
(1974) 07 BOM CK 0017

In the Bombay High Court

Case No : Criminal Application No. 424 of 1974

Narayanan Nambeesan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-07-1974

Acts Referred:

Bombay Police Act, 1951 — Section 57
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 428, 484
Penal Code, 1860 (IPC) — Section 120B, 408

Citation : (1974) 76 BOMLR 690

Hon'ble Judges : Sawant, J;Bhole, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sawant, J.—Petitioners Nos. 1 and 2 in this petition were original accused Nos. 2 and 3 in Sessions Case No. 22 of 1970 tried by the Additional Sessions Judge, Sangli. The Sessions Court by its judgment dated April 16, 1971 convicted both of them u/s 120-B read with Section 408, Indian Penal Code, and sentenced each of them to R.I. for five years and to pay a fine of Rs. 2000 and in default of the payment of fine, to undergo rigorous imprisonment for further nine months. They were also convicted u/s 408, Indian Penal Code simpliciter and each of them was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 3000 and in default of the payment of fine to undergo further rigorous imprisonment for one year. The substantive sentences were to run concurrently. Against their said convictions, the petitioners preferred Criminal Appeal No. 774 of 1971 along with original accused No. 4, in this Court. This Court by its order dated July 13, 1973 confirmed their convictions under both the counts, but reduced the substantive sentences of both the petitioners from five years to three years rigorous imprisonment under each of the counts. The sentences of fine, the default sentences as well as the order directing that the substantive sentences should run concurrently, were however maintained.

2. The petitioners have filed the present petition praying for an appropriate direction to the Jail authorities to act under the provisions of Section 428 of the Code of Criminal Procedure, 1973, and set off the period of their detention during the investigation and trial against the term of imprisonment imposed on them on their convictions. Although the petition which has been forwarded through the Jail has not been drawn up in so many words under Article 226 of the Constitution of India for the issuance of a writ of mandamus against the State of Maharashtra and the Jail authorities in the State, for the aforesaid direction, the same will have to be treated so and with the consent of the parties it is treated as such.

3. Admittedly the petitioners were in detention during the period of investigation and trial. They were convicted prior to April 1, 1974 i.e. the date on which the Code of Criminal Procedure 1973 (hereinafter referred to as the new Code) came into operation. The short question therefore which arises for our consideration in this petition is, whether the benefit of set-off under the provisions of Section 428 of the new Code is available to persons who were convicted prior to the date on which the new Code came into operation.

4. The rival contentions of the parties may be stated thus. According to Mr. Chitnis appearing for the State, the provisions of Section 428 are applicable only to those accused who are convicted under the new Code and are not applicable to those convicted under the old Code i.e. the Code of Criminal Procedure, 1898, since the convictions and sentences of the latter are governed by the old Code and admittedly there was no provision in the old Code similar to the one contained in Section 428 of the new Code. He submitted that to give benefit of Section 428 to those convicted prior to the coming into operation of the new Code is to give retrospective operation to the said section and this is not warranted either by the language of the said section or by any other provision in the Code, and will also be contrary to the principles of the interpretation of statutes. Mr. Singhavi, on the other hand, contended that, in the first instance, the language of Section 428 of the new Code is clear and unambiguous and covers the case of any accused person who has, on conviction, been sentenced to imprisonment. The petitioners in this petition satisfy, on the date on which Section 428 came into operation, the test viz. that of persons having been sentenced to imprisonment on conviction. Therefore, on the language of the section itself, without anything more, the petitioners are entitled to the benefit of the provisions of the said section. His next contention was that the said section cannot be construed as retrospective in its operation merely because for giving its benefits an event which has taken place prior to its coming into operation has to be taken into consideration as a qualification or a pre-requisite. The benefit to be given is to operate in future i.e. for the period subsequent to its coming into operation. Thirdly, he submitted that even assuming that to give benefit of the provisions of the said section to the persons convicted in the past will amount to making the said provisions retroactive in operation, such retroactive operation will be legal and valid since the said provisions are merely procedural in nature,

and procedural statutes are retrospective in their operation, unless a contrary intention is expressed. He further contended that the provisions contained in Section 428 are reformatory in nature and the benefits thereof should normally be available to all without unwarranted distinction between those convicted prior and those convicted subsequent to its coming into operation. His last contention was that Section 484 of the new Code makes abundantly clear, if the provisions of Section 428 are held not to be so clear, that a person convicted and sentenced under the old Code will be entitled to the benefit of the provisions of Section 428. In this connection he pointed out that Sub-clause (b) of Sub-section (2) of Section 484 states among other things that all sentences passed and orders made under the old Code and which were in force immediately before the commencement of the new Code, should be deemed respectively to have been passed or made under the corresponding provisions of the new Code. In view of these provisions, he contended that it was clear that persons who were, convicted and sentenced under the old Code would also be entitled to the benefit of the provisions of Section 428 of the new Code.

