
(1975) 03 GUJ CK 0008
In the Gujarat High Court

Namamal Pessumal and Others

APPELLANT

Vs

State of Gujarat.

RESPONDENT

Date of Decision : 12-03-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 484(2)(a)
Penal Code, 1860 (IPC) — Section 477, 506

Citation : (1975) 16 GLR 871

Hon'ble Judges : M.C. Trivedi, J

Bench : Single Bench

Judgement

M.C. Trivedi, J.—The applicants have filed this revision application against the order, dated 4th November 1974, passed by the learned Sessions Judge, Narol, in Criminal Revision Application No. 16 of 1974, which was filed in his Court, against the order passed by the learned Judicial Magistrate, First Class, Dehgam, on deputation to Narol, on 6-8-74, below application, Ex. 6, in Criminal Case No. 891 of 1973. It was a case filed against the applicants for offences under Sections 477, 506, etc. of the Indian Penal Code. It was filed on a police report. The complaint of the offence was filed in the police station on 3-3-73. The police took cognizance of the offence and carried out investigation. On completion of the investigation, charge-sheet was submitted against the applicants on 13-4-73. Admittedly, it was filed before the coming into force of Criminal Procedure Code, 1973, (hereinafter referred to as the new Code) which came into force from 1-4-74. Admittedly, the offence u/s 477 of the Indian Penal Code was exclusively triable by a Sessions Court under the Code of Criminal Procedure 1898 (hereinafter referred to as the old Code). It is conceded before me by Mr. Shelat for the State that the proceedings which were pending on the file of the learned Judicial Magistrate on the date of the coming into operation of the new Code, were inquiry proceedings under Chanter XVIII of the old Code. The learned Assistant Public Prosecutor, by the application, Ex.6, requested the Court that, after the coming into force of the new Code, offence u/s 477 of the Indian Penal Code is triable by the learned Judicial Magistrate, First Class. However the same

was exclusively triable by the Court of Sessions under the old code and, therefore, as provided in Section 484(2)(a) of the new Code, the case should be tried under the provisions of the old Code and the accused should be committed to the Court of Sessions for trial. The application was resisted on behalf of the applicants, original accused. The learned Judicial Magistrate, by his order, dated 6-8-74, found that the proceedings pending before him being inquiry proceedings, under Chapter XVIII of the old Code, were saved from the operation of Section 484(2)(a) and, therefore, they were to be dealt with and disposed of in accordance with the provisions of the new Code. He, accordingly, refused to commit the case to the Sessions Court for trial. The said order was taken in revision before the learned Sessions Judge, Narol. By his above referred order, dated 4th November, 1974, he held that the proceedings were governed by the provision contained in Section 484(2)(a) of the new Code and not by the proviso to the said provision and he set aside the order of the learned Judicial Magistrate and directed him to commit the accused to the Court of Sessions for trial.

2. Admittedly, the offence in question was committed on 1-3-73 and the complaint with respect to the offence was filed in the police station on 3-3-73. The charge-sheet against the accused for offences under Sections 342, 420, 477 and 506(2) read with Section 34 of the Indian Penal Code was submitted in the Court of the learned Judicial Magistrate, First Class, Narol on 13-4-73. The new Code of Criminal Procedure, 1973, came into force with effect from 1-4-74. On the date of the coming into force of the new Code, the proceedings, which were pending before the learned Judicial Magistrate, First Class, Narol, were inquiry proceedings under Chapter XVIII of the old Code. Such proceedings are governed by the proviso to Section 484(2)(a) of the new Code. It provides "every inquiry under Chapter XVIII of the old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code". All the requirements of this proviso to Section 484(2)(a) of the New Code are satisfied and, therefore, the learned Judicial Magistrate was bound to deal with and dispose of the proceedings under the New Code. However, it appears that, some confusion arose in the minds of the contesting parties, because one of the offence alleged against the accused persons is u/s 477 of the Indian Penal Code. Under Schedule II of the old Code, this offence u/s 477 of the Indian Penal Code was triable by a Court of Sessions. Therefore, under the old Code, the learned Judicial Magistrate was required to commit the case to the Court of Sessions. However, under the new Code, this offence u/s 477 of the Indian Penal Code is triable by a Magistrate of the First Class. In view of the coming into force of the new Code from 1-4-74, the prosecution applied to the learned Judicial Magistrate that the case should be committed to the Court of Sessions, because, on the date of the commission of the offence and on the date of the submission of the charge-sheet in the Court, the offence u/s 477 of the Indian Penal Code was triable by the Court of Sessions. The learned Judicial Magistrate came to a conclusion that, even though under the old Code, the offence u/s 477 of the Indian Penal Code was triable by a Court of Sessions, the

