Narumal vs State Of Bombay on 25 November, 1959

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

CASE NO.:
Appeal (crl.) 143 of 1955

PETITIONER:
NARUMAL

RESPONDENT:
STATE OF BOMBAY

DATE OF JUDGMENT: 25/11/1959

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

JUDGMENT:

JUDGMENT AIR 1960 SC 1329 The Judgment was delivered by : GAJENDRAGAKDKAR GAJENDRAGAKDKAR, J. : This criminal appeal has been filed with a certificate granted by the Bombay High Court under Art. 134(1) (c) of the Constitution, and it challenges the validity and correctness of the order passed by the said High Court convicting the appellant Narumal Holaram Sindhi under S. 5 of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 (Act XXV of 1946) hereinafter called the Act) and sentencing him to suffer rigorous imprisonment for six months. The prosecution case against the appellant was that on September 9, 1953, he had contracted a second marriage at Khandwa in Madhya Pradesh with one Vishna Devi though he had his first wife living whom he had not divorced and thus rendered himself liable to be punished under S. 5 of the Act. Along with him his second wife Vishna Devi was also charged with having committed an offence under S. 6 of the Act. The case against both of them was tried by the Judicial Magistrate, First-Class, Second Court, Nasik. The learned magistrate held that the appellant had contracted a bigamous marriage which was void under S. 4(b) of the Act and that his second wife had abetted the solemnisation of the said marriage; in other words, he found that the appellant and his second wife had committed the offences under Ss. 5 and 6 of the Act respectively. However, he upheld the plea raised by the appellant that he had no jurisdiction to try the offence; that is why the appellant and his second wife were acquitted under S. 258(1) of the Code of Criminal Procedure. The order of acquittal passed in favour of the appellant was challenged by the State of Bombay by an appeal before the High Court. The High Court has reversed the conclusion of the magistrate on the question of jurisdiction and following its decision in Radhabai Mohandas v. State of Bombay, 1955 ILR(Bom) 1039 : ((S) 1955 AIR(Bom) 439), it has held that the trial magistrate was competent to try the case against the appellant. On the merits it has confirmed the finding recorded by the magistrate and convicted the appellant under S. 5 of the Act. Thereupon the appellant applied for and obtained a certificate from the High Court, and with the said certificate he has come to this Court.

2. On behalf of the appellant Mr. Frank Anthony has raised two questions for our decision. He contends that S. 4(b) as well as S. 5 of the Act are ultra vires; alternatively he argues that even if the said Sections are valid, the High Court was in error in holding that the trial magistrate had jurisdiction to try the case. It appears that both these questions had been considered by the High Court in the case of Radhabai Mohandas, 1955 ILR(Bom) 1039 : ((S) 1955 AIR(Bom) 439), in which it has been held that it was competent to the Provincial Legislature to enact Ss. 4(b) and 5 of the Act and that the result of S. 8 of the Act was to confer jurisdiction on the trial magistrate to try the case. Subsequently the point about the vires of Ss. 4(b) and 5 which was decided in that case was referred to a Full Bench of the High Court in the case of The State v. Narayandas Mangilal Dayame, 1957 ILR(Bom) 880 : 1958 AIR(Bom) 68), and the full Bench has reversed the decision in the case of Radhabai Mohandas, 1955 ILR(Bom) 1039 : ((S) 1955 AIR(Bom) 439), and has held that S. 4(b) of the Act was ultra vires and so the penal provisions of S. 5 did not operate in regard to marriages contracted outside the State. Mr. Anthony has naturally relied on this Full Bench decision in support of his first contention.

