

## **M.G. Desai & Anr vs State Of Bombay on 2 December, 1959**

**Equivalent citations: AIR 1960 SUPREME COURT 1312**

**Bench: P.B. Gajendragadkar, K.C. Das Gupta**

CASE NO. :

Appeal (crl.) 70 of 1956

PETITIONER:

M.G. DESAI & ANR.

RESPONDENT:

STATE OF BOMBAY

DATE OF JUDGMENT: 02/12/1959

BENCH:

B.P. SINHA (CJ) & P.B. GAJENDRAGADKAR & K. SUBBARAO & K.C. DAS GUPTA & J.C. SHAH

JUDGMENT:

JUDGMENT AIR 1960 SC 1312 The Judgment was delivered by : SHAH SHAH, J. : By order dated February 12, 1957, this court remanded the proceeding in this appeal to the High Court of Bombay with a direction that proper steps be taken for recording a finding on the question whether the sanction for the prosecution of the appellants was accorded by the Central Government under Indian Ordinance No. III of 1946 or under the Bhore State Ordinance, i.e., the Ordinance which was in force in the Bhore State. Pursuant to this direction, the Special Judicial Magistrate First Class (A. C. Branch), Poona recorded a finding that sanction had been given by the Central Govt., under the Indian Ordinance No. III of 1946 and also under the Bhore State Ordinance of 1946, but primarily the sanction was given under the Ordinance in force in the Bhore State. The Additional Sessions Judge, Poona to whom the record was submitted for his opinion recorded a finding that the sanction was granted under the Ordinance which was in force in the State of Bhore. The High Court at Bombay did not record any express finding on this question.

2. To appreciate the pleas raised in this appeal, certain material facts may be briefly set out.

3. Bhore was one of the Indian States in the Deccan area. The Rajasahib of Bhore promulgated Act I of 1942, being "The Government of Bhore State Act, 1942 " with a view to introduce certain constitutional reforms in the State of Bhore. By S. 25 of the Act, a Council to be constituted under the Act was subject to the provisions of the Act, given authority to make, repeal or alter the laws for the whole or any part of the Bhore State and for the subjects of the Rajasahib wherever they may be. But by S. 26, from the competency of the Council to legislate, certain matters set out in sub-s. 1 were excluded, and by S. 30, jurisdiction was conferred on the Rajasahib to legislate in respect of the matters so excluded. By S. 31, power was conferred on the Rajasahib, if he was satisfied that an

emergency existed which rendered it necessary to take immediate action in matters other than those falling under S. 26, to frame any measure or regulation for that purpose. Such measure or regulation on receiving the assent of the Rajasaheb was to have the force of law for six months from the date of its promulgation in the official Gazette. By the proviso, the Rajasaheb was competent to extend the period of the operation of the measure or regulation for three months. By S. 6, inherent authority executive, legislative, and judicial, of the Rajasaheb, notwithstanding anything contained in the Constitution Act was affirmed, and it was expressly enacted that nothing contained in the Constitution Act or any other Act shall be deemed to have affected the right and prerogative of the Rajasaheb to make laws, issue proclamations, orders and ordinances.

4. The Laxmi Textile Mills Ltd., a limited liability company had its registered office in Bhore State and the two appellants were its Managing Directors. On January 12, 1946, the Government of India promulgated in exercise of the powers conferred by S. 72 of the Government of India Act, 1935, as set out in the IXth Schedule Ordinance No. III of 1946 called the High Denomination Bank Notes (Demonetisation) Ordinance, 1946. By S. 3 of that Ordinance, after January 12, 1946, all high denomination bank notes, notwithstanding anything contained in S. 26 of the Reserve Bank of India Act, 1934 ceased to be legal tender in payment or on account at any place in British India. By S. 4, transfer to the possession of another person of any high denomination bank note was prohibited. Provision was made by S. 6 for exchange of high denomination bank notes held by persons other than banks or Government Treasuries, and by Cl. 9 of S. 6, high denomination bank notes exceeding in value rupees ten lakhs held by any person were exchangeable only with the Reserve Bank at Bombay, Calcutta and Madras. By Cl. 2 of S. 6, every owner of the high denomination bank notes desiring to tender them for exchange was required to prepare in the form set out in the schedule a declaration signed by him giving in full the particulars required by that form. By S. 7, making of a declaration which was known to be false wholly or partially was penalised. By sub-sec.3 of S. 7, prosecution for an offence punishable under that Section could be instituted only with the previous sanction of the Central Government. The Rajasaheb of Bhore by notification dated January 19, 1946, applied Ordinance No. III of 1946 "Mutatis Mutandis" to the whole of Bhore State with immediate effect.

