
(2014) 11 BOM CK 0011

In the Bombay High Court

Case No : First Appeal Nos. 922 and 923 of 2013 in Charity Application Nos. 10 and 13 of 2013

Prabodh K. Mehta

APPELLANT

Vs

Charuben K. Mehta

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Constitution of India, 1950 — Article 261, 372, 47
Criminal Procedure Code, 1973 (CrPC) — Section 310, 311, 368, 4(o), 8
Evidence Act, 1872 — Section 35, 42, 43, 57, 74
General Clauses Act, 1897 — Section 3, 3(29), 3(38)
Government of India Act, 1935 — Section 108, 94(3)
Maharashtra Public Trusts Act, 1950 — Section 41D
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(b)(ii), 27, 32A, 33, 37
Penal Code, 1860 (IPC) — Section 2, 2(4), 3, 4
States Reorganisation Act, 1956 — Section 49, 49(1), 49(2), 50, 59

Citation : (2015) 4 ALLMR 724 : (2014) 6 BomCR 784

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Iqbal Chagla, Senior Advocate, Naval Agarwal, Riyaz Chagla, Dharendra Sinha and Ashish Gatagat i/by M/s. Vidhi Partners, Advocate for the Appellant; Mahesh Jethmalani, Senior Advocate, Pranav Badekha, Dakshesh Vyas, Karl Tamboli, Rizvi Nasirali, Abhishek Prabhu i/by M/s. Thakore Jariwala and Co, Advocate for the Respondent

Judgement

R.D. Dhanuka, J.—These appeals are directed against the order dated 20th July, 2013 passed by the City Civil Court dismissing the Charity Application filed by the appellant and allowing Charity Application filed by the respondent dismissing the appellant as trustee of Lilavati Kirtilal Mehta Medical Trust.

2. The facts that are material and relevant for the present case are as under: -

On 15th January, 2007 the appellant was appointed as a trustee of the Lilavati Kirtilal Mehta Medical Trust w.e.f. 15th January, 2007 for the period of 5 years.

The appellant was allegedly convicted of an offence of moral turpitude by a Court in Belgium. On 28th April, 2008, the respondent filed an Application No. 5 of 1008 under Section 41D of the Maharashtra Public Trusts Act, 1950 before the learned Joint Charity Commissioner, Greater Mumbai seeking removal/dismissal/suspension of the appellant as a trustees on the ground that he was allegedly convicted of an offence involving moral turpitude by a Court in Belgium.

3. By a resolution dated 18th October, 2011 passed by the trustees of the said trust, the appellant was appointed as a trustee for further period of 5 years w.e.f. 15th January, 2012. It is the case of the appellant that on 4th March, 2011, the Chamber of Indictment, Court of Appeal, Antwerp, Belgium granted rehabilitation/pardon to the appellant and restored his honour and rights. It is the case of the appellant that by virtue of the said order, the effect of rehabilitation according to the Belgium laws was that the same forever and permanently erased the criminal record of the appellant. The rehabilitation ends/terminates all the negative consequences of the conviction by erasing extracts of the criminal record. The same is clean towards the outside world.

4. By an order dated 8th March, 2013, the learned Joint Charity Commissioner allowed the said application filed under Section 41D thereby removing the appellant from the said trust for the remaining tenure. The City Civil Court rendered a finding that the respondent had proved that the appellant is convicted of an offence involving moral turpitude. Being aggrieved by the said judgment dated 20th July, 2013 the appellant preferred this appeal.

5. Mr. Chagla, learned Senior Counsel appearing for the appellant submits that the offence of moral turpitude alleged by the respondent should be in the capacity of the trustee or in relation to the trust and conviction arising out of such offence should be in India and not anywhere else to attract Section 41D of the Maharashtra Public Trusts Act. Reliance is placed on Sections 3(29) and 3(38) of the General Clauses Act, 1897. Learned Senior Counsel placed reliance on the judgment of Nagpur High Court in case of Govind Kesheo Powar Vs. State of Madhya Pradesh and Others, and in particular paragraphs 1, 4, 6 to 8 and would submit that even if this Court comes to the conclusion that there would be no effect of rehabilitation/pardon to the appellant granted by the Chamber of Indictment, Court of Appeal, Antwerp, Belgium, the alleged conviction of the appellant of offence having been committed by the appellant at Belgium, the authorities under the Maharashtra Public Trusts Act, 1950 can not take notice of such alleged conviction while deciding the application for removal of the trustee under the said Act. It is submitted that only if such offence would have been committed in India subject to the provisions of the Maharashtra Public Trusts Act, cognizance of such act could be taken.

6. Paragraphs 1, 4, 6 to 8 of the said judgment of the Nagpur High Court in the case of Govind (supra) read thus: -

"1. It is said on behalf of the petitioner that Shankar was convicted under Rule

72(4), Defence of Hyderabad Rules by a Magistrate in the Hyderabad State-sometime in the year 1943 and sentenced to pay a fine of Rs. 10/- and to undergo imprisonment till the rising of the Court. It is Further said that the offence under the aforesaid provision is punishable with imprisonment for a term extending to a period of three years and that therefore respondent 4 was, by virtue of the provisions of Section 10(m), C.P. and Berar Local Government Act, disqualified from being a councillor.

4.4. The question, however, is whether this conviction of respondent 4 can be taken notice of Under Section 10(m), C.P. and Berar Local Government Act, It must be remembered that when respondent 4 was convicted Hyderabad was not a part of the Indian Union, His conviction was thus by a foreign Court, It cannot be presumed that it was within the contemplation of the Legislature to take account of such a conviction. It is however said on behalf of the petitioner that after the integration of Hyderabad in the Indian Union and the promulgation of the Constitution the position is so altered that a judgment rendered in the former State of Hyderabad must be given in the same efficacy as those rendered in the provinces of British India.

In support of his argument the learned Counsel primarily relied on Article 261 of the Constitution and in addition referred to Sections 42, 43, 57, 35, 74 and 84, Evidence Act. He also referred to Section 311, Criminal P.C.

6. Section 311, Criminal P.C. to which reference was made is of no assistance to the petitioner. What the section deals with is as to when evidence of a previous conviction may be given, and according to this provision, such evidence can be given only if it is relevant under the Evidence Act and in the manner and circumstances provided for in the Act. There is nothing in this provision to show that the conviction had in any Court could be deemed to be a previous conviction under the Criminal Procedure Code.

The words "previous conviction" occurring in Section 310 of the Code which deal with the procedure in the case of a previous conviction, must necessarily mean a conviction for an act which is an offence under the Criminal Procedure Code. Offence as defined in Section 4(o) of the Code means "any act or omission made punishable by any law for the time being in force...." These last words necessarily postulate that the law must be in force in the territories of India. Defence of Hyderabad Rules were at no point of time in force in the territories of India or in any other part thereof.

7. What remains to consider is whether the language used in Section 10(m), Local Government Act is wide enough to include an offence committed in a foreign territory. For the purpose of ascertaining tills it would be useful to refer to the principles of International Law. Story in Section 620 of his Commentaries of the Conflict of Law (1872) states:

The common law considers crimes as altogether local, and cognizable and punishable exclusively in the country where they are committed. No other nation

therefore has any right to punish them; "or is under any obligation to take notice of, or to enforce any judgment rendered in such cases by the tribunals having authority to hold jurisdiction within the territory where they are committed. Hence it is, that a criminal sentence of attainder in the Courts of one sovereign, although it there creates a personal disability to sue, does not carry the same disability with the person into other countries.

It will thus be clear that in the opinion of the learned jurist the Courts are not bound even to take notice of a foreign judgment in a criminal case. Lord Loughborough quoted by the learned author stated in "Folliott v. Ogden", (1789) 1 H Bl 124 (A).