3. The contention about the vires of the relevant provisions of the Act undoubtedly raises an important question about the competence of the State Legislature to enact provisions which are characterised by the appellant as extra-territorial and as such outside the competence of the Legislature. We have, however, come to the conclusion that it is not necessary to decide this point in the present appeal. It is clear that after the passing of the Hindu Marriage Act the Act in question has been repealed; and the decision about the vires of two of its provisions would be a matter of merely academic importance. If we had thought that even so it was necessary to decide the said point in order to deal with the present appeal effectively we would not have hesitated to do so; but, for reasons which we will presently indicate, we are inclined to hold that the view taken by the High Court on the question of the jurisdiction of the trial magistrate to try the present case is erroneous even if the relevant provisions of the Act are held to be intra vires. That is why we do not propose to deal with the first contention raised before us. We must add that Mr. Sen, who appears for the respondent, has stated that in view of the fact that the Act has now been repealed the State is not keen on getting a decision from this Court on the question of the vires of the impugned Sections. We will, therefore, proceeded to deal with the question of the Magistrate's jurisdiction to try the case on the assumption that both Ss. 4(b) and 5 of the Act are intra vires.

4. Let us first examine the relevant scheme of the Act. The Act was passed for the prevention of bigamous marriages amongst Hindus and it extends to the whole of the Province of Bombay. A bigamous marriage has been defined by S. 3, sub-s. (1) as meaning the marriage of a person during the lifetime of his or her spouse, if the marriage of such person with such spouse has not been dissolved or declared void by a court of competent jurisdiction or is not void according to the custom or usage of the community to which either of the parties to such marriage belongs. Section 4 makes bigamous marriages void notwithstanding any law, custom or usage to the contrary and it deals with two classes of such marriages; S. 4(a) deals with a marriage which is contracted in the Province after the coming into force of the Act, while S. 4(b) deals with a marriage which is contracted beyond the limits of the Province after the coming into force of the Act, and either or both the contracting parties to such marriage are domiciled in the Province. In the present case we are concerned with S. 4(b). The High Court has found that the marriage between the appellant and his wife is hit by this

clause and is void. Section 5 provides a penalty for such a bigamous marriage; it lays down that notwithstanding any law, custom or usage to the contrary, whoever, not being a minor, contracts a bigamous marriage which is void under S. 4 shall be deemed to have committed an offence under S. 494 of the Indian Penal Code. Section 6 prescribes a penalty for solemnising bigamous marriages in the Province of Bombay; whereas S. 7 prescribes a penalty for person having charge of minor concerned in the bigamous marriage. Section 7(1) provides that when a minor contracts a bigamous marriage which is void under S. 4 any person having charge of the minor whether as parent or guardian or in any other capacity lawfully or otherwise who does any act to promote the marriage or permits to be solemnised or negligently fails to prevent it from being solemnised shall be punished in the manner specified. Section 7(2) provides for a statutory presumption which it is unnecessary to set out. It is clear that S. 7 deals with an offence which may be committed either within the Province of Bombay or outside it. Section 8 deals with the question of jurisdiction and as it originally stood in the Act it provided that notwithstanding anything contained in S. 190 of the Code of Criminal Procedure no. court other than the court of the Presidency Magistrate or a magistrate of First Class shall take cognizance of or try any offence punishable under S. 6 or S. 7 of the Act. By S. 9 offences under the Act are made cognizable. It is thus clear that the original S. 8 conferred jurisdiction on the specified magistrates to try offences under S. 6 or S. 7; but no such provision was made to try offences under S. 5. These offences were assimilated to those under S. 494 of the Indian Penal Code and as such were apparently left to be tried under the provisions of the Code of Criminal Procedure.

5. Subsequently the Bombay Legislature passed an amending Act 38 of 1948 which came into force on April 20, 1948, after receiving the assent of the Governor General. By this amending Act some of the Sections in the Act were amended. We are concerned with the amendments of S. 5 and S. 8. Section 5 was amended and a specific provision was made for the punishment of offences falling under the said Section by prescribing that the offender shall on conviction be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine. In other words the reference made by the original Section to the provisions of S. 498 (sic) of the Indian Penal Code while prescribing the punishment for the offence under S. 5 has now been deleted and a provision in that behalf has been expressly and specifically made by S. 5 itself.