provisions of the New Code are applicable to the pending inquiry proceedings under Chapter XVIII of the Old Code and, therefore, the offence u/s 477 of the Indian Penal Code being triable by him under the New Code, he was not bound to commit the case to the Court of Sessions. The learned Sessions Judge seems to have reversed his order, because he has found that the proviso to Section 484(2) (a) of the New Code is confined to the manner or the procedure of committing a case to the Court Of Sessions and does not extend to determining the Court empowered to try a case or the matter of the trial, viz., whether it should be a Sessions trial or warrant trial by a Magistrate. He has also found that under the proviso to Section 484(2)(a) of the New Code, the question as to which Court is empowered to try a case cannot be determined by the provisions of the New Code. According to him, the trial of the case has to be held in accordance with the provisions of the Old Code, as laid down in the substantive part of Clause (a) of Section 484 (2) and the proviso is not meant to provide an exception to this rule so far as the trial is concerned. He has also observed "it is a generally accepted principle that even if a statutory provision relating to a procedural matter is to be construed as retrospective, this rule does not extend to a provision determining the forum of trial or of appeal, unless the Legislature indicates a clear intention to that effect too." According to him, if the case is governed by the proviso to Section 484(2)(a) of the New Code, the offence, which was triable by a Court of Sessions, has become triable by a Court of Judicial Magistrate, First Class, and, therefore, even the forum for filing an appeal against the final order, which may be passed by the competent Court, would be changed. He has relied on the Full Bench decision of this High Court in *Hiralal Nama Bhavsar v. The State* 15 G.L.R. 725. He has also relied on the case of *Colonial Sugar Refining Company Ltd. v. Irving* 1905 A C 369. The effect of the conclusion reached by him comes to this that the proviso to Section 484(2)(a) of the New Code applies to inquiry proceedings under Chapter XVIII of the Old Code only where the forum for the trial of the offence in the Old Code as well as in the New Code remains the same and the right to file an appeal in the particular Court remains unchanged. According to him if, by application of the proviso to Section 484(2)(a) of the New Code, the forum for the trial of the offence is changed or the forum for preferring an appeal is changed, the proviso does not apply to inquiry proceedings and the same should be dealt with and disposed of under the Old Code. This clearly amounts to carving out an exception to the proviso laid down by the Parliament to Section 484(2)(a) of the New Code. The established rule of construction sought to be applied by him will have no application if the Parliament has expressly made provision for following the provisions of the New Code in conducting the inquiry proceedings under Chapter XVIII of the Old Code. It appears that he has fallen into an error, because he has applied the same principle which has been laid down by the Full Bench of this High Court in the above referred decision in 15 G.L.R. 725 in cases covered u/s 484(2)(a) of the New Code. In the Full Bench case referred to above, the question before the Full Bench was relating to the right of appeal and it was held "the right of appeal is a substantive right and not a procedural right. Right of