Penal laws of foreign countries are strictly local, and affect nothing more than they can reach, and can be seized by virtue of their authority....

In the appeal arising out of that case Buller J, stated:

It is a general principle that the penal laws of one country cannot be taken notice of in an" other.

The same doctrine was affirmed by Lord Ellen-borough in "Wolff v. Oxholm", (1817) 6 M and Section 92 at p. 99 (B)."In "Warrender v. Warrender", (1834) 9 Bligh NS 89 at pp. 119-120 (C) Lord Brougham stated:

The "lex loci", must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction.

As pointed out by the learned author in Section 621:

The same doctrine has been frequently recognized by America. On one occasion, where the subject underwent a good deal of discussion, Marshall C.J., in delivering the opinion of the Supreme Court, said: "The Courts of no country execute the penal laws of another." On another occasion, in New York, Spencer C.J. said "We are required to give effect to a law (of Connecticut), which inflicts a penalty for acquiring a right to a "chose in action". The defendant cannot take advantage of, nor expect the Court to enforce, the criminal laws of another State.

The penal acts of one State can have no operation in another State. They are strictly local, and affect nothing more than they can reach. Upon the same ground also, the Supreme Court of Massachusetts have held that a person convicted of an infamous offence in one State is not thereby rendered incompetent as a witness in other States.

8. From what we have quoted, it will be abundantly clear that the effect of a crime committed by a person does not travel beyond the State in which it was committed. Since that is the general principle, it must be presumed that the Legislature when it enacted Section 10(m), C.P. and Berar Local Government Act did not intend to include therein offences committed by the citizens of Madhya Pradesh in foreign territories."

7. Learned Senior Counsel Submits that by virtue of enactment of States Reorganization Act, 1956, and in particular Section 8 read with Section 59 sub-section (5), the territory of Nagpur became part of State of Bombay under the aforesaid provisions. The judgment of the Nagpur Bench is binding on this Court. It is submitted that by virtue of aforesaid provision, the said judgment of the Nagpur Bench relating to the dispute arising out in the City of Nagpur which became a part of Bombay and now the State of Maharashtra has to be considered as if the judgment of Bombay High Court. The said judgment having been delivered by the two Judges" of Nagpur Bench of the High Court would be binding on this Court on the question of law on the learned Single Judge of this Court.

8. Section 8 and Section 59 of the States Reorganization Act, 1956 read thus: -

"8. Formation of a new Bombay State.

(1) As from the appointed day, there shall be formed a new 1 State to be known as the State of Bombay comprising the following territories, namely:--

(a) the territories of the existing State of Bombay, excluding--

(i) Bijapur, Dharwar and Kanara districts and Belgaum district except Chandgad taluka,

and

(ii) Abu Road taluka of Banaskantha district;

(b) Aurangabad, Parbhani, Bhil and Osmanabad districts, Ahmadpur, Nilanga and Udgir taluks of Bidar district, Nanded district (except Bichkonda and Jukkall circles of Deglur taluk and Mudhol, Bhiansa and Kuber circles of Mudhol taluk) and Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk of Adilabad district, in the existing State of Hyderabad;

(c) Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda districts in the existing State of Madhya Pradesh;

(d) the territories of the existing State of Saurashtra; and

(e) the territories of the existing State of Kutch; and thereupon the said territories shall cease to form part of the existing States of Bombay, Hyderabad, Madhya Pradesh, Saurashtra and Kutch, respectively.

(2) The said Chandgad taluka shall be included in, and become part of, Kolhapur district, the said Ahmadpur, Nilanga and Udgir

1. The word and letter" Part A" omitted by the Adaptation of Laws (No. 1) Order, 1956. taluks shall be included in, and become part of, Osmanabad district, the said Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk shall be included in, and become part of, Nanded district and the territories comprised in the existing State of Kutch shall form a separate district to be known as Kutch

district, in the new State of Bombay.

59. Transfer of proceedings to Bombay High Court.

(1) Except as hereinafter provided, the High Court at Nagpur (which on the appointed day becomes the High Court for the new State of Madhya Pradesh and is referred to in this Act as the High Court of Madhya Pradesh) shall, as from that day, have no jurisdiction in respect of the territory transferred from the existing State of Madhya Pradesh to the new State of Bombay.

(2) Such proceedings pending in the High Court at Nagpur or the High Court of Hyderabad immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court for the new State of Bombay (referred to in this Act as the High Court of Bombay) shall, as soon as may be after such certification, be transferred to the High Court of Bombay.

(3) All proceedings pending in the High Court of Saurashtra or in the Court of the Judicial Commissioner for Kutch immediately before the appointed day shall stand transferred to the High Court of Bombay.

(4) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court of Madhya Pradesh shall have, and the High Court of Bombay shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings, where any such proceedings seek any relief in respect of any orders passed by the High Court at Nagpur before the appointed day: Provided that if after any such proceedings have been entertained by the High Court of Madhya Pradesh it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Bombay, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(5) Any order made before the appointed day by any Court referred to in sub-section (2) or sub-section (3) in any proceedings transferred to the High Court of Bombay by virtue of sub-section (2) or sub-section (3) shall for all purposes have effect, not only as an order of that Court, but also as an order of the High Court of Bombay; and any order made by the High Court of Madhya Pradesh in any proceedings with respect to which that Court retains jurisdiction by virtue of sub-section (4) shall for all purposes have effect, not only as an order of that High Court, but also as an order of the High Court of Bombay."

9. Learned Senior Counsel placed reliance on the judgment of the Calcutta High Court in case of Union of India (UOI) and Others Vs. Susanta Kumar Mukherjee, and in particular paragraphs 2, 4, 6 to 11 and would submit that even if the appellant was convicted beyond the territory of India, cognizance thereof cannot be taken of by the Indian Courts Paragraphs 2, 4, 6 to 11 of the said judgment

read thus: -

"2. The respondent Susahta Mukherjee is the Zonal Public Relation Officer in the Calcutta Zonal Office of the Food Corporation of India. He had been to Switzerland on July 16, 1974 in connection with the works of some relief and religious organisation. On July 27, 1974 he was arrested by a Swiss police and was detained in a place known as "Mal". On July 31 1974 he was produced before a Municipal Magistrate, Lausanne, Switzerland, and was convicted and sentenced to imprisonment for a period of eight days including the period of detention of five days on a charge of committing repeated thefts. After serving the sentence of imprisonment he returned to Calcutta on August 4, 1974 and resumed his duties on the next day. It has been alleged by him that he was put under detention and was convicted and sentenced illegally and mala fide and was not given any opportunity to defend himself, it is alleged that at the Geneva Airport while he was proceeding to the aircraft through the security in enclosure two Swiss policemen abused him and some other Indians with abusive words like "Nigger Indians" etc. and at this he protested whereupon the said two Swiss policemen became very much furious and forcibly dragged him to the Airport Police Office and took away from him the Baggage Ticket and Air Boarding Ticket. Thereafter, he was put under detention in the "Mal" without any warrant and without letting him know the reason for such detention. Before the Magistrate also, he did not get any opportunity to defend himself and the charge was also not explained to him.

