
(1958) 03 BOM CK 0001

In the Bombay High Court

Case No : Criminal Application No's. 1709 of 1957 and 313 and 314 of 1958

The State of Bombay

APPELLANT

Vs

Ramgopal Ganpatrai Ruia and Another

RESPONDENT

Date of Decision : 31-03-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 269(1), 269(4)

Citation : AIR 1959 Bom 1 : (1958) 60 BOMLR 834 : (1959) CriLJ 28 : (1959) ILR (Bom) 919

Hon'ble Judges : M.C. Chagla, C.J.; S.T. Desai, J.; Miabhoy, J

Bench : Full Bench

Advocate : Government Pleader, for the Appellant; H.M. Choksi, Shellim Samuel, K.J. Khandalawalla, S.A. Desai and S. Samuel, for the Respondent

Judgement

M.C. Chagla, C.J.—An application to dispense with the Jury in a case pending before the Session Court, Greater Bombay, was made to a Division Bench consisting of my brothers Datar and Miabhoy and that Bench felt some difficulty as to whether on a true construction of S. 269(4) of the Criminal Procedure Code the High Court has the power to dispense with the trial by Jury and has referred this question to a larger bench; and the question referred to us is whether the High Court can, in the circumstances stated in sub-s. (4) of S. 269 of the Criminal Procedure Code, by order direct a case pending trial before the Court of Session for Greater Bombay to be tried by the Judge himself without a jury.

2. Now, in order to understand and appreciate the difficulty that has arisen, it is necessary to look at the various amendments in the Code of Criminal Procedure made both by the Parliament and the State Legislature. The scheme of the Code before it was amended by Act XXXII of 1938, which is a Bombay Act, was that all trials before the High Court were by Jury, and that is S. 267. Then S. 268 dealt with trials before a Court of Session and the original provision was that the trials were to be either by Jury or with the aid of assessors. Section 269 enabled the State Government to direct that the trial of offences, or of any particular class of

offences, before any Court of Session, shall be by Jury in any district. and to revoke or alter such order. Therefore, the original Code drew a sharp distinction between trials before a High Court and trials before a High Court and trials before a Court of Session. Whereas in the case of a trial before a High Court, trial by Jury was obligatory, in the case of trials before the Sessions Court the trial could be by Jury or with the aid of assessors and it was left to the State Government to decide by notification in which district and in what classes of offences trial should be by Jury. Then came Bombay Act XXXII of 1948 and the object of this Act was to constitute the city of Bombay into a separate district and to set up a Sessions Court to have cases arising in the city of Bombay triable by that Court of Session. For that purpose the Criminal Procedure Code had to be amended. The first amendment was to S. 267 which provided, as amended, that not only trials before the High Court, but also before the Court of Session for greater Bombay, shall be by Jury. Section 268 was amended by adding the words "subject to the provisions of S. 267," so that S. 268 only applied to Session Court outside Greater Bombay. In other words, the result of the amendment was that, as far as Greater Bombay was concerned, it was put in the same position as the High Court and trials before the Court of Session for Greater Bombay had to be by Jury. With regard to Sessions Courts outside Greater Bombay, the position continued to be the same. Then came Act XXVI of 1955 which passed by Parliament, and which by amending S. 268 did away with trials with the aid of assessors. It also enacted sub-s. (4) of S. 269. The object of enacting this sub-section was to do away with Jury trials in two classes of cases: (1) where the volume of evidence was such that it was not desirable that the Jury trial should take place as it was not likely that the trial would be concluded within a short time; and (2) where the complexity of the evidence was such that men without legal training might be assumed not to be in a position to understand or appreciate the evidence led in the Court. The question that we have to consider is whether sub-s. (4) of S. 269 applies only to S. 269 or it also applies to S. 267; in other words. whether the power that has been conferred upon the High Court to dispense with a trial is confined to cases triable by jury in a Court of Session outside the Court of Session for Greater Bombay, and also whether that power cannot be exercised by the High Court in cases where the trial is before the High Court itself.

3. Now, first turning to the language of sub-s. (4) of S. 269, the sub-section opens with the words "When in respect of a trial in which the accused is charged with an offence triable by Jury" then come the operative words as to what conditions are to be satisfied before the High Court could exercise the power, and the power of the High Court is expressed in this language at the end of that subsection:

".....the High Court, may, notwithstanding anything contained in any order made under Sub-section (1), by order, direct that that case shall be tried by the Judge himself without a jury and the Judges shall proceed to try the case accordingly."

