

(1956) 06 AP CK 0004
In the Andhra Pradesh High Court

Public Prosecutor

APPELLANT

Vs

Dr. B. Krishnasami and Others

RESPONDENT

Date of Decision : 05-06-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 20, 228
Criminal Procedure Code, 1898 (CrPC) — Section 113, 432, 433
General Clauses Act, 1897 — Section 24
Government of India Act, 1935 — Section 205
Mines Act, 1952 — Section 66, 73

Citation : AIR 1957 AP 567 : (1957) CriLJ 1066

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Judgement

Chandra Reddy, J.—These appeals are preferred by the State against the judgment of the Sub-Divisional Magistrate, Gudur, acquitting the respondents. Charge sheets were filed against the owners and managers of some mica mines situated in different villages in Gudur taluk of Nellore district for contraventions of the rules made under the Indian Mines Act punishable under Sections 73 and 66 of the Indian Mines Act, 1952, or for the infringement of some of the regulations of the Indian Metalliferous Mines Regulations or for the violation of the Mines Creche Rules of 1946 framed by the Government in exercise of the power conferred by Sub-section (bb) of Section 30 of Indian Mines Act of 1923. It is not necessary to go into the details of these prosecutions as no decision is called for on the merits.

The validity of the rules the contravention of which is said to have constituted the offences, was called in question before the Sub-Divisional Magistrate on the ground that the Act under which these rules were framed was superseded by Act XXXV of 1952 and therefore they were not laws in force. It was contended before him that the provisions of law, which the prosecution urged as having been contravened, were invalid and ultra vires and that the prosecution could not be

sustained, As the Sub-Divisional Magistrate reached the conclusion that the above said rules and regulations were ultra vires and as there was no authoritative ruling on the subject he referred the cases to this Court u/s 432, Criminal Procedure Code.

The reference was answered by a Bench consisting of the Chief Justice and Justice Bhimasankaram. They expressed the opinion that the rules and regulations made under the earlier Act could not be described as laws in force within the meaning of Article 20 of the Constitution and that the accused could not be convicted under a law merely deemed to be in force. A copy of this order was sent to the Magistrate by whom the reference was made and the Magistrate gave judgments in all the cases acquitting the accused in conformity with that order. These appeals are filed against those acquittals.

2. In these appeals, the view of the Bench, which formed the basis of the orders of acquittal was canvassed by the Public Prosecutor. It was urged by him that the opinion of the Bench, that the rules in question were hit at by Article 20 of the Constitution as amounting to ex post facto laws was open to doubt, and the doctrine in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, did not govern the interpretation of the rules framed under the Mines Act of 1923. In the Supreme Court case, the charges as against the appellants in terms referred to the offences as having been committed under the various sections of the Indian Penal Code as adopted in the United State of Vindhya Pradesh by Ordinance XLVIII of 1949. Though this Ordinance was passed on 11th September, 1949, i.e., after the alleged offence was committed, it was made retrospective by providing that it should be deemed to be in force in Vindhya Pradesh from the 9th of August, 1948, long prior to the commission of the offences. In such a situation, their Lordships held that the law in force must be taken to relate to law not "deemed to be in force" but law factually in operation at the time or actually in existence. By giving retroactive operation to that Ordinance the principle underlying Article 20 was infringed. This has obviously no application to these cases on hand as the question of ex post facto legislation does not arise in this case and the offences were committed in this case long after the new Act came into force, continued the Public Prosecutor.

3. He also submitted that the scope and ambit of Section 24 of the General Clauses Act was not properly appreciated by the Bench and that, by reason of that section, the rules, the constitutionality of which is in question could be imported into the new Act, i.e., as framed and issued under the new Act. I do not think I am called upon to discuss the merits of this contention, as a preliminary issue arises as to whether I could go behind the opinion expressed by the Bench in the reference u/s 432, Criminal Procedure Code.

4. It was argued by the Public Prosecutor that it is not an order which has any binding force but has only a persuasive value. To substantiate this proposition, reliance is placed by the Public Prosecutor on Emperor v. Saver Manuel AIR 1941 Bom 245(B) which decided that an order of the High Court passed on a reference

u/s 432, Criminal Procedure Code, was not a final order within the meaning of Section 205, of the Government of India Act, 1935. The rule stated by a Special Bench of the Calcutta High Court in *Emperor Vs. Hemendra Prosad Ghosh and Another*, is in consonance with the principle enunciated in the Bombay case. In fact, this latter case was followed by the Bombay High Court. The Judgment of the Federal Court in AIR 1949 1 (Federal Court) accords with the doctrine of the above two cases, but I do not think that the problem posed could be solved with reference to these rulings.

In the Bombay case, the Magistrate referred two questions for the opinion of High Court on a particular notification. The High Court held that the first question did not arise and gave an answer only on the second question. On the first question also, the learned Judges gave an indication of their opinion but it was made perfectly clear in the judgment that the views expressed on the question were obiter. It is in that context that the Full Bench observed that it was a mere expression of opinion by a Court and that an appeal lies only against an order of the Court and not against the reasons in support of the order. It was also decided that the order made by the High Court merely answering the question raised by the Magistrate was not a final order within the meaning of Section 205 of the Government of India Act. u/s 205 of the Government of India Act of 1935, an appeal was competent to the Federal Court only against a judgment, decree or final order of a High Court. This section was interpreted to include a conviction or an acquittal.

5. That being the case, in the second of the cases, the learned Judges thought that, though the case involved a substantial question of law as to the interpretation of the Government of India Act, as the decision given by them was not a judgment or a decree or final order of the Court, no certificate could be issued u/s 205 of the Government of India Act. In AIR 1949 1 (Federal Court) the Federal Court took the view that the expression "judgment or final order u/s 205" could not cover a preliminary or interlocutory order made on a preliminary objection.