4.4. The point that arises for consideration is whether the words "offence", "conviction" and "imprisonment" occurring in Rule 10(2)(b) also include an "offence", "conviction" and "imprisonment" under the penal law of a foreign country. In other words, whether, when a Government servant is convicted of an offence and sentenced to a term of imprisonment exceeding forty-eight hours under the law of a foreign country, he can be suspended in accordance with Rule 10(2)(b). The Rules do not define these terms. The words "offence" and "imprisonment" have, however, been defined in the General Clauses Act. Under Section 3(38) of the said Act "offence" shall mean any act or omission made punishable by any law for the time being in force. The expression "any law for the time being in force" undoubtedly refers to any Indian law for the time being in force, for it is apparent from Section 3 of the General Clauses Act that the definitions given under that section shall apply to the General Clauses Act and all Central Acts and Regulations made after the commencement of the said Act. It is unthinkable that the General Clauses Act has been enacted by Parliament not only for the interpretation of the Central Acts and Regulations but also of the provisions of any foreign law, as contended on behalf of the appellants. The word "offence" as referred to in Rule 10(2)(b) or the Rules read with Section 3(38) of the General Clauses Act means any act or omission made punishable by any Indian law for the time being in force if any act or omission which is not punishable under any Indian law it will not be an offence, although such an act or omission may be an offence under the law of a foreign country. We do not think

that the decision in *Edward Milts Co. Ltd. v. State of Aimer*, has any bearing on the question whether the word "offence" as defined in Section 3(38) of the General Clauses Act also includes an offence under the law of another country beyond India. In that case, the Supreme Court has considered the difference between the expressions "an existing law" and "a law in force" as used in Section 94(3) of the Government of India Act, 1935 and Article 372 of the Constitution respectively. It has been held by the Supreme Court that there is no material difference between "an existing law" and a "a law in force". It has been further observed that the words "a law in force" as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. "As already stated, the proposition of law which has been laid down by the Supreme Court in the above decision is not relevant to the issue with which we are concerned.

6. In view of the definitions referred to above it follows that if a Government servant is convicted of an act or omission which is an offence under any Indian law and sentenced to a term of imprisonment of either description exceeding forty-eight hours he shall be deemed to have been placed under suspension with effect from the date of his conviction under Rule 10(2)(b). Mr. Nani Coomar Chakraborti and Mr. Somendra Chandra Bose, learned advocates appearing respectively for the Food Corporation of India and the Union of India have strenuously urged that in construing the words "offence" and "imprisonment" occurring in Rule 10(2)(b), the definition section of the General Clauses Act should not be applied, for such definitions of the said words would be repugnant to the context in which Rule 10 including Rule 10(2)(b) was framed. It is contended by them that the object of Rule 10 is to maintain absolute integrity and unblemished conduct of Government servants. It is wholly undesirable that a Government servant found guilty of moral turpitude and convicted and sentenced by a Court of competent jurisdiction in another country beyond India should be allowed to perform official duties in connection with his service, for it may affect the morality of other Government servants and may also seriously prejudice the image of public service. Accordingly, it is submitted by them that if the definitions of the words under the General Clauses Act are applied for the interpretation of Rule 10(2)(a) that would frustrate the very object for which the rule has been framed.

7. There cannot be any doubt as to the object or purpose behind Rule 10 of the Rules. But it is not correct to say that the interpretation of Rule 10(2)(b) with the help of the definitions of the General Clauses Act will be repugnant to the object or purpose of the rule or render a Government servant guilty of an act or omission in foreign land immune from being dealt with under any of the provisions of the Rules. It is not disputed that a disciplinary proceeding may be brought against a Government servant for such an act or omission and he may be put under suspension under Rule 10(1)(a) in contemplation of a disciplinary proceeding. If in such a proceeding he is found guilty of such an act or omission which is considered to be misconduct on the part of the Government servant he

may be punished in accordance with the Rules framed in view of Sections 3 and 4 of the Indian Penal Code, he may be tried by an Indian Court for acts done by him without and beyond India, provided such acts constitute an offence under the Code. Moreover, Rule 10(2)(b) does not expressly or by necessary implication include conviction under the law of a foreign country and, accordingly, it would be against the general principles of interpretation of statutes to exclude the definition of the said words under the General Clauses Act which shall be deemed to have been incorporated in the Rules. In our opinion, there is nothing in the subject or context of Rule 10(2)(b) which is repugnant to the applicability of the definition of the words "offence" and "imprisonment" as given in the General Clauses Act.

8. Rule 10(2)(b) gives ample indication that on the conviction of a Government servant for an offence and his being sentenced to a term of imprisonment exceeding forty-eight hours he may be forthwith dismissed or removed or compulsorily retired consequent to such conviction which is also borne out by Rule 19(a) of the Rules, without following any disciplinary proceeding and without giving the Government servant any opportunity of being heard. The only consideration for such consequences, namely, dismissal, removal or compulsory retirement is the conviction of the Government servant. The combined effect of Rule 10(2)(b) and Rule 19(a) is that as soon as it is brought to the notice of the appointing authority that the Government servant has been convicted of an offence and sentenced to an imprisonment of the description mentioned in Rule 10(2)(b), he may be forthwith dismissed from service or shall be deemed to have been under suspension by an order of the appointing authority with effect from the date of conviction. It has been argued by Mr. Balai Roy, learned advocate appearing on behalf of the respondent that if a conviction by a foreign Court is taken notice of for the purpose of Rule 10(2)(b), it will be giving effect to a foreign penal law which is derogatory to any sovereign country under the principles of Private "International" Law. He submits that these principles are well-established principles of Private or International law and should not be given a go-by by giving effect to a foreign penal law either directly or indirectly, notwithstanding the purpose for which the rule has been framed. It is contended by him that Rule 10(2)(b) only contemplates conviction for an offence by an Indian Court under the Indian Law and not by a foreign Court under a foreign law.

9. In Cheshire's Private International Law, 6th Edition, Page 138, it has been observed as follows:

It is well-settled that an English Court will not lend its aid to the enforcement, either directly or indirectly, of a foreign penal law. The imposition of a penalty normally reflects the exercise by a State of its sovereign power, and it is an obvious principle that an act of sovereignty can have no effect in the territory of another State.

In this connection, we may refer to a decision of the Privy Council in *Huntington v. Attrill* 1893 A.C. 150. In that case, the Privy Council observed:

The rule has its foundation in the well recognized principle that crimes, including in that term all branches of public law punishable by pecuniary mullet or otherwise at the instance of the State Government or someone representing the public, are local in this sense, that they are only cognizable and punishable in the country where they are committed. Accordingly no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State, whether directly or indirectly, of punishment for such breaches imposed by the *lex fori*, ought to be admitted in the Courts of any other country.

10. In view of the above principles of Private International Law, we are of the opinion, that if the word "conviction" is construed as also including a conviction by a Court of foreign territory for an offence punishable under the Law of that territory, it would be giving indirect effect to a penal law of a foreign territory. In these circumstances, it cannot but be held that the conviction of a Government servant by a Court beyond the territory of India is not contemplated by Rule 10(2)(b) and cannot be taken notice of as a ground for his suspension or for his removal, dismissal or retirement from service.

11. Mr. Bose has placed reliance on a decision of the Supreme Court in *Adi Pheroz Shah v. H.M. Seervai*. In that case an advocate was convicted of an offence in a summary proceeding by a Magistrate in England There was an enquiry into his conduct by the disciplinary committee of the State Bar Council which found him not guilty The Advocate General of the State preferred an appeal to the Bar Council of India against the decision of the disciplinary committee of the State Bar Council. *Hidayatullah, C.J.*, while holding that the Advocate General was not a "person aggrieved" within the meaning of the Advocates Act and that the appeal filed by him was incompetent observed as follows:

The advocate here explained that he was held guilty before the Magistrate in the circumstances in which he was placed. The fact of his conviction, as well as his full statement bearing on his conduct were before the disciplinary committee of the State Bar Council They had to choose between the two, that is to say, the result of a summary trial without going into merits and proof of the misconduct. Having examined the advocate and seen the record, the disciplinary committee of the State Bar Council chose to accept the plea of the advocate and held that he was not guilty. They were also satisfied that summary proceedings in the criminal trial in England offended against the principles of natural justice. They were entitled to this view on which much can be said on both sides.

