

(1973) 06 CAL CK 0002
In the Calcutta High Court
Case No : Criminal Revision No. 825 of 1972

State of West Bengal

APPELLANT

Vs

Shambhu Hela

RESPONDENT

Date of Decision : 14-06-1973

Acts Referred:

City Sessions Court (Amendment) Act, 1964 — Section 2(1)
City Sessions Court Act, 1953 — Section 9(1A)
Constitution of India, 1950 — Article 14, 21
Criminal Procedure (Amendment) Act, 1955 — Section 268, 269(4)
Criminal Procedure Code, 1898 (CrPC) — Section 207A, 269(4)
Explosive Substances Act, 1908 — Section 3
Penal Code, 1860 (IPC) — Section 109, 120B, 302
West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1956 — Section 9(1)

Citation : 77 CWN 887 : (1974) 2 ILR (Cal) 290

Hon'ble Judges : N.C. Talukdar, J

Bench : Single Bench

Advocate : Rajesh Chandra Ghosh, D.L.R. and Promode Ranjan Roy, Jr.
Government Advocate, for the Appellant; Niharendu Dutt Majumdar and Shib Sankar Sarkar for opposite party No. 6, Ashim Kumar Mukherjee, for opposite party No. 4, for the Respondent

Judgement

N.C. Talukdar, J.—This rule is at the instance of the Superintendent and Remembrancer of Legal Affairs, West Bengal, on behalf of the State of West Bengal, praying that the Sessions trial, arising out of C.R. Case No. 100 of 1972, now pending before the City Sessions Court, may be tried u/s 9(1A) of the City Sessions Court Act, 1953, by the learned Judge, City Sessions Court, himself without a jury.

2. The facts leading on to the rule can be put in a short compass. The prosecution case, inter alia, is that on March 29, 1971, at about 19.00 hours all the accused persons including the absconding accused Amarendra Nath Pal and Shyamdas and one Timir Guha (now approver) entered into a criminal conspiracy

at the residence of the accused Jadav Dutt at 38 Balaram Majumdar Street, Calcutta, to commit the murder of Nepal Roy M.L.A., and in pursuance thereof they took positions on the next day i.e. March 30, 1971, at about 12.30 hours, in the vicinity of the office of the said Nepal Roy at 292/6 Upper Chitpore Road (Rabindra Sarani). It is alleged that the absconding accused Amarendra @ Bhombal rushed into the said office-room with an unlicensed improvised revolver and fired a shot at Nepal Roy who was then seated on a chair and talking to visitors and, thereafter, each of the accused Shambhu, Monoranjan and Bimal, at the instruction of the accused Swapan, threw a bomb successively into the room causing injuries to one Ajit Chakraborty and damage to his properties. Nepal Roy was immediately removed to the Medical College Hospital at about 13 00 hours where he was declared dead. On investigation the Police submitted a charge-sheet u/s 120B read with Section 302, Indian Penal Code, against nine accused persons of whom two were absconding and one turned an approver as mentioned above. Following an enquiry u/s 207A, Code of Criminal Procedure, Sri P. Ghatak, Presidency Magistrate, Ninth Court, Calcutta, by his order dated November 17, 1972, committed all the six accused opposite parties to stand their trial in the City Sessions Court on charges u/s 302 read with Section 120B of the Indian Penal Code and Section 302 read with Section 109 of the Indian Penal Code against all; and the accused Shambhu alias Shankar Hela and Monoranjan alias Mantu Das on a further charge u/s 3 of the Explosive Substances Act. The Superintendent and Remembrancer of Legal Affairs, West Bengal, on behalf of the State of West Bengal thereafter moved an application u/s 9(1A) of the City Sessions Court Act, 1953, stating, inter alia, that there were no less than 82 witnesses including several witnesses to the occurrence and, as such, the trial was not likely to be concluded within two weeks from its commencement and that the case involved consideration of evidence of a highly technical nature, relating to Fire Arms and Explosive Substances Act, and, as such, the case should be tried by the learned Judge himself without a jury. The present rule was thereupon issued.