5. It is the case for the prosecution that the two appellants had in their possession on January 12, 1946, high denomination bank notes of the aggregate value of Rs. 10, 55, 000 and in order to circumvent the provisions of S. 6, Cl. 9 of the Ordinance, in conspiracy with one H. R. Karandikar split up the amount of Rs. 10, 55, 000 into three amounts of Rs. 9, 69, 000 Rs. 24, 000 and Rs. 62, 000 and by making declarations known by them to be false exchanged the high denomination bank notes from the Bhore Treasury through the Reserve Bank of India, Bombay on January 21, 1946, and received payment on February 4, 1946. It was the case for the prosecution that the appellants and Karandikar declared that out of the sum of Rs. 10, 55, 000, Rs. 9, 69, 000 were received in deposit with the Laxmi Textile Mills, though it was known by them that there were no such deposits received by the company; that they declared that Rs. 24, 000 were received in the cloth import department of the Laxmi Textile Mills Ltd. on January 9, 1946, from one Keshav Govind Agashe when in fact no such amount was received, and that it was declared that Rs. 62, 000 were received by Laxmi Trading Company from one Mrs. C. Vimal Ben of Kurundwad on January 9, 1946 and the same amount was obtained by the 1st appellant on January 11, 1946 for a theatre belonging to the Laxmi Trading

Company when in fact no such amount was received by the Laxmi Trading Company.

6. On February 23, 1953, the Central Government granted sanction to prosecute the appellants and Karandikar for the offence punishable under sub-sec. 1 of S. 7 of Ordinance No. III of 1946 and on July 9, 1953, a charge sheet was lodged in the court of the Special Judicial Magistrate First Class (A. C. Branch), Poona charging the appellants and Karandikar with submitting false declarations and getting exchanged contrary to S. 6, Cl. (9) of Ordinance No. III of 1946 high denomination bank notes of Rs. 10, 55, 000 on February 4, 1946, from the Reserve Bank of India, Bombay through the Bhore Treasury and with fabricating false documents by showing fictitious deposits for getting exchange of the said bank notes from the Reserve Bank of India, Bombay through the Bhore Treasury and thereby committing an offence punishable under S. 7 of Ordinance No. III of 1946 and also with committing offences punishable under ss. 420, 467 and 468 of the Indian Penal Code read with S. 34 of the Indian Penal Code.

7. At the trial before the Special Judicial Magistrate First class, Poona, the appellants submitted, (1) that the charge against them for alleged breach of Ordinance No. III of 1946 was not maintainable, because the Ordinance had lapsed long before the investigation was commenced ; (2) that the false representation, if any, was made in the territory of Bhore State in which the Ordinance promulgated by the Rajasaheb of Bhore was in operation and they could , if at all, be prosecuted under that Ordinance; (3) that even under the Bhore State Ordinance, no prosecution could be launched as that Ordinance had expired many years before the initiation of the proceeding against the appellants; and (4) that at the material time, the Bhore State was an independent Indian State and the appellants were not liable to be prosecuted in a court in the Bombay State without the requisite sanction under S. 188 of the Code of Criminal Procedure. The learned Magistrate negatived the contentions raised by the appellants and held that the prosecution was 'valid and according to law'. In a revision application against that order, the Court of Session at Poona rejected the contentions and declined to refer the case against the appellants and Karandikar to the High Court for quashing the proceeding. The appellants then invoked the jurisdiction of the High Court at Bombay under S. 561A of the Code of Criminal Procedure, but without success.

8. Against the order passed by the High Court, this appeal by special leave has been preferred. By order dated February 12, 1957, this court remanded the proceedings in the appeal to the High Court at Bombay as hereinbefore stated. Pursuant to the order passed by this Court, the High Court called upon the Special Judicial Magistrate First Class, Poona to determine the question whether the sanction dated February 23, 1953, was given under the Bhore State Ordinance or the Ordinance operative in British India. As hereinbefore observed, the Magistrate held that the sanction may be regarded as given under both the Ordinances, but primarily under the Bhore State Ordinance. The Court of session at Poona was of the view that the sanction must be regarded as given under the Bhore State Ordinance.

9. The sanction granted by the Central Government for the prosecution of the appellants and Karandikar may, for appreciation of its true effect, be set out :

Government of India, Ministry of Finance.

Department of Economic Affairs.

New Delhi, dated the 23rd February, 1953.

ORDER Under sub-sec. (3) of S. 7 of the High Denomination Bank Notes (Demonetisation) Ordinance, 1946 (No. III of 1946) , the Central Government hereby grants sanction to the institution of prosecution against (1) Shri M., G. Desai, (2) Shri D. B. Pathak and (3) Shri H. R. Karandikar who alleged to have contravened the provisions of the said Ordinance in the circumstances set forth below constituting offences punishable under Sub- sec. (1) of S. 7 of the said Ordinance and other provisions of law.