The observation of the learned Chief Justice that the State Bar Council had the option to choose between the result of the luminary trial without going into merits and proof of the misconduct, seems to be mere casual in nature. In our view, by that observation the learned Chief Justice did not in the least intend to lay down a rule of law that the State Bar Council it entitled to punish an advocate simply on the face of his conviction by a criminal Court of a foreign country which is amply borne out by the views expressed by his Lordship preceding the said

observation. It was observed that it did not necessarily follow that a conviction in England showed moral turpitude in the advocate. His Lordship clearly laid down that in the disciplinary proceedings the advocate was not estopped from questioning the charge that he was guilty of corrupt practice, the reason being that in a civil proceeding the decision of a criminal Court is not *res judicata* and would not preclude him from raising this issue before the civil Court. The said observation relied on by the appellant cannot, in our opinion, be read divorced from the views expressed by his Lordship and, if they are read together, there cannot be any doubt that an advocate cannot be punished solely on the basis of his conviction by a criminal Court of a country beyond India, without proof of his misconduct. The contention of the appellants based on the said observation is, accordingly, rejected.

10. Learned Senior Counsel invited my attention to Sections 2, 3 and 4 of the Indian Penal Code, Section 2(4) -i.e. definition of offence, Section 8 of Criminal Procedure Code and submits that no provision permits the Indian Courts to take cognizance of the conviction of an offence committed outside India. Mr. Chagla, Learned Senior Counsel invited my attention to the judgment of the Division Bench of this Court in case of *Avinashkumar Bhasin Vs. Air India*, and in particular paragraphs 2, 3, 5, 7, 10, 21 to 24.

2. The petitioner was working as an Assistant Flight Purser with Air India. He was on temporary posting at London, where he was posted along with several others to perform flight duty, and to facilitate his stay in London, the petitioner was provided with accommodation in Sheraton Heathrow Hotel. On 30th April, 1974, he was apprehended at about 8 p.m. by London Police on the allegation of being in possession of 195 mg. of Cannabis, a controlled drug of Class B. The charge-sheet read as follows:

"At 95, Gunterstone Road, W-14, he did have in his possession 195 mgs. of controlled drug of class "B" to wit Cannabis, in contravention of Section 5(1) of Misuse of the Drugs Act, 1971".

The petitioner was subsequently tried before the Magistrate's Court at West London. Before the English Court, he pleaded guilty. The English Court conditionally discharged him.

3. The petitioner's services were terminated vide order dated August 27, 1974. The petitioner challenged the said termination by preferring Miscellaneous Petition No. 527 of 1975, in this Court. By his judgment and order dated 24th of September, 1979, a learned Single Judge of this Court set aside the said order of termination because the said order was passed under Regulation 48 of the Air India Employees Service Regulations and the said Regulation 48 was struck down by this Court in Miscellaneous Petition No. 1663 of 1975 decided on 19th July, 1979. *S.S. Muley v. J.R.D. Tata and Ors.*,.

5. A charge-sheet dated 13th April, 1987 was issued to the petitioner. The charge-sheet stated that while the petitioner was temporarily posted at London

from 19th March, 1974, he was apprehended in his hotel room for being in possession of 195 mg. of controlled drug of Class B, to wit, cannabis, in contravention of Section 5(1) of the Misuse of Drugs Act. 1971, by the London Police on April 30, 1974. It was further stated that the petitioner was tried before the Magistrate's Court at West London and convicted of the said offence and sentenced to conditional discharge of two years on 16th May, 1974. The charge-sheet further went on to say that possession of the contraband drug i.e. Hashish constituted misconduct under the Air India Employees Service Regulations. The petitioner was, therefore, charged with the following:-

- (i) Commission of act subversive of discipline and of good behaviour.
- (ii) Conducting himself in a manner not conducive to the best interest, credit and prestige of the Corporation.
- (iii) Conviction in a Court of Law for a criminal offence involving moral turpitude.

The petitioner was directed to submit his written explanation within seven days of the receipt of the said letter.

7. The enquiry was conducted. The petitioner personally appeared before the Enquiry Committee and made his submissions. He informed the committee that the incident in question had taken place while he was visiting 95, Gunterstone Road with a friend of his. There were two other people at this address. Loud music was being played. The landlord came in and asked the tenant to lower the music. After about half an hour police came in. They were taken to Fulham Police Station. They were informed that a butt of a quarter cigarette was found in the ash tray in that place. The butt contained 195 mgs. of cannabis. The petitioner and others were told that they were smoking those cigarettes. The petitioner denied this allegation. He pointed out that only one pound sterling was found on his person. Nothing relating to the said drug was found. The police harassed and abused the petitioner. They insisted that the petitioner was smoking that butt of cigarette. He was not allowed to go for medical test. No legal help was given to him. The police went to his room in Sheraton Heathrow Hotel. They could only get 200 pound sterling. After the police returned from Sheraton Heathrow Hotel, they told him that if he did not plead guilty, he would be locked up for days. He was compelled to plead guilty and get over the matter as quickly as possible. It is in these circumstances that he pleaded guilty, though he was not concerned with the offence.

10. After conclusion of the enquiry, the Enquiry Committee submitted its report dated 7th November, 1987. After considering the submissions of the petitioner and of the management, the Committee observed that it was inclined to accept the deposition of the management witness that the petitioner did not act in a manner conducive to the best interest, credit and prestige of the Corporation and had also indulged in an act subversive of discipline and good behaviour. In its opinion, the petitioner could not, after pleading guilty, claim that he had not acted in the manner which was not conducive to the best interest, credit and

prestige of the Corporation and that he had not indulged in an act which is subversive of discipline. The Committee also observed that while the management had brought witnesses to establish its case, the petitioner had not produced any witness to contest what the management witnesses had said. The Committee, therefore, found the petitioner guilty of:

- (i) Commission of act subversive of discipline and of good behaviour;
- (ii) Conducting yourself in a manner not conducive to the best interest, credit and prestige of the Corporation;
- (iii) Conviction in a Court of Law for a Criminal offence Involving moral turpitude.

21. It will now be necessary to consider Mr. Bhasin's alternative submission that even if this Court comes to a conclusion that the Petitioner was convicted, the conviction was under Misuse of Drugs Act, 1971 as in force in United Kingdom. The said Act had no extra territorial jurisdiction and, therefore, this Court is not bound by it and the said conviction is not conviction by a Criminal Court in India. It is true that generally, an Indian Court will not lend its aid to enforcement either directly or indirectly of a foreign Criminal Law. The imposition of a conviction or penalty normally reflects the exercise by a State of Its sovereign power and it is an obvious principle that an act of sovereignty can have no effect in the territory of another State. It is true that jurisdiction over the crime belongs to the country where the crime is committed. However, though enforcement will not be allowed, it is going too far to assert that the penal laws of one country cannot be taken notice of in another for any purpose whatsoever. If an occasion arises, the nature of the crime, though springing from a penal law devoid of extra territorial effect, cannot be ignored by a State, particularly if its own law are also stringent and its public policy also is aimed at curbing such crimes.

22. In this connection, it will be useful to refer to the judgment of the Court of Chancery Division in *re Macartney*, where while dealing with enforcement of foreign judgments the Court observed, "The principle upon which foreign judgments receive recognition in our country is one of comity. It does not require, but rather forbids it, when such a recognition works a direct violation of the policy of our laws and does violence to what we deem the rights of our citizens."