3. Mr. Rajesh Chandra Ghosh, D.L.R. (with Mr. Promode Ranjan Roy, Jr. Govt. Advocate) appearing in support of the rule on behalf of the Superintendent and Remembrancer of Legal Affairs, West Bengal, made a two-fold submission. Mr. Ghosh contended in the first instance that, in view of the volume and complexity of the evidence to be adduced in the case, the trial was not likely to be concluded within two weeks from its commencement and, as such, it was desirable that it should be tried without a jury. The second branch of Mr. Ghosh's contention was that the trial would involve a consideration of evidence of a highly technical nature rendering it undesirable that it should be tried by a jury. In this context he referred to the charge under the Explosive Substances Act and also the general nature of the case involving serious offences and submitted ultimately that this was a fit and proper case coming within the bounds of Section 9(1A) of the City Sessions Court Act, 1953. Mr. Niharendu Dutt Majumdar, Senior Advocate (with Mr. Shib Sankar Sarkar, Advocate), appearing on behalf of the

opposite party No. 6 joined issue. Mr. Dutt Majumdar has submitted that the grounds raised on behalf of the prosecution are more technical than real, inasmuch as in the first instance most of the witnesses are formal witnesses and, therefore, the trial is not expected to take a considerable time; and secondly, the law relating to Fire and Explosive Substances Act is not of such a highly technical nature that a trial by jury should not take place. Besides giving his reply to the two-fold contention of the learned Deputy Legal Remembrancer, in support of the rule, Mr. Dutt Majumdar also raised a preliminary objection challenging the vires of Sub-Section 1(A) to Section 9 of the City Sessions Court Act, 1953. The objection is of two dimensions. The first dimension of the objection is that the said provisions are bad, being repugnant to the earlier provisions laid down u/s 9(1) of the City Sessions Court Act, 1953, and, as such, are in non-conformance to procedure established by law. Mr. Dutt Majumdar, in this context, urges that the accused has a vested right in procedure, viz. a trial by the jury as enjoined u/s 9 of the City Sessions Court Act, 1953, and a non-conformance thereto amounts to a non-conformance to procedure established by law vitiating the ultimate trial. The second dimension of Mr. Dutt Majumdar's objection to such maintainability relates to the vires of Sub-Section 1(A) to Section 9, City Sessions Court Act, 1953, on the ground of reasonableness under Article 14 of the Constitution of India which provides for enabling powers without laying down any regulating standard for a reasonable application thereof without any discrimination. Mr. Dutt Majumdar ultimately submits that a jury trial is a precious right conferred on the citizens of the State and the denial thereof is not only a denial of justice but also of a proper opportunity to the accused to establish his innocence before the world. Mr. Ashim Kumar Mukherjee, Advocate, appearing on behalf of the opposite party No. 4 adopted the arguments put forward by Mr. N. Dutt Majumdar, Sr. Advocate.

4. Before I take up for consideration the two submissions made by the learned Deputy Legal Remembrancer in support of the rule, it is necessary to decide the two dimensions of the objection raised by Mr. Dutt Majumdar to the vires of Section 9(1A) of the City Sessions Court Act, 1953. For a proper consideration of the objection raised by Mr. Dutt Majumdar, a reference in the first instance is necessary to the provisions of Section 9(1A) of the City Sessions Court Act, 1953 (W.B. XX of 1953). The provisions are as follows:

When, in respect of a trial before the City Sessions Court, it appears to the High Court, on an application made to it or otherwise, that having regard to the volume or complexity of the evidence in the case the trial is not likely to be concluded within two weeks from its commencement or that the case would involve consideration of evidence of a highly technical nature, which renders it undesirable that it should be tried by a jury, the High Court may by order direct that the case shall be tried by the Judge himself without a jury and the Judge shall proceed to try the case accordingly.

Amendments to Section 9 of the City Sessions Court Act, 1953, became

necessary after the passing of the Code of Criminal Procedure (Amendment) Act, XXVI of 1955, which brought about material amendments to Sections 268 and 269 of the Code of Criminal Procedure. By the Code of Criminal Procedure (Amendment) Act, XXVI of 1955, the present provisions in Section 268 were substituted for the old section. The amended provisions were as follows:

All trials before Court of Sessions shall be either by jury or by the Judge himself.

