 1975 KLT 739. We consider that it is the correct interpretation of the nature of remedy provided u/s 397 of the Cr.P.C.

17. Our reason for making these observations is based on the Constitution Bench judgment of the Apex Court in Pranab Kumar Mitra Vs. The State of West Bengal and Another, , where the same provision, namely, revisional power of the High

Court contained in Section 439 of the Code of Criminal Procedure, 1882 came up for interpretation. This view is reiterated by the Supreme Court recently in Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, . After taking note of earlier precedents not only of the Supreme Court but English Courts, the Court (speaking through Hon"ble Mr. Justice Arijit Pasayat) dealt with the nature and scope of Section 115 of the Cr.P.C. (which deals with revisionary powers of the High Court in civil matters) and held as follows:

32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favor of the party applying for revision would have given finality to suit or other proceeding. If the answer is "yes" then the revision is maintainable. But on the contrary, if the answer is "no" then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision u/s 115. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.

33. Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision u/s 115 of the Code. In Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, , it was observed that if a provision of statute is unconditionally omitted without a saving clause in favor of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, there is no scope for granting it afterwards. There is modification of this position by application of Section 6 of the General Clauses Act or by making special provisions. Operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in the statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favor of pending proceedings, then it can be reasonably inferred that the intention of the Legislature is that the pending proceedings shall continue but a fresh proceeding for the same purpose may be initiated under the new provision.

18. The Constitution Bench in no certain terms observed that the revisional powers of the High Court vested in it by the said provision do not create any right in the litigant but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisdiction and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse

their powers vested in them by the Court. On the other hand, it held, a right of appeal is a statutory right which has got to be recognized by the Courts. For this reason, the Court opined, that whereas the Legislature has specifically provided the rules governing the right of substitution in case of death of an appellant by Section 31 of the Code of 1882 (which was the provision for appeal), no such corresponding provision dealing with the question of abetment or and the right of substitution was made in a criminal revision.

19. Insofar as observations of the Supreme Court about right of revision contained in A.R. Antulay (ibid) are concerned, such observations are made having regard to a particular provision contained in Section 9 of the Criminal Law (Amendment) Act, 1952 which gives statutory right of revision in contradiction to Section 397 of the Cr.P.C. which does not provide any such statutory right.

20. Last but not the least, even if one were to go by the unamended provision, it merely required that no Court inferior to that of a Metropolitan Magistrate of the First Class shall try any offence punishable under the Act. That rule is not breached by the impugned order since the Court of Session is a Court that is not inferior to the Courts mentioned in Section 26(2) of the Act.

21. The upshot of the aforesaid discussion is that the administrative orders passed by this Court and consequential orders issued by the District and Sessions Judge passed thereon as well as the order of the learned Addl. Sessions Judge are perfectly valid. The Addl. Sessions Judge has requisite jurisdiction to entertain the complaint. We, Therefore, do not find any reason to interfere with these orders and consequently dismiss these writ petitions as misconceived and frivolous.

No costs.