

(1978) 02 CAL CK 0016

In the Calcutta High Court

Case No : Criminal Rev. No. 24, 320 of 1974 and 189 of 1975

Sheo Prasad Jethia and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 15-02-1978

Acts Referred:

Constitution of India, 1950 — Article 228A, 233(1)

West Bengal Criminal Law Amendment (Special Courts) Act, 1949 — Section 2

Citation : 82 CWN 424

Hon'ble Judges : R.K. Sharma, J;N.C. Mukherji, J

Bench : Division Bench

Advocate : N.C. Banerji, Dilip Kr. Dutta, R.K. Khaitan, Arun Kishore Das Gupta and Ashok Kr. Ganguly, for the Appellant; Ramendra Nath Bose and S.S. Paul for Advocate General and Pulin Behari Dutta, Ramendra Nath Bose and S.S. Paul for the State, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Mukherji, J.—Criminal Revision No. 24 of 1974 arises on an application under S. 439 and 561A of the Code of Criminal Procedure and is directed against an order dated 16. 11. 73 passed by Shri P. L. Chatterji, Judge, 4th Additional Special Court, Calcutta in Special Court Case No. 11 of 1971 rejecting the petitioner's prayer for discharge. Criminal Revision No. 320 of 1974 arises on an application under S. 439 read with S. 561A of the Code and is directed against an order dated 18th February, 1974 passed by Shri P. L. Chatterji, Judge, 4th Additional Special Court, Calcutta in Special Court Case No. 16 of 1971 framing a charge under S. 120B and also under S. 420 I. P. C. against the petitioner. Criminal Revision No. 189 of 1975 arises on an application under S. 397, 401 and 482 of the Code of Criminal Procedure, 1973, alternatively under S. 435, 439 and 569A of the Code of Criminal Procedure, 1898 and is for quashing the proceeding being Special Case No. 1 of 1974 before Shri K. C. Roy, Judge, 4th Additional Special Court, Calcutta. At the time of issuance of these rules N. C. Talukdar and A. N. Banerji, JJ., passed the following order :- In view of the fact that the

points raised in this petition involve a Constitutional point of great importance affecting the vires of an important section of a State Act (XXI of 1949) let a notice of this rule be given to the learned Advocate General, West Bengal, so that he may appear and take such part in this proceeding as he may be advised. We further direct that a copy of the rule and the petition as well as a copy of this order may be served upon the learned Advocate General, West Bengal, for the said purpose.

Mr. Nalin Chandra Banerji, learned advocate appearing on behalf of the petitioners, contends that in view of Article 228A of the Constitution of India, this Division Bench is not competent to determine the question of Constitutional validity of a State Law. This court can refer the matter to the learned Chief Justice for constituting a bench of five Judges who can only determine the question as to the Constitutional validity of sub-section (2) of Section 2 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. Mr. Ramendra Nath Bose, learned advocate appearing on behalf of the Advocate General, on the other hand, contends that a single Judge or a Division Bench of two Judges can very well say whether in a particular case, a question of Constitutional validity of a State Law is involved and if a single Judge or a Division Bench of two Judges is of opinion that no such question is involved, then the question of referring the matter for determination by a Bench of five Judges does not arise. Mr. Banerji in support of his contention that a single Judge or a Division Bench of two Judges cannot go into the question of validity of a State Law relies very much on a decision reported in Chandra Kanta Devi and Others Vs. State of U.P. and Others, . This is a Full Bench decision. In this case, their Lordships have laid down "the aim and object of Article 228A was to make sure that a State Law is not declared Constitutionally invalid except by the stated majority of at least five Judges. This safeguard to the validity of a law would be fully achieved if the provisions of cls. (3) and (4) of Article 228A are held applicable to the final hearing of a writ petition and not to the admission stage. If read the entire Article as disclosing an integrated scheme, the word, determining occurring in cls. (3) & (4) together as cognate parts of a single scheme, there is no difficulty in holding that the determining required by cl. (3) is the decision reached after hearing both the parties and not merely the opinion formed at the admission hearing". A similar point arise in a case reported in 1977 CHN 823 (Lancelot Melvils D'Cruz v. Union of India). In that case also Mr. Banerji challenged the constitutional validity of sub-section (2) of section 2 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. This was an appeal from a decision by A. K. Mukherji, J., holding that the question of ultra vires of section 2 of the Act did not arise. Mr. Benerji, in that case relied very much on the Full Bench decision of the Allahabad High Court referred to above and contended that the learned Judge had no jurisdiction to determine the question of constitutional validity of sub-section (2) of Section 2 of the Act. It was further contended that in view of Article 228A of the constitution as incorporated therein by the constitution (42nd Amendment Act, 1976), the learned Judge should have

