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**(1954) 03 MP CK 0005**  
**In the Madhya Pradesh High Court**

The State and Others

APPELLANT

Vs

Narayan Nandram Sarpanch and Others

RESPONDENT

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**Date of Decision :** 05-03-1954

**Acts Referred:**

Constitution of India, 1950 — Article 14, 20, 228

**Citation :** (1954) CriLJ 1739

**Hon'ble Judges :** Nevaskar, J;A.H. Khan, J

**Bench :** Division Bench

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## Judgement

A.H. Khan, J.—The Sessions Judge of Indore has made a reference to the High Court in this case and also in 15 other cases; the points involved in all these cases are questions of law as to the interpretation of the Constitution of India. The questions being Identical, all the references are being disposed of by this single order.

2. The facts, leading to the reference, briefly stated are that the Criminal Law Amendment Act (Act No, XLVI of 1952) received the assent of the President on 28-7-1952. Under Section 7 of the Act, the learned Sessions Judge of Indore was appointed a Special Judge on 8-10-1952 by the Madhya Bharat Government. All cases triable by the Special Judge, that were pending before other Courts, were transferred to the Special Judge u/s 10 of the Act for disposal.

During the hearing of these transferred cases, the counsel of the accused raised some objections relating to the validity of the Criminal Law Amendment Act of 1952, and, hence this reference.

The objections may be summarised thus: That the transferred cases are concerning offences alleged to have been committed before the coming into force of the Criminal Law Amendment Act; that the trial of such cases under the Act will amount to law being retrospectively applied to them; that Section 6 of the Prevention of Corruption Act (Act 2 of 1947) offends against Article 14 of the Constitution and that Section 10 of the Criminal Law Amendment Act is ultra

vires of Article 20 of the Constitution.

3. Before considering the objections, we must first consider whether any reference lies or not.

The learned Special Judge in his covering letter No. 9963/A of 22-7-1953 says that the reference is being made u/s 432, Criminal P. C. There is no doubt that under the Section a reference lies to the High Court, but the circumstances that justify a reference under the section are not there.

Section 432, Criminal P. C. runs thus:

(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, or 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 provisions 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 therefor, and refer the same for the decision of the High Court.

4. This Section empowers the Judge to make a reference if two conditions exist; First, that the pending case must involve a question as to the validity of any Act; secondly, the Judge should be of opinion that such Act is invalid. In this reference, the Special Judge has expressed the view that the impugned Act is valid. It being so, no reference lies u/s 432 and in this view of the matter we would have rejected the reference.

But the learned Advocate General, who has appeared on behalf of the State, has referred us to Article 228 of the Constitution, which is as follows:

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

(a) either dispose of the case itself, or

(b) determine the said question of law and return case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

5. There is no doubt that at the time the reference was made, there were substantial questions of law, which related to the interpretation of the Constitution and this reference must be treated as being under Article 228 of the Constitution rather than u/s 432, Criminal P. O. In *A. B. Lagu v. State of Madhya Bharat* AIR 1950 Mp. 81 (A) this High Court has expressed the view that "the object of this Article 228 is to make the High Court the sole interpreter of the Constitution in the State".

The learned Counsel for the accused Mr. Bhargava contends that the reference u/s 432 being incompetent, it is not necessary to consider it under Article 228 of the Constitution. But the objections which have given rise to this reference were specially raised by the learned Counsel for the accused in the lower Court and having raised the controversy there, it is not proper to belittle them at this stage.

6. The constitutional questions sought to be raised are mainly two: First, whether the transfer and trial of the cases (under Section 10 of the Criminal Law Amendment Act) involving offences committed prior to the Criminal Law Amendment Act, is hit by Article 20 of the Constitution. It is contended that the punishment provided under the new Act is greater than that which might have been inflicted under Indian Penal Code, the law which was in force at the time of the commission of the offences.

7. Second, that u/s 6 of the Prevention of Corruption Act, the unfettered discretion of the Government to sanction prosecution is liable to be misused and this offends against the principle of equality before the law as enunciated in Article 14 of the Constitution.