5. In order to appreciate the aforesaid contentions, it is necessary to bear in mind the provisions of Section 428 and the relevant provisions of Section 484 of the new Code which came into operation on April 1, 1974 and which read as follows:

428. Where an accused person has, on conviction, been sentenced to imprisonment for a term, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

484. (1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal,--

(a) ...

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately, before the commencement of this Code, shall be deemed, respectively, to have been published issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(c)...

(d) ...

(3) ...

6. A plain reading of Section 428 shows that the said provisions are both wide and unambiguous and cover cases of any accused person who has, on conviction, been sentenced to imprisonment. The only qualification laid down in the said section for entitling a person to its benefit is that he should stand sentenced to imprisonment on the date on which the said section comes into operation. There is no further condition laid down that the conviction must be under the new Code. The section does not make any distinction between persons convicted and sentenced under the old Code and those convicted and sentenced under the new Code. It is not therefore permissible to introduce any such further condition while considering the question of giving benefit under the said section. Secondly, the benefit of set-off given under the said section is to operate for the future i.e. after the coming into operation of the said section. All that happens in the case of past convicts is that while giving them benefit of the section, a qualifying or requisite past event i.e. their conviction prior to the coming into operation of the section, is taken into consideration. The section does not debar such consideration. The section is intended to give the benefit in presenti to all, whether the qualifying or pre-requisite condition arose prior or subsequent to its coming into operation. Thirdly, it is evident that the said section for the first time incorporates a penal reform, which was long overdue, for the benefit of the convicts. In the absence of clear intention to the contrary expressed in the enactment, the benefits of such reformatory measure should be available to all who answer the definition of convicts, the only qualifying condition laid down therein. It is also further clear that Section 428 merely lays down the manner in which computation of the period of imprisonment is to be made in the case of the convicts; who have already undergone a period of detention during investigation, inquiry or trial. It does not affect adversely substantive rights or obligations of any person. It is therefore purely procedural in nature. There is nothing in the section which bars the benefit of such computation in favour of the accused convicted prior to its coming into operation. The benefit of the procedure given in the said section for calculating the total period of imprisonment which a convict has to undergo will be equally available to those convicted prior to April, 1974 i.e. the date on which the new Code came into operation.

7. We also find that the provisions of Sub-clause (if)) of Sub-section (2) of Section 484 of the new Code reproduced above leave no manner of doubt that the benefits of the said Section 428 are equally available to the persons like the petitioners who were convicted prior to April 1, 1974. The said provisions of Section 484 are in the nature of saving provisions, and in terms state that all sentences passed and orders made under the old Code shall be deemed to have been passed and made under the corresponding provisions of the new Code. In other words, the conviction and sentence of the accused like the petitioners under the old Code will have to be deemed to be their conviction and sentence under the new Code also for the purposes of Section 428. In that case the only major plank of the arguments advanced on behalf of the State gives way, and the benefits of Section 428 become available also to those convicted under the

old Code, Mr. Chitnis had no answer to this position in law. This is the position which emerges on the plain reading of Section 428 independently and also in conjunction with Section 484(2)(b) of the new Code.

8. It will now be convenient to refer to the authorities cited by Mr. Singhavi in support of his two propositions viz. Section 428 does not become retrospective in operation merely because the benefit thereof becomes available to those convicted prior to its coming into operation, and secondly, even if it is held that the granting of its benefits to such past convicts makes the operation of the said section retrospective, the retrospective operation of the said section will be valid since it is merely procedural in nature.

9. In *The Queen v. The Inhabitants of St. Mary, Whitechapel* (1848) 12Q.B. 120: 116 E.R. 811 the facts were as follows: By Section 2 of the Poor Removal Act, 1846, it was provided that no woman residing in any parish with her husband at the time of his death shall be removed from such parish for twelve calendar months next after his death, if she so long continue a widow. It was sought to remove within the twelve months period, a woman whose husband had died before the Act was passed on the ground that to make the section apply in such a case was to construe it retrospectively, the right to remove being a vested right which had accrued on the man's death. The Court however held otherwise, Lord Denman C.J. observing as follows (p. 127):

...that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing.