23. In this context, it is therefore necessary to have a look at the relevant Indian laws meant for dealing with people indulging in offences involving narcotic drugs. The Narcotic Drugs and Psychotropic Substances Act, 1985 ("the N.D.P.S. Act" for short) contains stringent provisions to deal with such offences. Section 20(b) (ii) provides for rigorous imprisonment for such a term which shall not be less than ten years, but which may extend to 20 years apart from a sentence of fine to a person, who possesses cannabis in contravention of the provision of the said Act or any rule or order made or condition of licence granted thereunder where such contravention relates to cannabis other than ganja. Section 32A of the N.D.P.S. Act says that except a sentence awarded under Section 27 thereof, no

other sentence in the said Act shall be suspended, remitted or commuted. Section 33 denies the benefit of Section 368 of the Code of Criminal Procedure to a drug offender, which means that a drug offender cannot be ordered to be released on probation of good conduct or after admonition. It also denies to the drug offenders the benefit of Probation of Offenders' Act unless such a person is 18 or below 18 years of age. Section 37 of the N.D.P.S. Act makes every offence punishable under it cognizable and non-bailable. Bail can be granted only in exceptional cases after the Prosecutor is heard and after the Court is satisfied that the accused is not guilty and that he is not likely to commit any offence while on bail.

24. We may also refer to Chapter IV of the Constitution of India which contains the Directive Principles of State Policy. Article 47 of Chapter IV reads thus:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health."

These provisions, without doubt, bring out clearly the policy of the law that drugs are anathema to society. In view of these provisions, we are unable to agree with the learned Counsel for the petitioner that since the Misuse of Drugs Act has no extra territorial jurisdiction, the petitioner's conviction thereunder should be ignored. In our opinion, therefore, Regulation 42(xx) is clearly attracted to the facts of the present case.

11. It is submitted by the learned senior counsel that in the said judgment of the Division Bench of this Court, Division Bench did not notice the judgment of Nagpur High Court in case of Govind Kesheo Powar (supra) and though held that generally, an Indian Court will not lend its aid to enforcement either directly or indirectly of a foreign criminal law and an act of sovereignty can have no effect in the territory of another State, the Division Bench carved out an exception that though enforcement may not be allowed, it is going too far to assert that the penal laws of one country cannot be taken notice of in another for any purpose whatsoever. It is held that if an occasion arises, the nature of the crime, though springing from a penal law devoid of extra-territorial effect, cannot be ignored by a State, particularly if its own laws are also stringent and its public policy is aimed at curbing such crimes. Learned Senior Counsel submits that exception carved out by the Division Bench of this Court is contrary to the law laid down by the Nagpur High Court and in any event in ignorance of and without noticing the judgment of the Nagpur High Court. It is submitted that Special Leave Petition filed against the said judgment of the Division Bench of this Court in case of Avinashkumar Bhasin (supra) is dismissed in limine. Learned Senior Counsel submits that the judgment of this Court thus did not merge with the order of the Supreme Court. In support of this submission, the Learned Counsel placed

reliance on the judgment of the Supreme Court in case of Pernod Ricard India (P.) Ltd. Vs. Commissioner of Customs, ICD Tughlakabad, .

12. Mr. Chagla, Learned Senior Counsel placed reliance on the judgment of Supreme Court in case of Jaisri Sahu Vs. Rajdewan Dubey and Others, and in particular paragraphs 9 to 11 and would submit that there being a conflict of opinion of the Nagpur High Court on one hand which judgment would be binding on the Bombay High Court on the question of law by virtue of enactment of States Reorganization Act, 1956 and judgment of division Bench of this Court in case of Avinashkumar Bhasin (supra). This Court shall refer the issue "as to whether and to what extent this High Court is bound by the decision of the Nagpur High Court in case of Govind Kesheo Powar (supra) delivered prior to 1st November, 1956" to larger bench. Paragraphs 9 to 11 of the said judgment read thus: -

9. Then there is the question of the practice to be followed when there is a conflict among decisions of Benches of the same High Court. When a Bench of the High Court gives a decision on a question of law, it should in general be followed by other Benches unless they have reasons to differ from it, in which case the proper course to adopt would be to refer the question for the decision of a Full Bench. In Buddha Singh v. Laltu Singh, the Privy Council had occasion to discuss the procedure which should be adopted when a Bench of a High Court differs from the opinion given by a previous Bench. After referring to Suraya Bhukta v. Lakhshminarasamma and Chinnasami Pillai v. Kunju Pillai, where decisions had been given based on the opinions expressed by Devananda Bhatta in the Smriti Chandrika, the Privy Council observed: -

"Curiously enough there is no reference in either of the Madras judgments referred to above to a previous decision, Parasara Bhattar v. Rangaraja Bhattar of the same court to which Turner, C.J., was also a party. In that case the rule of the Smriti Chandrika was not accepted nor was the literal construction of the Mitakshara followed. It is usual in such cases where a difference of opinion arises in the same court to refer the point to a Full Bench, and the law provides for such contingencies. Had that course been followed their Lordships would probably have had more detailed reasoning as to the change of opinion on the part at least of one Judge." (pp. 622, 623).

10. Considering this question, a Full Bench of the Madras High Court observed in Seshamma v. Venkata Narasimharao Mad.:

"The Division Bench is the final Court of appeal in an Indian High Court, unless the case is referred to a Full Bench, and one Division Bench should regard itself bound by the decision of another Division Bench on a question of law. In England, where there is the Court of Appeal, Divisional Courts follow the decisions of other Divisional Courts on the grounds of judicial comity; see The Vera Cruz (No. 2), Harrison v. Ridgway, Ratkinsky v. Jacobs and Phillips v. Copping. If a Division Bench does not accept as correct the decision on a

question of law of another Division Bench the only right and proper course to adopt is to refer the matter to a Full Bench, for which the rules of this court provide. If this course is not adopted, the courts subordinate to the High Court are left without guidance. Apart from the impropriety of an appellate Bench refusing to regard itself bound by a previous decision on a question of law of an appellate Bench of equal strength and the difficulty placed in the way of subordinate Courts administering justice, there are the additional factors of the loss of money and the waste of judicial time."

11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma v. Venkata Narasimharao*, that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, third edition, Vol. 22, para. 1687, pp. 799, 800: -

"The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

13. Mr. Chagla, Learned Senior Counsel also placed reliance on the judgment of Chancery Division in case of *MACFARLANE Vs. MACARTNEY*, reported in (1921) Chancery Division 522. Learned Senior Counsel also placed reliance on the treatise of Cheshire and North's Private International Law in support of the submission that Indian Court cannot take notice of the foreign judgment in a criminal case against an Indian for the offences committed outside India.

14. Per contra, Mr. Jethmalani, learned Senior Counsel submits that the Nagpur High Court was then part of Madhya Pradesh and thus even if there is any conflict between the views of the Nagpur High Court and Division Bench of this Court in case of *Govind Kesheo Powar* (supra) and *Avinashkumar Bhasin* (supra) respectively, such issue cannot be referred to a larger bench on the ground that the judgment of Nagpur Bench cannot be considered as the judgment of this Court nor was the said judgment was of the Bench of co-ordinate jurisdiction. Mr. Jethmalani, Learned Senior Counsel placed reliance on the judgment of the full bench of the Mysore High Court in the case of *Basappa Vs. The State*, and would

submit that the territory of Nagpur having been part of Bombay under the States Reorganisation Act, 1956 and now the state of Maharashtra, judgment of the Nagpur High Court cannot be considered as precedent or have binding effect on this Court. Paragraphs 5 to 12 and 19 to 22 of the said judgment read thus: -

5. The question referred to this Full Bench for decision is:

"Whether and to what extent this High Court is bound by the decisions of the Chief Court of Mysore and the High Court of Mysore delivered prior to 1-11-1956?"