On 21st January, 1946, (1) Shri M. C. Desai, (2) Shri D. B. Pathak and (3) Shri H. R. Karandikar submitted false declaration under S. 6 of the said Ordinance knowing them to be false, and committed forgery of documents by showing fictitious depositors for getting exchange of high Denomination Bank Notes of Rs. 1, 000 each of the total value of Rs. 10, 55, 000 from the Reserve Bank of India through the Bhore Treasury and actually got exchange of the said amount on the 4th February, 1946. The Treasury would have refused payment if they had stated the true facts regarding the possession of the amount. They have thus cheated the Reserve Bank of India and the Bhore Treasury and are therefore, punishable for offences under S. 7 of the said Ordinance.

Sd. (N. C. Sen Gupta) Deputy Secretary to the Government of India.

10. By his notification dated January 19, 1946, the Rajasaheb of Bhore had applied "Mutatis Mutandis" Ordinance No. III of 1946 promulgated by the Central Government to the whole of Bhore State with immediate effect and the bare reference to Ordinance No. III of 1946 in the body of the sanction will not justify an inference that the sanction was accorded under the Ordinance in operation in British India and not granted under the Bhore State Ordinance. The recitals in the Ordinance make it abundantly clear that the Central Government was seeking to exercise authority under the Bhore State Ordinance. It is recited that the Reserve Bank of India, Bombay and the Bhore State Treasury were cheated, because of the false declaration made by the appellants and Karandikar. A reference to the alleged deception practised on the Bhore State Treasury was material only if the sanction was given for breach of the Bhore State Ordinance. There is again nothing in the recitals which supports the view that the authority under Ordinance No. III of 1946 conferred by S. 7, sub-s. 3 as in operation in British India was intended thereby to be exercised. In the absence of any sufficient ground indicating that the authority exercised by the Central Government in granting sanction to prosecute the appellants and Karandikar was not exercised under the Bhore State Ordinance for breach of which alone they can be prosecuted, but was exercised under the Ordinance in operation in British India, the inference inevitably arises that it was in pursuance of the authority vested in the Central Government under the Bhore State Ordinance that the sanction was given.

11. The contention that the Bhore State Ordinance had lapsed before the initiation of prosecution against the appellants is without substance. The Rajasaheb of Bhore expressly exercised in issuing the Ordinance his inherent power under S. 6 of Act I of 1942 of the Bhore State. The legislative act of the Rajasaheb of Bhore in exercise of the inherent power is not subject, unless expressed otherwise, to any temporal limitation. The argument raised by counsel for the appellants that S. 31 overrides S. 6 of Act I of 1942 is plainly unsustainable. In terms, it is provided by S. 6 :

"Notwithstanding anything contained in this or any other Act, all powers- legislative, executive and judicial- in relation to the Bhore State and its Government are hereby declared to be and to have always been inherent in and possessed and retained by the Ruler for the time being of the Bhore State; and nothing contained in this or any other Act shall be deemed to have affected the right and prerogative of the Ruling Prince to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority"

By S. 6, the inherent right and prerogative to exercise legislative powers remained uncontrolled, any provision of the Act notwithstanding.

12. Undoubtedly, in respect of the same legislative field, authority could be exercised under S. 6 as well as under S. 31, but that did not affect the competency of the Rajasaheb to make laws or issue ordinances in exercise of his inherent authority when he so chose. It was open to the Rajasaheb to exercise his authority either under S. 6 or S. 31. Promulgation of the ordinance applying "Mutatis Mutandis" Ordinance No. III of 1946 issued by the Central Government to the whole of the Bhore State was expressly made in exercise of an authority under S. 6 of Act I of 1942, and accordingly that Ordinance did not lapse on the expiry of six months from the date of its promulgation.

13. Whether on the merger of the Bhore State with the Dominion of India, the Bhore State Ordinance lapsed may now be considered. Before 1947, the Bhore Ruler was one of the treaty chiefs exercising jurisdiction in criminal and civil cases. With the enactment of the Indian Independence Act, 1947, the suzerainty of the British crown over the Indian States lapsed as from August 15, 1947, and with it all the treaties and agreements in force between the British Crown and the Rulers of the Indian States; and all the functions exercisable by the British Crown and obligations of the British Crown existing on August 15, 1947, towards the Indian States or the Rulers thereof and powers, rights or the jurisdiction exercised by the British Crown also lapsed. But by the Instruments of Accession, the Dominion Government of India was competent to exercise all powers and jurisdiction which the Crown Representative previously exercised. To regulate the exercise of the powers and jurisdiction granted to the Dominion Government under the Instrument of Accession and Stand-still Agreements executed by the Rulers of Indian States, Extra-Provincial (later called "Foreign") Jurisdiction Act XLVII of 1947 was enacted. By this Act, the Central Government could exercise or delegate to any officer or authority the exercise of the 'foreign jurisdiction' vested in it by virtue of treaties, agreement, grants, usage, sufferance or other lawful means. In February 1948, the Ruler of the Bhore State decided upon integration with the Bombay Province and signed a merger agreement.