10. In *Master Ladies Tailors v. Min. of L. & N.S.* [1950] 2 All E.R. 535 the same principle is reiterated, The facts in that case were as follows: The "Wages Councils Act, 1945, Section 10, empowers the Minister of Labour and National Service to make orders giving effect to proposals submitted by a Wages Council established under the Act for fixing remuneration for work, and holiday remuneration of workers in respect of whom the Council operates, as: from such date as may be specified in the order, which must be a date subsequent to that of the making of the order. On July 25, 1949, the Minister made a holiday remuneration order for workers engaged in wholesale mantle and costume making, which came into force on August 15, 1949. Paragraph 8 of the schedule to the new order provided:

When a worker ceases to be employed after the provisions of this schedule become effective, accrued holiday remuneration shall, immediately on the termination of the employment, be paid to him by his employer in accordance with the next following paragraph....

and by para. 9 it was provided that "holiday remuneration shall accrue to a worker during the period of twelve months commencing on May 1, 1948, and thereafter in each successive period of twelve months commencing on May 1, and such remuneration shall accrue in accordance with the provisions of" a table

which specified twice the normal wage if an employee had worked for forty-eight weeks and a diminishing proportion of that sum for lesser periods. On the question whether the order was ultra vires the Act of 1945 and void since it purported to confer on workers remuneration not merely measured by, but in respect of employment before the order became effective, and thus imposed on the employers liabilities which had accrued in respect of antecedent employment, it was held that the effect of the provisions relating to accrued remuneration being- merely to determine and limit the quantum of payments to be made after the order came into force, the order could not be construed as having a retrospective operation, and the order was valid.

11. The next case stating the same principle is *A Solicitor's Clerk, In re.* [1957] 1 W.L.R. 1219. The facts in that case were that on September 20, 1957, the disciplinary committee of the Law Society made an order u/s 16(1) of the Solicitors Act, 1941 as amended by Section 11(1) of the Solicitors (Amendment) Act, 1956 directing that no Solicitor should thereafter employ the appellant, an unadmitted Solicitor's clerk, who had been convicted of larceny in 1953, without the permission of the Law Society. The appellant's conviction had no connection with money or property belonging to the Solicitor by whom he had been employed or any of his clients, but the Committee found that his case was clearly covered by Section 16(1) of the Act of 1941 as amended by Section 11(1) of the amending Act of 1956 which amendment debarred a person convicted of larceny with regard to money or property in general. It was the contention of the appellant in his appeal from the Committee's order, that inasmuch as the larceny which he had committed in 1953 was not with respect to money or property of the Solicitor or any of his clients, his case was not covered by the amending Act of 1956 which made all larcenies a disqualification. According to the appellant the Committee had given retrospective effect to the amending Act of 1956 by applying it to the conviction which had taken place in 1953. It was held that as the amending Act of 1956 enabled a disqualification to be imposed for the future, but did not affect anything done in the past it was not retrospective in operation and accordingly the Committee had jurisdiction to make the order. In this connection, Lord Goddard C.J. observed as follows (p. 1222) :

...But in my opinion this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.

12. In *Sunshine Porcelain Potteries Pty. Ltd. v. Nash* [1961] A.C. 927 the facts were that by Section 5(7) of the Workers' Compensation Act, 1951 of Victoria

(as amended by Act No. 5676 of 1953) it was provided:

If in any employment personal injury...arising out of or in the course of the employment is caused to a worker his employer shall...be liable to pay compensation....

By Section 12(7):

Where--(a) a medical practitioner certifies that a worker is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed (&) ...and the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of disablement, then...the worker...shall be entitled to compensation....

13. Section 12(1) of the Act of 1951, which was a consolidating Act which repealed the Workers' Compensation Acts of 1928 and 1946, was in the same terms as Section 18 of the Act of 1928 as substituted by Section 8 of the Act of 1946. The original Section 18 of the Act of 1928 was restricted to certain specified industrial diseases which did not include silicosis, whereas Section 18 substituted by the Act of 1946 admittedly covered silicosis. Further, under the Act of 1928, the disease had to be due to the nature of the employment in which the worker was employed within twelve months previous to the date of disablement, whereas in the 1946 substitution the words were "at any time" prior to that date.