6. In the year 1881, the Court of the Judicial Commissioner, who was then the head of the judicial administration in the territories of Mysore, was designated as the Chief Court of Mysore, and by the Mysore Chief Court Regulation, 1884, its constitution was statutorily amended with effect from 23-5-1884. By the provisions of Mysore Act XII of "1930 this Chief Court became designated as the High Court of Mysore which will be referred to by me as the High Court of the former State of Mysore.

The jurisdiction of this High Court, which exercised jurisdiction over the territories of the former State of Mysore, was extended to the State of Coorg with effect from 1-4-1933, and to a part of the District of Bellary, which was until then in the State of Madras, with effect from 1-10-1953.

7. The Former State of Mysore, over which its High Court was exercising jurisdiction until the first day of November, 1956, when there was a reorganization of the Suites of the Union of India, was one of the Part B States specified in the first schedule to the Constitution of India. By the States Reorganisation Act, 1956, enacted by the Parliament for the Reorganisation of the States of India and for matter connected therewith, a new State known as the State of Mysore was formed under the provisions of Section 7 of that Act comprising the territories specified in that section.

Those territories were the territories of the then existing State of Mysore to which I have already referred as the former State of Mysore, together with parts of the then existing States of Bombay, Hyderabad, Madras and the entire State of Coorg. By that Act, five more new States were also formed and by Sub-section (2) of Section 49 of the Act, it was provided that as from the appointed day which was the first day of November 1956, there shall be established a High Court for three of those new States of which the State of Mysore was one. By Sub-section (1) of Section 50 of that Act it was provided that-

"50. Abolition of certain Courts.--(1) AS from the appointed day, the High Courts of all the existing Part B States, except Jammu and Kashmir, and the Courts of the Judicial Commissioners for Ajmer, Bhopal, Kutch and Vindhya Pradesh shall cease to function and are hereby abolished."

8. As from the first day of November 1956, the High Court of the then existing Part B State of Mysore, which was also exercising jurisdiction over the State of

Coorg, was thus abolished and ceased to function and this High Court was established for the new State of Mysore.

9. This High Court, therefore, which was established after the reorganisation of the States, can by no means be said to be the representative of the High Court of the former State of Mysore. As a result of the reorganisation, different parts of different States have been combined and a new State of Mysore has come into existence. This High Court, which was established after such reorganization, is a High Court exercising jurisdiction over this new State which, as I have mentioned, consists of not only the old State of Mysore but also parts of the old States of Madras, Bombay and Hyderabad.

There is therefore no reason for saying that this High Court is a representative of the High Court of the former State of Mysore. In fact by the States Reorganisation Act the old High Court was abolished and this High Court was established. This is not a case of extending the jurisdiction of an existing High Court but this is a case of abolishing the old High Court and establishing a new one which has to exercise jurisdiction over the new State formed as a result of the reorganisation.

It is difficult to see how under these circumstances this High Court can be said to be a representative or successor-in-interest of the High Court of the former State of Mysore. If it can be held to be a representative or successor-in-interest of the High Court of the former State of Mysore, then it can be equally called a representative-in-interest of the High Courts of the former State of Bombay and/or of Madras and/or of Hyderabad. It is no more a representative of the one than of the other. If then, as I have held, this High Court is not a successor-in-interest of the High Court of the former State of Mysore, then there is no reason as to why this High Court should be bound by the decisions of the Chief Court of Mysore or of the High Court of Mysore delivered prior to 1-11-1956.

10. Mr. Venkataramayya, who appeared for the appellant in the Criminal Appeal, out of which this reference arises, in the course of his argument, finding it difficult to maintain his contention that this High Court is a successor in-interest of the High Court of the former State of Mysore, took a slightly different stand with regard to this question.

He then contended that this High Court exercising jurisdiction over territories which originally belonged to five different States should, however, regard itself as bound, though not absolutely, by the previous decisions of only one of the four High Courts which were exercising jurisdiction over their respective territories prior to the reorganization of the States for the reason that this Court and the High Court of the former State of Mysore should be regarded as Courts of co-ordinate jurisdiction.

11. I am wholly unable to accept this contention. Mr. Venkataramayya's argument, if accepted, would lead to incongruous results, namely that the decisions of each one of the four High Courts would sometimes be binding upon

this Court and sometimes not, depending upon the area from which the appeal in question has to be decided. If, for instance, an appeal has come from the area which originally belonged to Madras State, the decision of the Madras High Court will have to be followed. But if, on the other hand, an appeal coming from Bombay State has to be dealt with, then the said decision will have no binding effect. This State of affairs would lead to confusion and inconsistency in judicial decisions. I am therefore of opinion that this contention of Mr. Venkataramayya is equally untenable.

12. In the result, therefore, the answer to the question referred to us should, in my opinion, be in the negative.

19. I have had the opportunity of reading the judgment prepared by My Lord the Chief Justice and I find myself so completely in agreement with it that what I wish to add is very little.

20. Since this High Court exercises jurisdiction over territories comprising areas over which four High Courts of the States to which they originally belonged were respectively exercising jurisdiction, the proposition that the previous decisions of any one of such High Courts, none of which exercised jurisdiction over the entire area of the present State of Mysore, should be treated as judicial precedents binding on this Court, unless their reversal was demanded in the interests of sound administration of justice, has merely to be stated to be rejected as manifestly unreasonable.

21. This was so obvious to their Lordships of the High Court of the United State of Travancore and Cochin that they pointed out in: (D). That it was repeatedly told by that Court that the decisions of the High Courts of the former States of Travancore and Cochin neither of which exercised jurisdiction over the entire State of the United State of Travancore and Cochin were only of persuasive value to them but did not bind them. On page 213 (of ILR Trav-C.):

(at pp. 285-286 of AIR) of the report, this is what Koshi C.J. said:

"Before concluding we must not omit to mention that the respondent's counsel pressed upon us that we should not fail to follow the Full Bench decision in Krishna Menon v. Venkiteswara Iyer, 32 Co-chin 438 (FB) (H) as it has held the field up till now and has been followed in ever so many cases in the Cochin High Court as well as in the Courts subordinate thereto. It was said we should respect it at least on the principle of stare decisis. The short answer to it is what has been repeatedly told by this Court that the decisions of the former Travancore and Cochin High Courts are only of persuasive value for us and that those decisions do not bind us. The application of the principle of stare decisis or the necessity for reference to a Full Bench does not therefore arise in the case".

That was also the view taken by the High Court of the new Lekshmikutty Amma and Others Vs. Madhavan Pillai and Others, .

22. It is clear that any other view would create strange situations when a conflict

exists between the previous decisions of the different High Courts which once exercised jurisdiction over those parts which now comprise the new State of Mysore.

15. Mr. Jethmalani, Learned Counsel for the respondent placed reliance on the judgment of Kerala High Court in case of Ryrn Nair Vs. Govindan Nair, and would submit that since the Nagpur High Court was not the Court of Coordinate jurisdiction, the said judgment in case of Govind Kesheo Powar (supra) would not be binding on this Court. Paragraphs 4 and 5 of the said judgment read thus: -

4. The plaintiff appeals and the appeal is directed only against the decision of the lower court on issues (i) and (ii) to the effect that there was no concluded contract between the parties and consequently there was no breach of contract. Regarding the quantum of damages, in case he succeeded, the plaintiff has no dispute in the appeal.

5. Before we consider the main question we will dispose of a contention raised by the respondent's learned counsel. He contends that the contract pleaded in the plaint and which was made the subject matter of the first issue in the suit was different from the contract that was sought to be established at the time of arguments in the lower court and also in the appeal before us. He invites our attention to paragraph (1) of the plaint which pleads:

"On defendant's enquiry the plaintiff offered to sell 660 tins of coconut oil at Rs. 33 per tin Bilticut, that is, F.O.R. Cochin. This offer was accepted by the defendant by his telegram dated 15-1-1952 and thereby a binding contract was created between the parties".