6. The amending Act had provided for the trial of offences under S. 5 by enacting S. 8 and so the original S. 8 has been numbered as S. 8A. Section 8 provides that notwithstanding anything contained in the Code of Criminal Procedure an offence under S. 5 may be tried by any court of a Presidency Magistrate or a magistrate of First Class. It is this Section which falls to be construed in the present appeal. Section 8A which has not taken the place of S. 8 as it originally stood provides that notwithstanding anything contained in the Code of Criminal Procedure no. court inferior to that of a Presidency Magistrate or a magistrate of First Class shall try any offence punishable under Ss. 6 or 7. It would be noticed that the non-obstante clause in S. 8A differs from the said clause in the original Section in that it deletes the specific reference to S. 190 and refers to the Code of Criminal Procedure in general. Similarly, in the substantive provision of the Section the expression "no court other than that of the Presidency Magistrate" has yielded place to the expression "no court inferior to that of the Presidency Magistrate". The amendments thus made in enacting S. 8A are relevant and material and they would have to be considered in construing S. 8.

7. The High Court has held that under S. 8 as it now stands any magistrate of the First Class can try an offence under S. 5 and the plea that the said offence has been committed outside the territorial jurisdiction of the magistrate cannot be pleaded in such a case. According to this view the non-obstante clause has the result of making the provisions of S. 177 of the Code inapplicable, and if that be so any magistrate specified in the Section would have jurisdiction to try the offence under S. 5. In coming to this conclusion the High Court has been very much influenced by the consideration that, unless S. 8 receives the construction which it accepted, offences under S. 5 would go unpunished; and it thought that it would be unreasonable to hold that the Legislature having created an offence by S. 5 read with S. 4(b) did not provide for any machinery to punish the said offence .If no machinery is provided for the trial of the offences created by S. 5, S. 5 and even S. 4(b) of the Act would become otiose. Prima facie there is force in this point of view. The appellant's argument, however, is that in assessing the importance or significance of this consideration it would be material to consider the scheme of the Act and to determine the object which the Legislature had in mind in enacting S. 8 and S. 8A by the amending Act. The appellant relies on the rule of harmonious construction and suggests that Ss. 8 and 8A should be read together in ascertaining the effect of the non-obstante clause used in both of them. It is urged that the Section which the court in construing is a penal Section and so even if it is capable of two constructions, one accepted by the High Court and the other for which he contends, the court must accept the construction which is more favourable to the accused. That in brief is the effect of the argument.

8. At this stage we would refer briefly to the relevant Sections of the Code of Criminal Procedure. Section 5 (2) provides that all offences under any other law shall be investigated, enquired into, tried and otherwise dealt with according to the provisions of the Code but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offence. Section 28(c) provides that subject to the other provisions of the Code any offence under the Indian Penal Code may be tried by any other court by which such offence is shown in the eight column of Schedule II to be tried. The offence under S. 5 which is punishable with seven years' rigorous imprisonment would accordingly be triable by the Court of Session. Section 29(1) prescribes that subject to the other provisions of the Code any offence under any other law shall when any court is mentioned in this behalf in such law be tried by such court. In this connection we must refer to one more Section of the Code. It is S. 177 which provides that every offence shall ordinarily be enquired into and tried by a court within the local limits of whose jurisdiction it was committed. The rule laid down by this Section is one of general application and governs all criminal trials held under the provisions of the Code of Criminal Procedure. It is true that the Section has used the word "ordinarily" but it is not disputed that the said word means "except where provided otherwise in the Code"(See : Ram Narayan Baburao Kapur v. Emperor, 1937 ILR(Bom) 244 at p. 253 : 1937 AIR(Bom) 186 at p. 190)). There is no doubt that the State Legislature is competent to provide for the trial of offences created by its statutes otherwise than is prescribed by S. 177 of the Code; but it must clearly appear from the relevant provision of the special statute that a departure from the general principle prescribed by S. 177 is intended. Does S. 8 of the Act intend to make such a departure? Does it intend to provide that the Presidency Magistrate or a magistrate of First Class in the State of Bombay specified by it should try offences which had been committed outside their ordinary territorial jurisdiction?