By the same Amendment Act, XXVI of 1955, two of the Sub-sections to Section 269 were also amended. The words "by the Judge himself" were substituted for "by the Court of Sessions, with the aid of the jurors as assessors" and a new Sub-section was inserted as Sub-section (4) by the Amendment Act, XXVI of 1955, the provisions whereof are substantially the same as those in Sub-section (1A) to Section 9 of the City Sessions Court Act, 1953. The words "notwithstanding anything contained in any order made under Sub-section (1)" in Section 269(4), Code of Criminal Procedure are not incorporated in Section 9(1A) of the City Sessions Court Act, 1953. Following the aforesaid amendments the Legislature in its wisdom thought it necessary to amend the provisions of Section 9(1) of the City Sessions Court Act, 1953, and also insert a new Sub-section, namely Sub-section (1A) to Section 9. By Section 3 of the West Bengal Criminal Law (Amendment) Act, 1956 (W.B. XXVI of 1956), Sub-section (1) to Section 9 as well as the marginal notes were substituted in the original Sub-section (1) and the marginal notes thereof. By a later amendment, namely by Section 2(1) of the City Sessions Court (Amendment) Act, 1964 (W.B. XXI of 1964), the words "but subject to the provisions of Sub-section (1A) to Section 9" were inserted. The said amending Act, namely the City Sessions Court (Amendment) Act, 1964 (W.B. XXI of 1964), also inserted the new Sub-section (1A) to Section 9.

5. It is abundantly clear from the provisions of Sub-section (1A) to Section 9 of the West Bengal Act XX of 1953 that the two conditions are disjunctive or, in the alternative, ensuring thereby that the fulfilment of even one of those would bring the case within the ambit of the section. The two tests are that (a) the volume or complexity of the evidence in the case makes it clear that the trial is not likely to be concluded within two weeks from its commencement, and (b) the case involves a consideration of evidence of a highly technical nature which renders it undesirable that it should be tried by a jury. It was contended at one stage on behalf of the accused opposite parties that the aforesaid provisions are mainly directory and not mandatory. It is undoubtedly true that a discretion has been conferred on the High Court under the aforesaid provisions, but the said discretion is to be exercised judicially in the back-drop of the facts and circumstances of the case and the materials available on the record. Some meaning and effect must be given to the intention of the Legislature as incorporated in the relevant provisions and the impact thereof on the facts of a case cannot be overlooked. As was observed by Lord Sumner in the case of *Quebec Railway Light, Heat and Power Co. Ltd. v. Vandry* AIR 1920 P.C. 181

(186) that

effect must be given, if possible, to all the words used for the Legislature is deemed not to waste its words or to say anything in vain.

I respectfully agree with the same and hold that failure to give effect to the express words used by the Statute would lead on to redundancy and, in this context, it is pertinent to refer also to the observations of Subba Rao J. (as his Lordship then was) in the case of *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, that--

A construction which would attribute redundancy to a Legislature shall not be accepted except for compelling reasons.

There are no compelling reasons to the contrary and, therefore, a failure to give effect to the amended provisions of Section 9(1A) of the West Bengal Act XX of 1953 would result in a construction attributing "redundancy to a Legislature".

6. I will now proceed to consider the first dimension of the preliminary objection raised by Mr. Dutt Majumdar against the backdrop of the provisions of Section 9(1A) of the City Sessions Court Act, 1953. Mr. Dutt Majumdar contended that the provisions contained therein for a trial without a jury was in non-conformance to procedure established by law. The steps of Mr. Dutt Majumdar's reasoning in this behalf are that the accused has a vested right in procedure, namely, a trial by a jury as enjoined in Section 9(1A) of the City Sessions Court Act, 1953, that a trial by a jury is a precious right conferred on the citizen of a State and the denial thereof is a denial of justice of any opportunity to the accused to be heard properly in his defence, and that in view of Article 21 of the Constitution of India no person shall be deprived of his life or personal liberty except according to procedure established by law. It is undoubtedly true that a trial where there has been a non-conformance to the procedure established by law, stands vitiated. The principle has received an imprimatur of judicial decisions and is highlighted by observations of the Master of the Rolls, Lord Jessel, in the case of *Taylor v. Taylor* (1876) 1 Ch.D. 426 (431) that

when a statutory power is conferred for the first time upon a Court and the mode of exercising it is pointed out, it means that no other mode is to be adopted....