14. The respondent who had been employed as an insulator cleaner by the appellant company from 1931 to 1938, was during her work exposed to dust containing silica, and she developed silicosis, the first manifest symptoms of which did not appear, however, until about 1950. She obtained in 1955 a medical certificate which stated that her disablement began about 1950. In 1956 she claimed compensation under the Act of 1951 as amended.

15. It was held in the case that Section 12 of the Act of 1951 did not follow Section 5 in requiring that the injury must occur during the employment. The Act of 1946 applied to the respondent although she was not in employment after it was passed. The question was one of construction--the presumption against a statute being intended to be retrospective having little weight if, indeed, applicable at all--and the words of the new Section 18 substituted by the Act of 1946 applied exactly to the present case--the certificate and disablement were subsequent to its passing and the disease was due to the nature of the employment in which the respondent was employed "at any time prior to the date of disablement." There was nothing in the context or in the circumstances to require that any restricted meaning should be given to the words of the section. It was no answer to the respondent's claim to show that the real cause of the injury was inhaling noxious material before the Act was passed.

16. The Act of 1946 must be held retrospective in substance at least to the extent that all those who were working in noxious employment after 1946 would

get compensation when disablement occurred even if it was clear that the disease was contracted or the whole or most of the damage was done before the Act of 1946 was passed.

17. The said principle has not only been wholeheartedly accepted but also reiterated by our Supreme Court in a case reported in *State of Bombay v. Vishnu Bamchandra*. A.L.R [1961] .S.C. 307: 63 Bom. L.R. 427. The Supreme Court in its judgment in that case quoted extensively from the English and Indian eases in support of its conclusion, and we may with benefit reproduce the said quotations here. This¹ was a case dealing with the provisions of Section 57 of the Bombay Police Act, 1951, which provides as follows:

57. If a person has been convicted--

(a) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code, or

(b) twice of an offence u/s 9 or 28 of the Bombay Beggars Act, 1945, or under the Bombay Prevention of Prostitution Act 1928, or

(c) thrice of an offence within a period of three years u/s 4 or 12 A of the Bombay Prevention of Gambling Act, 1887 (Bom. IV of 1887) or under the Bombay Prohibition Act, 1949 (Bom. XXV of 1940)

the Commissioner, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person U) remove himself outside the area within the local limits of his jurisdiction, by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself.

A single Judge of this High Court had held that the order of externment dated October 15, 1957 under the aforesaid provisions of the Bombay Police Act on the basis of the conviction of the externee on November 16, 1949 i.e. before the Act came into operation, was invalid. In appeal by special leave against that decision, the Supreme Court stated as follows (p. 309);

...The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events.

The Court went on to observe (p. 309) :

There are, however, statutes which create no new punishment, but authorise some action based on past conduct. To such statutes, if expressed in language showing retrospective operation, the principle is not applied. As Lord Coleridge, C.J., observed during the course of arguments in *Bess v. Birthwistle Etc.* (1889)

58 L.J.M.C. 158.

Scores of Acts are retrospective, and may without express words be taken to be retrospective, since they are passed to supply a cure to an existing evil.

Indeed, in that case which arose under the Married Women (Maintenance in Case of Desertion) Act, 1886, the Act was held retrospective without express words. It was said :

It was intended to cure an existing evil and to afford to married women a remedy for desertion, whether such desertion took place before the passing of the Act or not.

Another principle which also applies is that an Act designed to protect the public against acts of a harmful character may be construed retrospectively, if the language admits such an interpretation, even though it may equally have a prospective meaning. In *The Queen v. Vine* (1873) L.R. 10 Q.B. 195, which dealt with the disqualification of persons selling spirits by retail if convicted of felony, the Act was applied retrospectively to persons who were convicted before the Act came into operation. Cockburn, C.J. observed :

If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes--that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses in which spirits are retailed being kept by persons of doubtful character... On looking at the Act, the words used seem to import the intention to protect the public against persons convicted in the past as well as in future; the words are in effect equivalent to "every convicted felon.

In the same case, Archibald, J. expressed himself forcefully when he observed:

...I quite agree, if it were simply a penal enactment, that we ought not to give it a retrospective operation; but it is an enactment with regard to public and social order, and the infliction of penalties is merely collateral".

Similarly in *Ex Parte Pratt* (1884) 12 Q.B.D. 334, which dealt with the words "a debtor commits an act of bankruptcy" to enable the Court to make a receiving order, Cotton, L.J., gave the words a retrospective operation, observing :

...I think that no reliance can be placed on the word "commits" as shewing that only acts of bankruptcy committed after the Act came into operation are intended.