To this the defendant in his written statement pleads:

"It is denied that the plaintiff offered to sell coconut oil at Rs. 33 per tin and that the defendant accepted it by his telegram dated 15-1-1952 resulting in an enforceable contract as stated in the plaint":

These two passages extracted from the pleadings make it clear that the plaintiff's case was that he offered to sell 660 tins of coconut oil at Rs. 33 per tin which was accepted by the defendant by his telegram dated 15-1-1952. As a matter of fact there was no such offer by the plaintiff to sell coconut oil at Rs. 33 per tin and consequently there could not have been any acceptance by the defendant by his telegram dated 15-1-1952. Issue No. (i) in the suit also relates to the contract between the parties as alleged in paragraph (1) of the plaint. The telegram of the plaintiff that is referred to in paragraph (1) is Ext. A, which reads: "Received offering one wagon of 680 tins Bilticut 38/3 subject immediately reply wire with advance" and the telegram of acceptance referred to in the said paragraph is Ext. B, which reads; "Received offer accepted rate 33, Thirty three Wire", So it is clear that there was no offer by the plaintiff to sell 660 tins of coconut oil at Rs. 33 per tin and hence there is considerable force in the contention of the counsel for the respondent that the contract that is sought to

be made out at the time of arguments in the lower court and before us is different from the contract that was pleaded in the plaint. The learned counsel also draws our attention to the observation of the learned subordinate judge in his judgment to the effect that at the time of arguments it was conceded by the plaintiffs advocate that Ext. B was only a counter-offer but not an acceptance of the terms of Ext. A. But in view of the fact that all these telegrams were put into court along with the plaint and that the defendant could have had inspection of these documents immediately on service of summons to him, we do not propose to decide the appeal on this short point. We propose to decide the question in controversy on merits, i.e., on the effect of the whole correspondence that passed between the parties.

16. Mr. Jethmalani, Learned Senior Counsel submits that the judgment of Nagpur High Court is even otherwise distinguishable on merits and would submit that there was no conflict between view taken by the Nagpur High Court and Division Bench of this High Court. Learned Senior Counsel submits that if the Division Bench of this Court would have taken cognizance of the provision of Narcotic Drugs and Psychotropic Substance Act, 1985, it would have been clear that the provision of the said Act would apply to whole of India and citizen of India for the offences committed out of India.

17. It is submitted by the learned senior counsel that prior to 1st November, 1956, the Nagpur Bench was part of State of Madhya Pradesh. Under the provisions of State Reorganization Act, 1956, new State of Bombay came into force and thus new High Court came to be established. Reference to thus larger bench is not warranted. It is submitted by the learned senior counsel that the judgment of Nagpur High Court in any case is clearly distinguishable with the facts of this case and cannot be used as a precedent in so far as this court is concerned. Reliance is placed on paragraph 8 of the said judgment and it is submitted that the Nagpur High Court had taken the said particular view after constructing a particular statute and in facts of that case. The facts in that case and in this case are totally distinct.

18. It is submitted that on the contrary Division Bench of this court in case of Avinashkumar Bhasin (supra) has in terms held that Penal law of another country can be taken noticed by Indian Courts. Learned senior counsel placed reliance on section 4 of the Indian Penal Code and would submit that the provisions of the said code are extended to extra territorial offences i.e. place within and beyond India. Reliance is placed on illustration A. It is submitted that the appellant herein had committed very serious offences in Belgium and such offence and the orders passed by the Belgium court against the appellant cannot be ignored by this court. Learned senior counsel submits that judgment of Division Bench of this court in case of Avinashkumar Bhasin (supra) is binding on the learned single judge and applies to the facts of this case. Issue is thus not required to be referred to larger bench as canvassed by the appellant.

19. Mr. Chagla, learned senior counsel in rejoinder distinguished the judgment of

Mysore High Court relied upon by the respondent on the ground that the Mysore High Court had considered a situation where the existing court was abolished and new court was established. The issue was whether judgment of the court which was abolished in respect of the same territory whether was binding on the new court. Mr. Chagla invited my attention to paragraphs 8 and 9 of the said judgment and submits that when the State Reorganization Act 1956 came in existence and State of Bombay was established under the said Act by defining the territories of various states including State of Bombay, Bombay High Court was already in existence much prior thereto and not established as a separate High Court.

20. In so far as judgment of Kerala High Court relied upon by the respondent is concerned, learned senior counsel submits that the said judgment is not relevant for the reason that it is not the case of the appellant that the jurisdiction of the Nagpur High Court was of coordinate jurisdiction with that of Bombay High Court when the said judgment was delivered by the Nagpur High Court in the year 1955.

21. In so far as alternate submission of Mr. Jethmalani, learned senior counsel that there is no conflict between judgment of Nagpur High Court and the Bombay High Court is concerned, learned senior counsel placed reliance on paragraphs 7 and 8 of the judgment of the Nagpur High Court. Learned senior counsel submits that the exception carved out in paragraph 21 of the judgment of Division Bench of this court in case of Avinashkumar Bhasin (*supra*) is directly in conflict with and in departure with the judgment of Nagpur High Court. It is submitted that the Nagpur High Court had considered the principles of private international law which are not considered by the Division Bench of this court. It is submitted that in view of the exception carved out by the Division Bench of this court in case of Avinashkumar Bhasin (*supra*), a subjective element is created giving a discretion to the court to look into the gravity of offence and then to decide whether to apply the order of conviction of an Indian by a foreign court in the proceedings before Indian court. Learned senior counsel thus submits that in view of the direct conflict between the two judgments of Division Bench, this issue is required to be referred to the larger bench.

22. In so far as reliance on section 4 of the Indian Penal Code placed upon by Mr. Jethmalani, learned senior counsel is concerned, it is submitted by Mr. Chagla learned senior counsel that the said provision does not provide that the conviction of an Indian by a foreign court will be binding on Indian court against such Indian for the said offence or can be noticed by Indian courts and would submit that reliance on section 4 by the respondent is misplaced.

23. In view of the rival submissions made by the parties on the limited issue referred to aforesaid following questions arise for consideration at this stage:

(a) Whether judgment of Nagpur High Court in case of Govind Kesheo Powar Vs. State of Madhya Pradesh and Others, is binding on this court in view of the

provisions of the States Reorganisation Act 1956 and if held binding,

(b) Whether there is any inconsistency in the judgment of Nagpur High Court in case of Govind Kesheo Powar (*supra*) and the judgment of this court in case of Avinash Kumar Bhasin vs. Air India 2002 (4) BCR 772 and if inconsistency is found whether issue raised by the appellant shall be referred to larger bench.

24. I will first consider the submission of the learned senior counsel whether the judgment of Nagpur High Court delivered prior to the enactment of the States Reorganisation Act, 1956 on question of law is binding on this court.

25. Under section 8 of the said States Reorganisation Act, 1956, from the appointed day, the State of Bombay has been formed comprising of various territories including Nagpur (hereinafter referred to as the said Act). Nagpur High Court was established on 2nd January 1936 by Letters Patent dated 2nd January 1936 issued under section 108 of the Government of India Act 1935. On 1st November 1956 the States Reorganisation Act was enacted. The new State of Madhya Pradesh was constituted under section 9 thereof. Section 49(1) of the said Act ordained that from 1st November 1956, the High Court exercising jurisdiction in relation to the existing State of Madhya Pradesh i.e. Nagpur High Court shall be deemed to be the High Court of State of Madhya Pradesh. It is thus clear that the Nagpur High Court was not abolished but by a legal fiction it became High Court for new State of Madhya Pradesh in view of section 49(1) of the said Act.