The said principles were approved of and applied by their Lordships of the Judicial Committee and the Supreme Court in a number of decisions. But the point still remaining for consideration is whether there is a fit and proper case where there has been a non-conformance to procedure established by law within the bounds of Article 21 of the Constitution of India. The answer must be in the negative. The very provisions of Section 9(1A) of the West Bengal Act XX of 1953 make it abundantly clear that all trials before the City Sessions Court shall be by jury

notwithstanding anything contained in Sections 268 and 269 of the Code but subject to the provisions of Sub-section (1A).

The provisions of Sub-section (1A) are accordingly quite clear, viz. that in the event of anyone of the two contingencies referred to therein taking place,

the High Court may, by order, direct that the case shall be tried by the Judge himself without a jury.

Nobody has a vested right in a procedure unless the same is established by law. The point involved, therefore, is ultimately one of discretion based on the facts and circumstances of a particular case and the provisions of Section 9(1A) and does not per se amount to a non-conformance to any procedure established by law. The first dimension of the preliminary objection accordingly fails.

7. The second dimension of the preliminary objection raised relates to the vires of Sub-section (1A) to Section 9 of the West Bengal Act XX of 1953. Mr. Dutt Majumdar submitted that Sub-section (1A) to Section 9 of the West Bengal Act XX of 1953 should be struck down as the provisions thereof are bad, repugnant and ultra vires, encroaching on the fundamental rights of the subject to have a trial in accordance with law and offending against Article 14 of the Constitution of India on the ground of reasonableness inasmuch as, amongst others, the two conditions laid down therein provide for arbitrary enabling powers without laying down any regulating standard for a reasonable application thereof irrespective of discrimination. The learned Deputy Legal Remembrancer joined issued and contended that submissions made in this behalf by Mr. Dutt Majumdar were unwarranted and untenable, that the enabling powers incorporated in Sub-section (1A) of Section 9 of the City Sessions Court Act, 1953, were not without any regulating standard for a reasonable application thereof, and that the two conditions precedent laid down therein provide a regulating standard which is neither arbitrary nor unreasonable. It is pertinent, therefore, to refer to Article 14 of the Constitution of India which lays down as follows:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

This Article is, in substance, modelled upon the equal protection clause occurring in the Fourteenth Amendment of the American Constitution with a further addition of the rule of "equality before the law" which is an established maxim of the English Constitution. Equal protection under Article 14 means the right to equal treatment in similar circumstances both with regard to the privileges conferred as also the liabilities imposed. The provisions, in short, rule out discrimination between one person and another, if as regards the subject-matter of the legislation their position is the same. A reference in this context may be made to the case of *Shri Kishan Singh and Ors. v. State of Rajasthan and Ors.* (1965) 2 S.C.R. 531 (533) Venkatarama Ayyar J. delivering the judgment of the Court observed:

What Article 14 prohibits is the unequal treatment of persons similarly situated.

A reference may also be made to the case of *The State of West Bengal Vs. Anwar*

Ali Sarkar, . B.K. Mukherjee J. (as his Lordship then was) observed:

It can be taken to be well-settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

It cannot be overlooked that every classification on ultimate analysis is in some degree likely to produce some inequality, but the overriding consideration is not a mere production of inequality. As was observed by Mr. Justice Fazl Ali in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, that

any classification which is arbitrary and which is made without any basis is no classification, and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed.

Differential treatment does not per se constitute a violation of Article 14. It denies equal protection only when there is no reasonable basis for the differentiation. A reference in this connection may be made to the case of Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, B.K. Mukherjee J. (as his Lordship then was) delivering the judgment of the Court observed that

mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary.

I respectfully agree with the observations made by the Supreme Court as referred to above and I hold that Article 14 prohibits class legislation and not reasonable classification for the purposes of legislation. This has been pinpointed by the Supreme Court again and again, and without multiplying the number of cases a reference may be made to the observations made in the case of Budhan Choudhury and Ors. v. State of Bihar (1956) 1 S.C.R. 1045 (1049) wherein S.R. Das J. (as his Lordship then was) observed that

it is now well-established that while Article 14 prohibits class legislation, it does not forbid reasonable classification for the purposes of legislation.