9. The construction of S. 8A does not present any difficulty. Though the non-obstante clause in this Section refers to the Code of Criminal Procedure in general it is clear that its effect is not to modify the provisions of S. 177 of the Code. All that the said Section purports to do is to exclude the jurisdiction of the Second and the Third Class Magistrate to try offences under Ss. 6 and 7. If the jurisdiction to try the said offences had been left to be determined by reference to the Code of Criminal Procedure even the specially empowered Second and Third Class Magistrates would have been competent to try them under S. 190 of the Code. The Legislature desired that these offences should not be tried by a court inferior to that of the Presidency Magistrate or a magistrate of First Class. Even in the case of Radhabai Mohandas, 1955 ILR(Bom) 1039 : ((S) 1955 AIR(Bom) 439), the Bombay High Court has not construed S. 8A as empowering the courts specified in it to try offences punishable under S. 7 though they may have been committed outside the territorial jurisdiction of the said courts. Indeed Mr. Sen fairly conceded that the effect of the non- obstante clause used in this Section is not to depart from and override the normal territorial limitation prescribed by S. 177 of the Code. It is obvious that a contrary view would be manifestly unreasonable.

10. This construction of S. 8A inevitably leads to the conclusion that some of the offences punishable under S. 7 which would be committed outside the State of Bombay cannot be tried or punished under S. 8A. The Legislature must have known that S. 7 includes offences which would be committed outside the State of Bombay, and yet in passing the amending Act of 1948 it did not think it necessary to provide for the trial and punishment of such offences. This position has a material bearing on the construction of S. 8. If it is clear, and even admitted, that the Act as amended has not provided for the trial and punishment of some of the offences falling under S. 7, then the argument that the construction of S. 8 for which the appellant contends would leave the offences under S. 5 unpunished ceases to have a decisive significance; and, as we have already indicated it is this consideration which weighed with the High Court when it decided the case of Radhabai Mohandas, 1955 ILR(Bom) 1039 : ((S) 1955 AIR(Bom) 439).

11. Let us now construe S. 8. The non-obstante clause in S. 8 which is identical with the clause under S. 8A should under the rule of harmonious construction ordinarily bear the same meaning. If the non-obstante clause in S. 8A does not have the effect of overriding the provisions of S. 177 of the Code there is no reason why the said result should necessarily follow from the same non-obstante clause in S. 8. In our opinion the two non- obstante clauses were really intended to serve a similar purpose. We have already shown that the non-obstante clause of S. 8A was intended to exclude the jurisdiction of the Second and the Third Class Magistrates to try the offences under Ss. 6 and 7; a similar object was intended to be achieved by the non-obstante clause in S. 8. As soon as the offence under S. 5 was made punishable by the amending Act with seven year's rigorous imprisonment and fine it became triable by a Court of Session under Schedule II of the Code; and by S. 8 the Legislature wanted to enact that the said offence may be tried by any court of Presidency Magistrate or a magistrate of First Class. We are, therefore, disposed to take the view that the object of the Legislature in enacting S. 8 by the amending Act was not to depart from the provisions of S. 177 of the Code but to modify the effect of Schedule II under which offences under S. 5 were triable by a court of Session and provided that they may be tried by the courts specified in S. 8. It is undoubtedly true that on this construction the Act does not seem to have provided for the trial and punishment of

offences under S. 5; but that is equally true about some of the offences punishable under S. 7; and so this consideration cannot override the ordinary rule of harmonious construction. We can only add it may be possible to speculate but it is unnecessary to consider and decide why the Legislature has left this lacuna in the Act. We would accordingly hold that the High Court was in error in reversing the finding of the trial magistrate that he had no jurisdiction to try the case. In view of this conclusion it is unnecessary to decide whether the impugned Sections of the Act are intra vires or not.