By Cl. 1 of the agreement the form whereof is set out in Appendix 13 to the White Paper on Indian States issued by the Government of Indian Ministry of States at p. 183, the Bhore State ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on the date specified and as from the said day, the Dominion Government was invested with the said powers, authority and jurisdiction in such manner and through such agency as it thought fit. By notification No. 150-1B dated February 25, 1948, the Government of India delegated to the Government of Bombay the powers under S. 4 of the Foreign Jurisdiction Act in respect of the Deccan States respecting any matters enumerated in List II or List III of the seventh schedule to the Government of India Act, 1935.

14. On June 2, 1948, the Government of Bombay issued an Order called "The Administration of the Indian States Order" in exercise of the powers conferred by S. 4 of the Extra-Provincial Jurisdiction (Foreign) Act of 1947 and it was provided by paragraph 4 of the Order that "Such provisions ....of any law.....as were in force immediately before the appointed day in any Indian State (which included Bhore State) shall continue in force until altered, repealed or amended by an order under the Extra Provincial Jurisdiction Act." On July 28, 1948, another Order called "

The Indian States (Application of Laws) Order, 1948"

was issued. This Order applied among others to the Bhore State and laws which were in force in the Province of Bombay were extended to the area of the Bhore State and corresponding laws in force in that State prior to the merger stood repealed. But the Bhore State Ordinance was not repealed by that Order; nor was Ordinance No. III of 1946 made applicable to the Bhore State in supersession of the Bhore State Ordinance. On July 27, 1949, the "States Merger (Governor's Provinces) Order, 1949" was issued by the Governor General and by paragraph 4 of that Order, all the laws in force in the merged States immediately before the appointed day, i.e., August 1, 1949, continued to remain in force until repealed, modified or amended by a competent legislature. By Cl. 1 of Art. 372 of the Constitution of India, all the laws in force in the territory of India immediately before the Constitution remained in force until repealed or amended by a competent legislature or competent authority. The Bhore State Ordinance continue to remain in operation notwithstanding merger of the Bhore State by virtue of the order issue under S. 4 of the Foreign Jurisdiction Act, 1947 and under Art. 372 of the Constitution it remained in operation even after the Constitution was enacted. The High Court was therefore, in our judgment, right in holding that the Ordinance had not ceased to be in operation on the date of the commencement of the prosecution against the appellants and Karandikar.

15. There is no substance in the contention that in the absence of adaptations which the President of India is competent to make under Cl. 2 of the Art. 372, the Bhore State Ordinance lapsed. By Cl. 2 of Art. 372, the President is authorised to adapt existing laws; but the application of the existing laws is not conditioned by the making of adaptations or modifications in that law by the President.

16. The plea that the Province of Bombay was incompetent to extend the Bhore State Ordinance to the area which was formerly administered by the Bhore State, its competence to enact laws being

restricted to laws specified in schedules 2 and 3 of the Government of India Act, 1935 is also without substance, because the Bhore State Ordinance remained in operation by virtue of the order issued under S. 4 of the Extra Provincial Jurisdiction Act and not by any express enactment by the Government of the Province of Bombay in exercise of delegated authority from the Central Government. Nor is there any force in the contention that the sanction should have been given by the Provincial Government for the prosecution of the appellants. By the merger agreement, the Central Government was invested with all the powers of the Ruler of Bhore State, and because of the delegation of its authority by the Central Government to the Provincial Government, that authority did not become ineffective. The Central Government still retained its right to sanction prosecution for infringement of the provisions of the Bhore State Ordinance.

17. The plea that the appellants could not be prosecuted in the absence of a sanction under S. 188 of the code of Criminal Procedure was not set up before this court.

18. The High Court was accordingly right in holding that no case was made out for quashing the proceedings commenced against the appellants in the court of the Special Judicial Magistrate First Class (A. C. Branch), Poona. The appeal therefore fails and is dismissed.

19. We hope that the proceedings commenced against the appellants and Karandikar will be taken up for hearing without avoidable delay, and heard expeditiously.