The two essential conditions contained in Sub-section (1A) to Section 9 of the West Bengal Act XX of 1953 are reasonable classifications which, when fulfilled, empower the High Court with the discretion to direct that the case in question shall be tried by the learned Judge himself without a jury. The aforesaid provisions, therefore, do not offend in any way the provisions under Article 14 of the Constitution of India and, as such, are not ultra vires. The second dimension of the preliminary objection raised by Mr. Dutt Majumdar also fails.

8. I will now proceed to consider the two submissions made by the learned Deputy Legal Remembrancer in support of the present rule. The first one is that as the trial is not likely to be concluded within two weeks from its commencement in view of the volume or complexity of the evidence in the case, the case pending before the City Sessions Court should be tried by the learned Judge himself without a jury. The steps of Mr. Ghosh's reasoning in this context are that (a) the enquiry in the committal Court had taken about 2 1/2 months' time from September 5, 1972, uptill November 17, 1972, although seven witnesses only were examined, and (b) there are as many as 82 witnesses, including eye-witnesses to the actual occurrence on behalf of the prosecution and, as such, the trial is not likely to be concluded within two weeks from its commencement, more so as a considerable time would be taken for cross-examination by the learned defence counsel during the Sessions trial. Mr. Dutt Majumdar in his reply submits that the estimate given on behalf of the prosecution is merely an a priori predilection and not a correct yardstick to fathom the duration of the trial. Moreover, many of the witnesses are formal witnesses and there is no reason as to why the trial cannot be concluded within two weeks from its commencement. The contention of Mr. Dutt Majumdar overlooks the time already taken in the committal Court during the committal enquiry as also the material fact that there are no less than 82 witnesses on behalf of the prosecution including eye-witnesses to the actual occurrence, besides a volume of documentary evidence to be let in. Justice is not an one way traffic and the prosecution is as much a limb of the Court as the defence is and, accordingly, there should be ex debito justice a full-fledged trial after giving due and proper opportunity of being heard to both the parties. There is a considerable force behind the submissions of the learned Deputy Legal Remembrancer and it cannot be overlooked that, although seven witnesses were examined during the enquiry under chapter XVIII of the Code of Criminal Procedure, it took no less than 2 1/2 months' time. I ultimately hold, therefore, that the estimate given on behalf of the prosecution is neither an a priori predilection nor a haphazard guess but a reasonable estimate based on the materials on the record. It should not be overlooked that the words used by the Statute are that "the trial is not likely to be concluded". The point that awaits consideration at this stage is whether there is a reasonable chance of the trial going on beyond two weeks from its commencement. In view of the facts and circumstances of the case and the nature of evidence proposed to be adduced, I ultimately hold that the same lends assurance to the contention raised by the learned Deputy Legal Remembrancer that the trial is not likely to be concluded within two weeks from its commencement. The first branch of Mr. Ghosh's contentions, accordingly succeeds.

9. The second branch of the contentions of the learned Deputy Legal Remembrancer is that the case would involve a consideration of evidence of a highly technical nature rendering it undesirable that it should be tried by a jury. There is also a considerable force behind these submissions. In view of the facts

and circumstances involved and the nature of the evidence to be adduced, the trial is likely to involve a consideration of evidence of a highly technical nature attracting the provisions of the second part of Sub-section (1A) to Section 9 of the West Bengal Act XX of 1953. It has to be considered in this connection that the two essential ingredients laid down under Sub-section (1A) to Section 9 are not conjunctive but in the alternative and even one of those would be sufficient to bring the case within the ambit of the said Sub-section. Mr. Dutt Majumdar submitted that the contention made on behalf of the prosecution is more technical than real and that a charge under the Explosive Substances Act itself would not involve a consideration of evidence of a highly technical nature rendering it undesirable that the case should be tried by a jury. In view of the nature of the evidence required for establishing the offences, it is difficult to agree with the contentions of Mr. Dutt Majumdar. The second branch of Mr. Ghosh's submissions in support of the rule also succeeds.

10. In the result, I make the rule absolute, vacate the ad interim order for stay, and I direct that the Sessions trial now pending before the City Sessions Court shall be tried expeditiously and in accordance with law by the learned Judge, City Sessions Court, himself witho