12. The result is the appeal succeeds, the order of conviction and sentence passed against the appellant is set aside and he is ordered to be acquitted and the bail bond cancelled.

SUBBA RAO, J. :

13. I have had the advantage of perusing the judgment of my learned brother, Gajendragadkar J. I. regret my inability to agree.

14. The facts are fully stated in the judgment of my learned brother and it would therefore suffice if I state briefly only the relevant facts. The appellant is an evacuee from Pakistan. He married one Sitabai about 15 years ago at a place near Sukkar in Pakistan. They came to Nasik, a town within the State of Bombay, as evacuees and were living in that place as husband and wife. Their marriage has not been dissolved. On September 9, 1953, the appellant contracted a second marriage with Vishnadevi and this second marriage was performed at Khandwa outside the limits of the State of Bombay. The appellant as well as Vishnadevi have been working, before and after the marriage, as teachers in a Sindhi primary school under the control of the Nasik Municipality. The appellant was prosecuted for the offence of bigamous marriage in the Court of the 4th Joint Civil Judge and Judicial Magistrate, First Class, Nasik. The learned Magistrate, held that the appellant was guilty of the offence, but inasmuch as the marriage took place outside the State of Bombay he had no jurisdiction to try the appellant for the offence and, therefore, he acquitted him. On appeal, it was contended before the High Court that the appellant and his second wife had no domicile of the State of Bombay and as such they had not committed any offence under the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 (Act XXV of 1946), (hereinafter called the Act), and that in any event, as Khandwa was outside the State of Bombay, no Court in the State of Bombay had jurisdiction to try them. The High Court rejected both the contentions, set aside the order of acquittal and convicted the appellant under S. 5 of the Act and sentenced him to undergo rigorous imprisonment for a period of six months. Having obtained a certificate from the High Court under Art. 134(1) (c) of the Constitution, the appellant in this appeal questions the correctness of the decision of the High Court.

15. For the purpose of this appeal it is assumed that Ss. 4 and 5 of the Act are valid. The said Sections read :

> Section 4 :
>
> "Notwithstanding any law, custom or usage to the contrary, a bigamous marriage shall be void-

(a) if it is contracted in this Province after the coming into force of this Act.

(b) if it is contracted beyond the limits of this Province after the coming into force of this Act and either or both the contracting parties to such marriage are domiciled in this Province."

Section 5 :" Notwithstanding any law, custom or usage to the contrary, whoever not being a minor contracts a bigamous marriage which is void under Section 4 shall, on conviction, be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine."

Section 3(1) of the Act defines bigamous marriage to mean the marriage of a person during the lifetime of his or her spouse, if the marriage of such person with such spouse has not been dissolved or declared void by a court of competent jurisdiction, or is not void according to the custom or usage of the community to which either of the parties to such marriage belongs. Under these Sections, so far relevant to the present enquiry, if a person domiciled in the State of Bombay contracts a bigamous marriage beyond the limits of the State of Bombay, the said marriage is void and such a person commits an offence under S. 5 of the Act and shall be liable, on conviction, to the punishment imposed thereunder. The Act therefore creates a special offence and lays down the ingredients of the offence. The facts found in this case clearly constitute an offence under the Act. The appellant, therefore, committed an offence under S. 5 of the Act.

16. The next question is, which Court has jurisdiction to try the appellant for this offence? Section 8 of the Act confers jurisdiction for offences under S. 5 and it says :

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), an offence under Section 5 may be tried by any Court of a Presidency Magistrate or a Magistrate of the First Class."

This Section is couched in clear phraseology and is free from any ambiguity. It means what it says : a person committing an offence under S. 5 of the Act may be tried by any Court of Presidency Magistrate or a Magistrate of the First Class. In the State of Bombay there are Presidency Magistrates and Magistrates of the First Class, and under this Section jurisdiction is expressly conferred on any such Magistrate to try the person committing an offence specified in S. 5 of the Act. The relevant Sections, therefore, leave no room for doubt and if they are construed together as they should, one constitutes the offence and the other confers jurisdiction on specified Magistrates to try the person committing the said offence.