In the same case, the observations of Bowen, L.J., were :

I think that the more the Act is studied the more it will be found that it is framed in a very peculiar way, I do not mean to say that it is inartistically framed. I think it is framed on the idea that a bankruptcy code is being constructed, and when the present tense is used, it is used, not in relation to time, but as the present tense of logic

Fry, L.J. added :

I entirely agree with Bowen, L.J., as to the meaning of the present tense in this section; it is used, I think, to express a hypothesis, without regard to time,...

In *In re School Board Election for Parish of Pulborough. Bourke v. Nutt* [1894] 1 Q.B. 725 Lord Esher, M.R., speaking of these observations of Bowen and Fry, L.J., observed :

...the case seems to me to shew that when the present tense is used in this statute (Section 82 of the Bankruptcy Act, 1888) the time to be considered is the time at which the Court has to act, and not the time at which the condition of things on which it has to act came into existence." Applying the above principles, Lord Esher, M.R., held that the section was not retrospective but prospective, because the important time was that at which it had to be considered whether the person was disqualified and it related to a time after the passing of the Act. He however added that "even if it could be said that it is retrospective, its enactments are solely for the public benefit, and the rule that restricts the operation of a penal retrospective statute does not apply, because this statute is not penal.

These principles, though not unanimously expressed, have been accepted in later cases both in England and in India. In *S. Ganesan Vs. A.K. Joscellyne, Chakravartti, C.J.*, observed, Sarkar, J. (as he then was) concurring :

...I may state, however, that in spite of the ordinary and I might almost say cardinal rule of construction that statutes, particularly statutes creating liabilities, ought not to be so construed as to give them a retrospective operation unless there is a clear provision to that effect or a necessary intendment implied in the provisions, there is another principle on which Courts have sometimes acted. It has been held that where the object of an Act is not to inflict punishment on anyone but to protect the public from undesirable persons, bearing the stigma of a conviction or misconduct on their character, the ordinary rule of construction need not be strictly applied.

In *Syedna Taher Saifuddin Vs. Tyebbhaji Moosaji Koicha and Another*, the same principles were applied by Chagla C.J. and Bhagwati J. (as he then was) and reference was made also to *The Queen v. Inhabitants of St. Mary, Whitechapel*, where Lord Denman, C.J. in his judgment observed :

...It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption against a retrospective statute being intended supported this construction : but we have

before shewn that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing.

Turning to Section 57, the Court then held (p. 310) :

Now, Section 57 of the Bombay Police Act, 1951, does not create a new offence nor make punishable that which was not an offence, It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The section only enables the authorities to take note of their convictions and to put them outside the area of their activities, so that the public may be protected against a repetition of such activities. As observed by Phillimore, J. in *Rex v. Austin* [1913] 1 K.B. 551

No man has such a vested interest in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history.

An offender who has been punished may be restrained in his acts and conduct by some legislation, which takes note of his antecedents; but so long as the action taken against him is after the Act comes into force the statute cannot be said to be applied retrospectively. The Act in question was thus not applied retrospectively but prospectively.

It remains only to consider if the language of the section bars an action based on past actions before the Act was passed. The verb "has been" is in the present perfect tense, and may mean either "shall have been" or "shall be". Looking, however, to the scheme of the enactment as a whole and particularly the other portions of it, it is manifest that the former meaning is intended. The verb "has been" describes past actions, and, to borrow the language of Fry, L.J., in *Ex Parte Pratt* "is used to express a hypothesis, without regard to time.

18. The principle is therefore now well established that merely because acts antecedent to the coming into operation of an Act are made a requisite or part of a requisite for making" an order under the Act, which order is to operate in future, the Act does not become retrospective in operation on that account. We find that this principle will equally apply to the present case inasmuch as all that Section 428 provides is that for giving an accused the benefits under it, his conviction prior to April 1, 1974 i.e. the date on which the section came into operation, will be taken into consideration as a requisite or a qualification. The benefit to be had is to operate in future i.e. after April 1, 1974. The mere fact, therefore, that such conviction forms the basis or a requisite for the benefit to be had under it, does not make Section 428 retrospective in operation.

19. With regard to the second proposition viz. that even a retrospective operation of Section 428 will be valid since the section is merely procedural in nature, we may refer to the observations on p. 222 in *Maxwell* on the

Interpretation of Statutes, 12th edn., which are as follows:

The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. "Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.