6. Thus, these three cases do not afford any guidance in the determination of the question before me. I am here concerned with the scope of the order passed by this Court in a reference u/s 432, Criminal Procedure Code. That section enacts:

432. (1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate, or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore and refer the same for the decision of the High Court....

7. It may be mentioned here that this section as it stands was substituted by Act

XXIV of 1951. Sub-section (1) was amended by Section 3 of the Act, and before the amendment, it was only a Presidency Magistrate that could refer for the opinion of the High Court, any question of law. Section 433(1) requires the High Court to pass "such order thereon as it thinks fit and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made who shall dispose of the case conformably to the order". Sub-section 2 states that "the High Court may direct by whom the costs of such reference shall be paid". It is seen that the Magistrate making the reference has to dispose of the case in accordance with the decision of the High Court.

8. Now, what is the effect of the decision given by the Court on such a reference? Is it open to this Court to disregard that decision when the matter comes again before it in the shape of an appeal against a judgment of the subordinate Court which embodied the opinion of this Court?

9. The position, according to the Public Prosecutor, is this. That opinion is only of a persuasive nature & the Judge can come to his own conclusions on the point of law if he is not impressed with the reasons underlying the opinion. On the other hand, the counsel for the accused submits that the decision, although not binding as a concrete decision, is binding on this Court as a legal precedent. It is incontestable that the judgment given by a Bench is binding on a single Judge by reason of the principle of stare decisis. Put that way, it is open to a single Judge to place a matter before the Chief Justice for constitution of a Bench or a Full Bench if he feels that the opinion expressed there requires reconsideration. In my judgment, the decision given u/s 432, Criminal Procedure Code, acquires a binding force not only as establishing a general principle but also as a concrete decision; otherwise the purpose behind these provisions would be frustrated.

10. The provisions in the CPC in Section 113 and Order 46, Rule 1 are of the same character. The proviso to Section 113, Civil Procedure Code, is in identical terms to Section 432, Criminal Procedure Code. It may be stated here that this proviso to Section 113, CPC and Sub-section 1 of Section 432, Criminal Procedure Code, were added by the Codes of Civil and Criminal Procedure Amendment Act XXIV of 1951. The object of these two provisions seems to be that the Acts of Legislature should be interpreted by the highest Tribunals in the State. We have cognate provisions in the Stamp Act also -sections 57 to 59 -- enabling the Chief Controlling Revenue Authorities to refer to the High Courts cases in which doubts are entertained for the opinion of the High Court, the object being to secure a judgment of the High Court for the guidance of the authorities concerned.

11. There are similar provisions in the Constitution also. Article 228 empowers a High Court to withdraw from a subordinate Court a case if it involves substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, either to dispose of it itself or to determine the question of law and return the same to the Court etc. The intention of the Legislatures in enacting these provisions will not be given effect

to if the decisions rendered either u/s 113, Civil Procedure Code, or Section 432, Criminal Procedure Code, are not to be regarded as having a binding force as a concrete decision but only as laying down a general proposition. It should also be remembered in this connection that opinions of High Courts are not obtained on abstract questions of law. The High Court is called upon only to express its opinion on these questions with reference to facts of a particular case. The Court making the reference should draw up the facts of the case and formulate precise questions. So the decision given is a considered one on the facts before them, and to hold that there is no finality will be to encourage multiplicity of proceedings. The same question has to be argued a number of times in the same Court with different results.

12. If the interpretation sought to be placed is to prevail, it leads to much waste of judicial time. Supposing under Rule 2 of the Appellate Side Rules a Bench of two Judges expresses an opinion in a petition or an appeal on a reference by a single Judge and the Bench itself refers the matter to a Full Bench and after expression of opinion the matter is returned to a single Judge & a judgment is rendered on the basis of the opinion given by the Full Bench, if it is an appeal which comes within the purview of Clause 15 of the Letters Patent, the opinion given by the Full Bench could be canvassed and it would be open to the Bench hearing the Letters Patent Appeal to refer the matter once again to a Full Bench or a Fuller Bench if they feel a doubt as to the correctness of that opinion.

Thus, there will be multiplicity of proceedings and there will be no certainty or finality. In all proceedings, the principle of finality must be respected. To canvass that decision u/s 432, Criminal Procedure Code, is to seek to have that order reviewed. There is no provision in the Criminal Procedure Code which confers power of review on the High Courts. For all these reasons, I hold that the opinion given u/s 432, Criminal Procedure Code, cannot be reviewed by a single Judge in hearing an appeal against the Judgment founded on the opinion expressed under that section. My view is fortified by a passage in Chitale's "Criminal Procedure Code":

Where the High Court passes an order under this Section and the Magistrate gives a decision in conformity with such order it has no power to reconsider or review that order in case the matter comes up before it in appeal.

13. In support of this, reliance is placed on Queen Empress v. Canji, Rat Un Cr. C. 638(E), A similar passage is contained in Sohoni's "Criminal Procedure Code":

A Court sitting in appeal cannot review an order passed by it u/s 433, Criminal Procedure Code.

Ranganathaiyar in his "Commentary on the Criminal Procedure Code" also says the same thing. In all these commentaries reference is made to Queen Empress v. Canji (A).

14. It follows that so far as this Court is concerned, the opinion expressed by the

Bench has concluded the matter and cannot be reopened. In the result, the appeals are all dismissed, D.H.Z. Appeals dismissed.