appeal is a vested right and the said right vests from the day of commencement of the proceedings as an appeal is considered as a continuation of the proceeding. The substantive right of appeal includes the right to continue the proceeding upto the final Court of appeal. The forum to file the appeal is also thus determined as soon as the action is instituted. In a criminal case this right of appeal and the right to file the appeal in the forum prescribed by law would precipitate at the date when the Court takes cognizance of an offence against the accused." In paragraph 3 of the judgment, the Full Bench has observed. "The New Criminal Procedure Code (II of 1974) came into force from April 1, 1974, repealing the Old Criminal Procedure Code (V of 1898). Sub-section (2) of Section 484 of New Criminal Procedure Code contain saving provisions and the intention of the Parliament as evident from the provisions of Sub-section (2)(a) is to continue the Old provisions in respect of pending appeal, application, trial, inquiry and investigation. The Parliament has clearly given the direction that such proceedings should be disposed of or continued or held or made, as the case may be, in accordance with the provisions of the Old Code as if the New Code has not come into force. It is clear that the Parliament did not intend to give retrospective effect to the provisions of the New Code so far pending proceedings mentioned therein are concerned. It is obvious that in enacting Sub-section (2) (a) the Parliament intended that the pending proceedings be disposed of or continued or held or made according to the procedure under the Old Code". It is further observed in the judgment "there are four categories of persons so interested in the right of appeal to the High Court against their orders of conviction passed by the concerned Magistrate, namely (i) those persons who were aggrieved by a judgment and order of conviction passed by the Presidency Magistrate before commencement of the New Code and who have filed the appeal in pursuance of the provisions of the Old Code in the High Court. In this class, there may be cases in which there may be more than one accused person in a case against whom an order of conviction might have been passed. Some of these accused might have filed appeal against their order of conviction in the High Court prior to the coming into force of the New Code and some of them who have not filed such appeal because they have not obtained certified copies of the judgment and whose period of limitation for filing appeal is still subsisting. (2) These accused persons against whom the trial Court had taken cognizance of the prosecution prior to the coming into force of the New Code, held trial after April 1, 1974 and has passed judgments and orders of conviction thereafter. (3) Those accused persons against whom the Court has taken cognizance after April, 1974 of the prosecution in respect of an offence committed prior to coming into force of the New Code and the order of conviction has been passed thereafter. (4) Those accused persons who have committed the offence after the coming into force of the New Code and who are convicted thereafter." As regards these four categories of cases, it has been held "that in the four categories of cases mentioned-herein before, the first two categories of cases would be governed by Sub-section (2)(a) of the New Code and have to be disposed of finally in accordance with the provisions of the Old Code as if the New Code has not come

into force. The other two categories of the cases would not be governed by the provision of Sub-section (2)(a) and shall have to be dealt with and disposed of in accordance with the provisions of the New Code". It appears that the learned Sessions Judge has lost sight of the fact that, while coming to this conclusion, the Full Bench was dealing with the provisions of Section 484(2)(a) of the New Code. Here, the case is clearly covered under the proviso to Section 484(2)(a) of the New Code. The question before this Court is as regards the scope and extent of the proviso to Section 484(2)(a) of the New Code and not as regards the scope of Section 484(2)(a) of the New Code.

3. Section 484 of the New Code is relating to the repeal and saving. It reads:

(1) The Code of Criminal Procedure, 1898, is hereby repealed.

(2) Notwithstanding such repeal,-

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure Code, 1898, as in force immediately before such commencement, (hereinafter referred to as the Old Code), as if this Code had not come into force:

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code.