20. This position in law has also been stated in Craies on Statute Law, 7th edn., at p. 388 as follows:

A retrospective statute is different from an ex post facto statute. "Every ex post facto law said Chase J. in the American case of *Colder o. Bull* (1798) 3 Dal (U.S.) 386 "must necessarily be retrospective; but every retrospective law is not an ex post facto law:... Every law that takes away, or impairs, rights vested, agreeably to existing laws, is retrospective, and is generally unjust, and may be oppressive; and it is a good general rule, that a law should have no retrospect : but there are cases in which laws may justly, and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement; as statutes of oblivion, or of pardon. They are certainly retrospective, and literally both concerning, and after, the facts committed. But I do not consider any law etc post facto, within the prohibition, that mollifies the rigor of the criminal law; but only those that create, or aggravate, the crime; or increase the punishment, or change the rules of evidence, for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful; and the making an innocent action criminal, and punishing it as a crime".

21. The aforesaid principle has been applied by the Courts in interpreting diverse statutes.

22. In *Director of public Prosecutions v. Lamb* [1941] 2 K.B. 89 the facts were as follows: By Regulation 5(1) of the Defence (Finance) Regulations, 1939, every person entitled to sell or procure the sale of any foreign currency is required to offer it, or cause it to be offered, for sale to the Treasury; and Regulation 5(2) imposes a similar obligation with regard to assigning to the Treasury rights to receive credits or balances in foreign currency. By Regulation 9 the maximum penalty for an offence was prescribed viz. three months' imprisonment or a fine not exceeding ₹100 or both. On June 11, 1940, a further Order in Council amended the Defence (Finance) Regulations, increasing the maximum fine among other things to a fine equal to three times the value of the security, currency, gold, banknote, etc. whichever is greater. The offenders in that case were charged with offences which were committed between September 3, 1939 and May 11, 1940, in respect of various sums of United States dollars. All the

respondents admitted the offences, and the only question before the Magistrate was whether the Magistrate was entitled, in imposing penalties, to have regard to the Order in Council of June 11, 1940 and impose fines up to three times the value of the currency or whether, as the respondents contended since the offence was complete before the date of the Order in Council of June 11, 1940, they were entitled to the maximum fine of ₹100 only, in each case. The Magistrate having imposed fines not exceeding ₹100, the Director of Public Prosecutions applied for a case stated. The Court held that the language of the amending Order was clear and unambiguous in imposing the increased penalty on any person thereafter convicted, and that the cases must be remitted for the Magistrate to consider the penalty on the basis of the amending Order. To similar effect are the pronouncements in the two other cases which also dealt with the liability of the prisoners for increased penalties for offences committed prior to the date of the Orders increasing the said penalties. The said cases are reported at *Buckman v. Button* [1943] 1 K.B. 405 and *Rex v. Oliver*. [1944] 1 K.B. 68.

23. These cases therefore lay down the principle that the statutes increasing the penalties are procedural statutes and the Courts have, unless specifically barred, to apply them while awarding the punishment, irrespective of the fact that the offence was committed prior to their coming into operation.

24. The logical corollary of the aforesaid principle is that if at the time of conviction, a statute has come into operation reducing the punishment for the offence, then the Court would be required to award the lesser punishment. If this is so, then, in the present case, the case of the petitioners is even stronger, for the substance of Section 428 is that while computing the total period of imprisonment an accused has to undergo, he should be given a set-off of the period of pre-conviction detention which he has already undergone. If therefore on the date on which the accused is undergoing his term of imprisonment, the provisions of Section 428 have come into operation requiring the authorities to give him the said set-off, then according to the aforesaid principle, the authorities are undoubtedly required to act under the said section and to give the accused the benefit of the said set-off. The argument advanced by Mr. Chitnis that the aforesaid principle only empowers the Court to act on the provisions in operation at the time of conviction and no person other than the convicting Court can act on such a provision, has no merit in it. For simply stated, what Mr. Chitnis argues is that since Section 428 was not in operation at the time the petitioners were convicted and since only the Court convicting could act under the provisions of Section 428, the petitioners cannot now be given the benefit of set-off by the State. This argument, in the first instance, ignores the fact that Section 428 does not cast any duty or obligation on the convicting Court to give the said set-off. In fact the convicting Court is required to do nothing under the provisions of Section 428. On the other hand, a duty is cast on the executive authority concerned to act under the said section and to give the necessary benefit to the accused. It may be that the convicting Court for the sake of convenience, administrative facility and to avoid unjust detention on account of

bureaucratic delays, may state in the order of conviction the total period of pre-conviction detention undergone by the accused. But this is a matter of practice and not a requirement of law.