The first difficulty is caused by the important power being conferred upon the High Court in an enactment which is a sub-section of a section. Section 269 deals with the power of the State Government to direct by notification in which Courts of Sessions trials will be by jury & it is in this section that this important enactment finds a place. The other difficulty is caused by the fact that the non-constant clause is confined to Section 269(1); in other words, it may appear as if Sub-section (4), by reason of this non-constant clause, only applied to the provisions of Section 269(1). But in order properly to construe Section 269, certain principles must be borne in mind. In enacting this sub-section, the Legislature was putting on the statute-book a remedial legislation. Parliament was convinced that there were certain types of cases where it would be wrong to have a trial by jury. Parliament was impressed by the fact that a great deal of time would be wasted if, in cases of complexity or where the volume of evidence was large, cases were tried by jury. Now, if that was the object with which Sub-section (4) was enacted, it is difficult to believe that Parliament wanted only the citizens living in the districts to benefit by that remedial legislation and not the people living in the city of Bombay. There is no reason why, if cases presented difficulty by reason of the volume of evidence or the complexity of evidence, in the Court of Session for Greater Bombay or in the High Court any other principle should be adopted than the principle embodied in Sub-section (4) of Section 269; nor could it have been the view of the Legislature that, in all cases coming before the Court of Session for Greater Bombay or the High Court, the citizens should have the benefit and the advantage of trial by jury. If that right was considered to be so important as never to be taken away under circumstances, then again it is difficult to understand why the people tried in the districts should be deprived of that right and the right should only have been preserved for those who were tried in the Court of Session for Greater Bombay. If we are right in the view we are taking with regard to the objection that the Legislature had in enacting Sub-section (4), then it is our duty to place an interpretation upon Sub-section (4) which will carry out that objective and which would effectuate the intention of Parliament.

4. Undoubtedly, if the language of Sub-section (4) was not capable of bearing the construction which we are proposing to put upon it then whatever might have been the object of Parliament, whatever mischief it intended to remedy, we would be compelled to construe the section according to the language used by the Legislature. But, in our opinion, the language used by the Legislature is capable of being construed in a manner which would carry out the object which the Legislature had at heart. Now, in the first place, the language used in the opening words of Section 269(4) is wide enough to cover not only trials which are held in the Sessions Courts in the districts, but also in the Sessions Courts in Greater Bombay and also in the High Court, because the language used is "in respect of a trial in which the accused charged with an offence triable by jury." The expression "trial" is not qualified in any way by the Legislature; every trial where the accused is charged with an offence triable by jury is a trial which

comes within the purview and ambit of Section 269(4). It is true that better drafting required that Section 269(4) should have been enacted as a separate section; but this Court has taken the view, in construing many pieces of legislation, that even a proviso in certain case may be looked upon as a substantive legislation, and Sub-section (4) is not a proviso: it is an independent provision of law in the sense that it does not purport to be a proviso to any earlier sub-section of Section 269. Therefore, there is no objection as far as canons of construction are concerned in looking upon Sub-section (4) as an independent substantive provision of law with regard to dispensing with trials by jury. It is also true that better drafting required that the non-constant clause should have referred, not only to Sub-section (1) of Section 269, but also to Section 267. But it is again possible to explain why the Legislature only referred to Section 269(1), and not to Section 267, and the explanation is this. Section 269(1) was dealing with cases where the State Government had issued specific notification directing trials by Jury in certain districts, and lest it be said that by reason of the exercise of power by the State Government the power of the High Court u/s 269(4) was taken away, the Legislature for greater caution specifically enacted that, notwithstanding the provisions of Section 269(1), the High Court was given the power to direct that the trial should be without a jury. In the case of Section 267 no such provision was necessary and no such caution had to be exercised because in a case falling u/s 267 what the High Court would be doing would be to exercise its power to direct otherwise than what was provided by law u/s 267. In that case the High Court would not be passing an order contrary to a notification issued by the State Government.

5. In our opinion, therefore, the provisions of Section 269(4) apply to all trials in which the accused is charged with an offence triable by jury and the power conferred upon the High Court by that sub-section to dispense with the jury trial may be exercised by the High Court in all such cases. Further, in our opinion, Sub-section (4) of Section 269 makes no distinction between a trial before the High Court or the Court of Session for Greater Bombay and a trial before a Session Court other than the Court of Session for Greater Bombay.

6. We will answer the question submitted to us in the affirmative.

7. The Judgment of Mr. Justice Datar and Mr. Justice Miabhoy points out that this is a clear case where the High Court should exercise its power u/s 269(4) if it has the power. We agree with these two learned Judges and we will. Therefore, direct that this case should be tried by the Judge himself without a jury.

8. Reference answered in affirmative.