26. The matters having cause of action in the territory of Nagpur prior to the enactment of the said Act were tried by the Courts at Nagpur including High Court of Nagpur as the case may be. Under section 8 of the said Act, territory of Nagpur became part of state of Bombay w.e.f. 1st November 1956. In so far as State of Bombay is concerned, w.e.f. 1st November 1956, the same was reorganized under the said Act absorbing various territories including the Saurashtra and Kutch States which ceased to exist. In the year 1960, the State of Bombay was further divided into Maharashtra and Gujarat State. The state of Bombay was finally dissolved in view of the formation of Maharashtra and Gujarat State on 1st May 1960.

27. In so far as Bombay High Court is concerned, the same has been established in the year 1862 under the provisions of High Courts Act 1861. It is thus clear that when the State of Bombay was established on 1st November 1956 when territory of Nagpur became part of State of Bombay, Bombay High Court was already in existence much prior thereto and has not been established as a new High Court by virtue of the said Act of 1956.

28. On conjoint reading of section 59(2), section 59(3) and 59(5) in my view it would indicate that the territory of Nagpur having become territory of State of Bombay and the then Nagpur High Court not having been abolished and the Bombay High Court already in existence on the date of enactment of the said States Reorganisation Act, 1956, the law laid down by the Nagpur High Court

prior to the enactment of the States Reorganisation Act, 1956 would be binding as a precedent on the Bombay High Court on the question of law. After 1960 the territory of Nagpur continued to be part of State of Maharashtra.

29. In so far as judgment of Mysore High Court in case of Basappa vs. State (supra) relied upon by Mr. Jethmalani, learned senior counsel is concerned, the Mysore High Court had considered section 49(2) and section 50 of the States Reorganisation Act, 1956. The Mysore High Court considered that on the date of enactment of the said Act the High Court of the then existing Part B State of Mysore which was also exercising jurisdiction over the State of Coorg was abolished and ceased to function and new High Court was established for the new State of Mysore. The Mysore High Court accordingly held that the said High Court was established after the reorganization of the States and thus could by no means be said to be the representative of the High Court of former State of Mysore. The Mysore High Court held that by virtue of the said Act, the old High Court was abolished and the new high court was established and that case was not the case of extending the jurisdiction of an existing jurisdiction but was a case of abolishing a old High Court and establishing a new one which has to exercise jurisdiction over the new state formed as a result of the reorganisation and thus it was difficult to say how the Mysore High Court could be said to be a representative or successor in interest of the High Court of the former State of Mysore.

30. In my view since in this case neither the Nagpur High Court has been abolished nor Bombay high Court is established under the provisions of the said States Reorganisation Act, 1956, and only the territories of various States including Nagpur having been reorganized and Nagpur became part of State of Bombay, the judgment on question of law delivered by Nagpur High Court prior to the enactment of the said Act would be binding on this court. The judgment of Mysore High Court relied upon by Mr. Jethmalani, learned senior counsel is of no assistance to the respondent and is clearly distinguishable with the facts of this case.

31. I shall now consider the issue whether there is any conflict between the view taken by two division benches on the issue whether Indian courts can take notice of the offence committed by an Indian in a foreign country and can convict an Indian for such offences committed in the foreign country based on such conviction by a foreign court.

32. The Nagpur High Court has taken a view that the conviction of an Indian beyond the territory of India cannot be taken notice of by an Indian Court. Division Bench of this High Court however in the judgment of Mr. Avinash Kumar Bhasin (supra) did not notice the judgment of Nagpur High Court. In paragraphs 21 and 24 of the said judgment, the Division Bench of this court though held that an Indian court will not lend its aid to enforcement either directly or indirectly of a foreign criminal law and the jurisdiction over the crime belongs to the country where the crime is committed, held that though enforcement will not be allowed,

it was going too far to assert that the penal laws of one country cannot be taken notice of in another for any purpose whatsoever. Division bench also held that if an occasion arises, the nature of the crime though springing from a penal law devoid of extra territorial effect, cannot be ignored by a state particularly if its own laws are also stringent and its public policy is also aimed at curbing such crimes. Division bench of this court considered the provisions of Narcotic Drugs and Psychotropic Substances Act 1985 and held that the said provisions bring out clearly the policy of the law that drugs are anathema to society and in view of those provisions, the division bench was unable to agree with the submission that since the misuse of the Drugs Act has no extra territory jurisdiction, the conviction of the petitioner thereunder should be ignored. The division bench applied regulation 42(XX) to the facts of that case.

33. In my view though on one hand the Division bench held that an Indian court will not lend its aid to enforcement either directly or indirectly of a foreign criminal law and imposition of a conviction or penalty normally reflects the exercise by a state of its sovereign power and it is an obvious principle that an Act of sovereignty can have no effect in the territory of another state, applied the different principles considering the provisions of the Narcotic Drugs and Psychotropic Substances Act 1985. In my view Mr. Chagla, learned senior counsel for the appellants is right in his submission that though the division bench of this court was also of the same view that was of the Nagpur High Court, however an exception is carved out considering the gravity of offence and by giving a discretion to the court to decide whether to apply the order of conviction of an Indian by a foreign court in the proceedings before Indian court. In my view in so far as exception carved out by the division bench of this court in the said judgment is concerned, the same is in conflict with and is inconsistent with the law laid down by the Nagpur High Court.

34. In so far as submission of Mr. Jethmalani, learned senior counsel that the judgment of the Nagpur High Court was not the judgment of the court having co-ordinate jurisdiction and is thus not binding on the Bombay High Court is concerned, Mr. Chagla learned senior counsel does not dispute that the judgment of the Nagpur High Court was not of the court of coordinate jurisdiction but it is submitted by the learned senior counsel that since the judgment of Nagpur High Court is binding on this court on the question of law, in view of the conflict on the question of law, matter has to be referred to the larger bench. In view of this submission, I need not deal with the judgment of the Kerala High Court in case of Ryrur Nair (supra) relied upon by Mr. Jethmalani learned senior counsel for the respondent.

35. Since this court has taken a view that the judgment of the Division Bench of Nagpur High Court in case of Govind Keshao Powar (supra) is binding on the Division Bench of this court on question in law, merely because the Division Bench of the Nagpur High Court was not of the coordinate jurisdiction with the Division Bench of this Court, the same is of significance. Since there is conflict of

opinion on the question of law between the two Division Benches, matter has to be referred to the larger bench. Reliance placed by Mr. Chagla on the judgment of the supreme court on this issue in case of Jaisri Sahu (supra) is correct.

36. Calcutta High Court in case of Union of India Vs. Sushantakumar Mukherjee (supra) has approved the treatise of Cheshire on private international law and has held that conviction by a foreign court cannot be noticed by the Indian Court. Division bench of this Court has not noticed the principles of private international law.

37. In so far as reliance placed by Mr. Jethmalani learned senior counsel on section 2, 3 and 4 of the Indian Penal Code and section 8 of Code of Criminal Procedure, is concerned, in my view Mr. Chagla learned senior counsel is right in his submission that in none of those provisions Indian Courts are permitted to take cognizance of the conviction of an offence by an Indian committed outside India. Reliance placed on those provisions by the learned senior counsel for the respondent is thus misplaced. In view of the aforesaid reasons, in my view it would be appropriate that this question which is of wide public importance and in view of the conflict between the judgment of the Nagpur High Court and this court, the said issue be considered by the larger bench. In this view of the matter Registrar of this court is directed to place the papers before the Hon"ble Chief Justice for appropriate orders to refer the following question to the larger bench for determination:

"Whether conviction of an Indian by a foreign Court for the offence committed in that country can be taken notice of by the Courts or authorities in India and such conviction would be binding on Courts and authority in India while trying such person for such offence in India ?

38. Ad-interim order passed by this court to continue until further orders.