8. But we find that we are relieved of the necessity of considering these questions, because in two cases, Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and Kedar Nath Bajoria Vs. The State of West Bengal, their Lordships of the Supreme Court have already considered these precise questions.

9. With regard to the validity of Article 20 of the Constitution, (Evidently, the validity of the Act is meant--Ed.) their Lordships have been pleased to observe in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, that:

What is prohibited under Article 20 of the Constitution is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time, cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular Court, or by a particular procedure except in so far as any Constitutional objection by way of discrimination or the violation of any other fundamental right may be involved.

10. A careful perusal of Article 20, would show that it sets two limitations on the legislative authority; one, that no person shall be convicted of any offence, if there was no law in force at the time of the commission of offence which made the act an offence. In other words, it prohibits the creation of a new offence, the punishment of which may be prescribed with retrospective effect. It is not contended that the offences with which the accused stand charged were not offences at the time of their alleged commission. The other "imitation is that no one shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. If

the presiding Judge were to award a sentence severer than that which was provided in the former law (viz., the Indian Penal Code) then of course it would offend against Article 20. But at this stage, no question of any heavier penalty arises and till the accused are tried and convicted, there is no question of punishment.

11. With regard to the validity of (under?) Article 14 of the Constitution their Lordships of the Supreme Court in Kedar Nath Bajoria Vs. The State of West Bengal, have observed that.

Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 of the Constitution must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. Merely because the Government is not compellable to allot all cases of offences set out in the Schedule to the Act to Special Judges but is vested with a discretion in the matter, it cannot be said that the provision offends against Article 14 of the Constitution.

It is also contended that transfer of cases u/s 10 of the Criminal Law Amendment Act would amount to retrospective legislation. But the recent decision of their Lordships of the Supreme Court in The Union of India Vs. Madan Gopal Kabra, clearly indicates that Parliament can legislate retrospectively. In this view of the matter a sovereign Legislature has the power to enact prospective as well as retrospective laws. The law therefore, made by Parliament cannot be impeached merely on the ground that it operates ex post facto.

12. For reasons stated above, we are not satisfied that the reference involves any such question of constitutional importance so as to justify the withdrawal of the cases before us. We accordingly dispose of the reference and rejecting it send the cases back to the Special Judge, for speedy trial and disposal.

Nevaskar, J.

13. Facts leading to these references are stated by my learned brother Khan J.

14. It is clear by reference to Section 432, Criminal P. C. that the present references which purported to be those u/s 432 are incompetent. The Court making the references has not expressed an opinion that the impugned Act is invalid or inoperative. Mere entertaining a doubt by the Court making the reference as to the validity or inoperative nature of an Act or any provision therein is not enough and that by itself does not clothe that Court with an authority to make reference on questions of law which is vested only in the Presidency Magistrates and in none else. The references, therefore, are clearly incompetent.

15. The learned Advocate General at one time thought that he would move this Court by an independent application inviting its decisions on questions of law bearing on the interpretation of the Constitution indicated in the order of reference of the learned Special Judge in exercise of the powers of this Court

under Article 228 of the Constitution but later he expressed his intention not to submit any fresh application.

16. At the hearing the learned Advocate General called our attention to two Supreme Court cases Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and " AIR 1953 SC 484 (C)", and contended that the points involved in these cases and referred to in the order of reference have already been settled by the Supreme Court and now there is no controversy left either regarding validity of the Act or regarding validity of the provisions of Section 10 of the Criminal Law Amending Act being contrary to Article 20 of the Constitution or regarding validity of Section 6 of Prevention of Corruption Act being contrary to Article 14 of the Constitution.

There is no doubt that the cases referred to above appear to settle the points indicated above but for that reason it is unnecessary to treat the references which purported to be u/s 432, Criminal p. C. as those under Article 228 of the Constitution.

17. The Courts below no doubt will take into account the decisions of their Lordships of Supreme Court in these cases if the points decided by their Lordships are sought to be agitated before them.

18. With these observations the references are rejected.