25. We may now refer to the other cases holding some other statutes procedural and giving retrospective effect to them and requiring Courts to apply them as they stood on the date of the decision.

26. In *Herridge v. Herridge* [1965] 1 W.L.R. 1506 the husband and wife were married in 1948. On August 12, 1962, after an act of violence committed on her by the husband, the wife left the husband. On November 5, 1962, she returned to cohabitation with him. On December 4, 1962, after a further alleged act of violence, she again left him, this time for good. She petitioned for divorce on the ground of the husband's cruelty, the petition being heard in February, 1955. The learned President, without referring to Section 2(1) of the Matrimonial Causes Act, 1963 (which came into force on July 1, 1963), found that the husband had been guilty of cruelty, consisting of a course of conduct up to and including the incident of August 12, 1962, but that the cruelty had been condoned by the wife in returning to cohabitation with him on November 5, and that two acts of violence alleged by her to have occurred subsequently to her return did not amount to conduct sufficient to revive it, and he dismissed the wife's petition. The wife appealed, contending, inter alia, that the Judge had erred in law in not taking into account Section 2(1) of the Act of 1963. The Court held that Section 2(1) of the Act of 1963 was properly to be regarded as a procedural section dealing with what evidence might or might not be adduced in relation to an allegation of condonation in any trial taking place after the Act came into force, even though that evidence might relate to events which took place before the Act; the section must, therefore, plainly be relevant to be considered in the present case, and in so far as the President had proceeded without giving it consideration he had misdirected himself.

27. In *Selangor United Rubber Estates Ltd. v. Cradock* [1968] 1 W.L.R. 319 the Board of Trade on a company's behalf brought an action against the company's former directors, bankers and certain other persons for misapplication of the company's moneys. The Board sought to put transcripts of evidence given pursuant to Section 167(2) of the Companies Act, 1948 by B., one of the defendant-directors, before the inspectors investigating the affairs of the company on the ground that they were admissible in evidence against B. in the present proceedings by virtue of Section 50 of the Companies Act, 1967. On B.'s objecting, the Court held that the absence of an express provision regarding admissibility in another proceeding, of evidence taken pursuant to Section 167(2) of the Act of 1948 was cured by Section 50 of the Act of 1967, which expressly provided that an answer given by a person to a question put to him in exercise of powers conferred by Section 167 of the Act of 1948 might be used in evidence against him; that Section 50 was a procedural provision applicable to hearings after the Act came into operation even though the hearing was in

respect of matters which arose before the Act was passed; and that, accordingly, the transcripts were admissible in evidence against B. in the present proceedings.

28. In *Attorney-General v. "Vernazza [1960] A.C. 865* it was provided by Section 51(1) of the Supreme Court of Judicature (Consolidation) Act, 1925:

If on an application made by the Attorney-General...the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings...the court may...order that no legal proceedings shall without the leave of the High Court...be instituted by him in any court, and such leave shall not be given unless the court...is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.

By Section 1(1) of the Supreme Court of Judicature (Amendment) Act, 1959 [it was provided that] in Sub-section (1) of Section 51 of the Supreme Court of Judicature (Consolidation) Act, 1925,...after the words " in any Court there shall be inserted the words "and that any legal proceedings instituted by him in any Court before the making of the order shall not be continued by him without such leave".

On April 9, 1959, the High Court made an order on the application of the Attorney-General, u/s 51(1) of the Act of 1925, that no legal proceedings without leave of the Court should be instituted by V. Against this order. V appealed by notice of appeal dated May 21, 1959. On May 14, 1959, the Act of 1959 had been passed and came into force. The Attorney-General, by a notice of contention dated October 29, 1959, asked the Court of Appeal to vary the order of the High Court by adding an order that any legal proceedings instituted by V before the making of that order should not be continued by him without leave.

Held, that the Court of Appeal, which on the merits held V to be a vexatious litigant, had jurisdiction so to vary the order, and the High Court could itself have made an order in such terms had it been applied for. Assuming that the terms of the amending Act were retrospective, they were procedural, providing a new remedy, but not altering substantive rights. V was not deprived of a substantive right, since it was still open to him to prosecute a claim which was not an abuse of the process of the Court and for which there was a *prima facie* case. Although the Court of Appeal had no original jurisdiction, it was entitled to employ the extended procedural power, made available by the amending Act since the decision of the Court below, as a remedial and preventive measure against vexatious litigation.