referred the matter to a Bench of five Judges of this court for the determination of that question. M. M. Dutt and R. K. Sharma, JJ. considering the relevant Article of the constitution were of the opinion that there can be no doubt that the question as to the constitutional validity of any State Law can only be determined finally by a Bench of five Judges. At the same time their Lordships held "but before a case is referred to a larger Bench, a single Judge or a Division Bench of the High Court should be satisfied *prima facie* that such a question arises. When no such question arises in any case, it can not be referred to a larger Bench. The condition precedent to the reference of any case to a Bench of five Judges is that a question as contemplated by Article 228A of the Constitution is involved". It has further been held "when a Judge refuses to refer a matter to Bench of five Judges on the ground that no question as to the constitutional validity of any State Law arises, he does not thereby act contrary to the provision of clause (3) of Article 228A, for the simple reason that he does not determine any question as to the constitutional validity of any State law". Their Lordships scrutinised the provisions of Article 233(1) of the Constitution and sub-section (2) of section 2 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and expressed an opinion to the effect that the question of constitutional validity of sub-section (2) does not at all arise. In that view of the finding their Lordships held that the learned Judge was perfectly justified in holding that no question as to the constitutional validity of section 2 was involved in the case. Mr. Banerji contends that in order to come to a finding whether a question of constitutional validity is involved or not, the Judges are required to hear the arguments of both sides and to consider the relevant provisions of the Act and the Constitution. The decision that no constitutional point is involved is also a determination and such a determination cannot be made by less than five Judges. In this connection Mr. Banerji further contends that at the time of the issuance of the rules a Division Bench of this court was *prima facie* satisfied that a constitutional point of great importance affecting the vires of an important section of Act. XXI of 1949 was involved. That being so the case reported in 77 CHN 823 is distinguishable from the present cases. In the present cases, when such a view has been taken by the two Judges this Bench cannot finally determine the matter. The order passed by the learned Judges at the time of issuance of the rule has been quoted earlier. Their Lordships did not find that really a constitutional point was involved. Their Lordships were inclined to issue notice upon the learned Advocate General as points affecting the vires of a section of Act XXI of 1949 were taken in the petition before their Lordships. The points which have been taken in this petition are identical with the points which were raised in the case of Lancelot Melvils D'Cruz v. Union of India, referred to above. We have considered the reason offered by their Lordships for holding that no question of a constitutional Validity was involved in that case. We have also considered the opinion expressed by the learned Judges that single Judge or a Bench of two Judges can go into the question whether a question of constitutional validity is involved in a particular case and if the Judge or Judges are of opinion that such a question is involved then they must refer the matter for determination by a larger Bench. On the

other hand, if they are of opinion that no such question is involved then they are not under any obligation to make reference for constitution of a larger Bench. We agree with the decision made by the Division Bench of this Court in the case referred to above and we hold that no question of Constitutional validity arises in these cases.

In the result, the applications fail and the rules are discharged. The learned Special Judges are directed to proceed with the cases in accordance with law. They are further directed to dispose of the cases as early as possible as they are pending for a long time. Let the records go down immediately.

Sharma, J.

I agree.