The question for decision before the Full Bench was u/s 484(2)(1) of the New Code. By Section 484(2)(a) of the New Code, the provisions of the Old Code have been continued in force in so far as the pending appeal, application, trial, inquiry or investigation are concerned. However, to Section 484(2)(a) a proviso has been added which gives retrospective operation to the New Code to inquiry proceedings under Chapter XVIII of the Old Code, which are pending at the commencement of the New Code. The Parliament has, by express provision, given retrospective effect to the provisions of the New Code in so far as the pending inquiry proceedings under Chapter XVIII of the Old Code are concerned. The retrospective effect is not given to particular type of proceedings under Chapter XVIII of the Old Code. Retrospective effect is given to all such inquiry proceedings. Even in the Full Bench decision referred to above, it is observed "it is clear from the aforesaid provisions that whenever the Parliament wanted to apply the provisions of the New Code or that the provisions of the Old Code are to be continued (inspite of the enactment of the New Code), it has specifically so stated. The intention of the Parliament as evident from the provisions of Sub-section (2)(a) is to continue the old provisions in respect of pending appeal, application, trial, inquiry and investigation. The Parliament has clearly given the direction that such proceedings should be disposed of or continued or held or made, as the case may be, in accordance with the provisions of the Old Code as

if the New Code has not come into force. It is clear that the Parliament did not want to give retrospective effect to the provisions of the New Code so far pending proceedings mentioned therein are concerned. The proviso to the said sub-section makes the intention of the Parliament clearer. A bare reading of the said proviso indicates that the committal proceedings which are contained in Chapter XVIII of the Old Code and which are pending at the date of the commencement of the New Code are to be continued under the New Code. This clearly means that retrospective effect has to be given to the provisions of the New Code so far as pending committal proceedings are concerned". These observations of the Full Bench very clearly read the intention of Parliament to give retrospective effect to the provisions of the New Code to pending inquiry proceedings under Chapter XVIII of the Old Code. The proviso does not distinguish between different inquiry proceedings under Chapter XVIII of the Old Code. It is an absolute provision which applies to all such pending proceedings. Therefore the intention of Parliament is that the provisions of the New Code should apply to all such pending inquiry proceedings under Chapter XVIII of the Old Code irrespective of the change of forum for trial of the offence or the change of forum for filing of the appeal, as a result of the coming into force of the New Code after the commission of the offence or after the institution of the proceedings in the Court. The Court cannot read any exception to the proviso to Section 484(2)(a) of the New Code. When Parliament has clearly indicated its intention by enacting the proviso to Section 484(2)(a), there remains no scope for saying that the New Code cannot apply to pending inquiry proceedings under Chapter XVIII of the Old Code, if the forum for the trial of the offence is changed or if the forum for filing of an appeal is changed, as a result of the coming into force of New Code. The only difficulty which the learned Sessions Judge has found in interpreting the proviso to Section 484(2)(a) of the New Code is that the forum for the trial of the offence u/s 477 of the Indian Penal Code is changed, after the coming into force of the New Code. However, even such cases are covered by the proviso, which is absolute in its operation. The principle laid down in the Full Bench Decision referred to above in construing Section 484(2)(a) cannot be extended to the present case, because, here, the question is of the construction of the proviso to Section 484(2)(a) of the New Code. If the construction put by the learned Sessions Judge on the proviso to Section 484(2)(a) is adopted it will result in distinguishing pending inquiry proceedings under Chapter XVIII of the Old Code, on the coming into force of the New Code, which is not intended by Parliament.

4. The Parliament has made its intention very clear by enacting the proviso and, therefore, there is no scope for arguing that the proviso has no application to pending inquiry proceedings under Chapter XVIII of the Old Code, where the offence charged is an offence u/s 477 of the Indian Penal Code, which was exclusively triable by the Sessions Court under the Old Code and which is triable by the Magistrate of the First Class under the New Code. There is no scope for making this distinction because the proviso governs all pending inquiry

proceedings under Chapter XVIII the Old Code. The present proceedings before the learned Judicial Magistrate are clearly covered under the proviso and, therefore, they are required to be dealt with and disposed of under the provisions of the New Code. Therefore, I am of the opinion that the learned Sessions Judge has erred in coming to a conclusion that the proceedings in question are required to be dealt with and disposed under the provisions of the Old Code.

5. The result is that the revision application is allowed. The order of the learned Sessions Judge is set aside and it is directed that the learned Judicial Magistrate, First Class, Dehgam, on deputation at Narol, shall proceed further with the proceedings in accordance with law.