29. We have then a decision of the Division Bench of this Court reported in *Shiv Bhagwan v. Onkarmal* (1951) 54 Bom. L.R. 330 One of the points to be considered in that case was whether this Court had jurisdiction to entertain a suit relating to a certain immovable property situate in Vikhroli which admittedly did not form a part of Greater Bombay and was not within the ordinary original civil jurisdiction of this High Court, when the suit was filed. But by reason of the

amending Act of 1950, Vikhroli was brought within the ordinary original civil jurisdiction of this Court from April 3, 1950. Therefore, when the suit came on for hearing before the single Judge of this Court, the immovable property situated at Vikhroli was within the jurisdiction of this Court. The learned single Judge had taken the view that this Court had no jurisdiction to try the said suit. Negating this contention the Division Bench in appeal held that when the Court had jurisdiction to try the suit at the time when it came for trial or disposal, the Court should exercise its jurisdiction notwithstanding the fact that the Court had no jurisdiction on the date on which the suit was filed. Chagla C.J. in this connection observed as follows (p. 352):

...Now, I think it may be stated as a general principle that no party has a vested right to a particular proceeding or to a particular forum, and it is also well settled that all procedural laws are retrospective unless the Legislature expressly states to the contrary. Therefore, procedural laws in force must be applied at the date when a suit or proceeding comes on for trial or disposal.... Now, as I said before, the defendants have no vested right in any particular forum. This court was bound to take notice of the change in the law and was bound to administer the law as it was when the suit came on for hearing. Therefore, if the Court had jurisdiction to try the suit when it came on for disposal, it could not refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted.

30. The principle of law is therefore firmly established that the procedural laws are retrospective in operation and the Courts have to apply them as they are in force at the date when proceedings come up for trial or disposal. We have already observed earlier that Section 428 merely lays down the manner of computation of the total period of imprisonment that a convict has to undergo and hence is only procedural. Therefore on and from the date the said section came into operation, the benefit thereof will have to be given to all convicts undergoing imprisonment whether they were convicted before or after the coming into operation of the Act.

31. The said section further, as pointed out earlier, incorporates a penal reform for the benefit of the convicted persons. It is common knowledge that a considerable length of time elapses before an accused is brought to trial and convicted, after his arrest. The result is, the accused who has no benefit of bail, remains in detention, sometimes, for a long time prior to his conviction when his sentence of imprisonment commences. This obviously unjust situation under the old Code was sought to be remedied by the Legislature by inserting Section 428 in the new Code, on the recommendations of the Joint Committee of Parliament. The reformatory and beneficial nature of the measure is patent on the face of the said section without a reference to its history. Even on this ground, therefore, the said section which in effect gives remission of sentence for the benefit of convicts will have to be held retrospective in operation relying on the observations of Chase J. in the American case of *Colder V. Bull*, quoted from *Craies on Statute*

Law, p. 388, hereinabove. The section will therefore undoubtedly cover cases of the accused like the petitioners who were convicted prior to April 1, 1974 i.e. the date on which the section came into operation. This is apart from the conclusion which we have arrived at earlier, that the case of the petitioners will be covered by the said section, even if no retrospective operation is given to it.

32. Lastly, we have already discussed above the effect of the provisions of Section 484(2)(6) of the new Code and shown how, whatever little doubt there may be about the interpretation of Section 428, has been resolved by the said saving provisions, in favour of the petitioners.

33. For all these reasons we hold that the petitioners are entitled u/s 428 of the new Code to the set-off of the period of pre-conviction detention undergone by them, against the term of imprisonment imposed upon them on their conviction. The State and the Jail authorities concerned should therefore immediately give them the said benefit of set-off.

34. In the result, the petition succeeds and the rule is made absolute as above.

35. Before concluding we may observe that as a matter of healthy practice the Courts convicting the accused may specify in their orders the total period of pre-conviction detention that the accused may have undergone, for the purpose of enabling the authorities concerned to give effect to the provisions of Section 428, without delay.

36. We also place on record our appreciation of the very able assistance given to us by Mr. Singhavi, senior advocate appointed amicus curiae for the petitioners and Mr. K.S. Ramaswami, junior advocate who assisted him. "We recommend that Mr. Ramaswami be paid Rs. 100 as his fees in this petition.