17. But the learned Counsel for the appellant advances a subtle argument, first to create an ambiguity in S. 8 where there is none and then by a comparison of the terms of the said Section with those in other Sections of the Act to create a lacuna in the interest of, what he calls, a harmonious construction. As the argument turns upon the said Sections, I shall read them :

S.6 :

"Whoever performs, conduces or abets any bigamous marriage in this Province shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both, unless he proves that he had reason to believe that the marriage was not a bigamous marriage."

S. 7 :"(1) When a minor contracts a bigamous marriage which is void under S. 4, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or otherwise, who does any act to promote the marriage or permits it to be solemnised or negligently fails to prevent it from being solemnised shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both.

2. For the purposes of this Section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a bigamous marriage which is void under S. 4, the person having charge of such minor, whether as parent or guardian, or in any other capacity, lawful or otherwise, has negligently failed to prevent the marriage from being solemnized."

S. 8 :" Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), an offence under S. 5 may be tried by any Court of a Presidency Magistrate or a Magistrate of the First Class."

S. 8A :" Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), no Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under S. 6 or 7 :"

It may be mentioned that Ss. 8 and 8A were substituted for S. 8 of the Bombay Act XXV of 1946 by Bombay Act XXXVIII of 1948. The argument is put in two ways : (i) the non-obstante clause in both the Sections must be construed in the same way; and (ii) if the terms of S. 8 are construed to confer jurisdiction on a Bombay Court in respect of a bigamous marriage contracted outside the State of Bombay, the said provisions of S. 8A also would have to be construed in a similar way; with the result that persons not domiciled in the State of Bombay would be liable for offences specified in the said two Sections.

18. Re. (i) : Section 8 as it originally stood did not confer any special jurisdiction on a Magistrate to try the offence under S. 5 of the Act :

that was because under S. 5 in its original form a person contracting bigamous marriage was deemed to have committed an offence under S. 494 of the Indian Penal Code and therefore the provisions of that Code governed the question of jurisdiction. But by the amending Act of 1948 a new S. 8 was inserted conferring a special jurisdiction on any Court of a Presidency Magistrate or a Magistrate of the First Class to try the offence under S. 5 of the Act. Section 5 was also suitably amended by deleting any reference to S. 494 of the Indian Penal Code. But it is said that the object of inserting S. 8 was not to confer any special jurisdiction but was only to confer

jurisdiction on a Presidency Magistrate or a Magistrate of the First Class, who would not be competent under the Code of Criminal Procedure, 1898 to try the offence under the amended S. 5 as only a Sessions Court would be competent under that Code to try an offence punishable with imprisonment for a term extending to seven years. That may be one of the objects attempted to be achieved by S. 8; but that does not detract from the wide amplitude of jurisdiction conferred upon the Magistrates specified therein. Section 8A which also opens out with a non-obstante clause excludes the jurisdiction of Courts inferior to that of a Presidency Magistrate or a Magistrate of the First Class to try any offence under S. 6 or S. 7 of the Act. It is said that the object of this Section was only to exclude the jurisdiction of 2nd and 3rd Class Magistrates and nothing more i.e., in other respects the jurisdiction of the Court is governed by S. 177 of the Code of Criminal Procedure, 1898, and, therefore, the object of S. 8 also should be confined only to an attempt on the part of the Legislature to confer jurisdiction on a Presidency Magistrate or a Magistrate of the First Class and in other respects to be governed by S. 177 of the Code of Criminal Procedure, 1898. I do not see any justification for this process of construction. I do not see why S. 8 should be controlled by S. 8A.

19. Re. (ii) : Section 6 imposes a penalty for solemnizing bigamous marriages on any person conducting or abetting such marriages in the State.

Section 7 imposes a penalty on a person having charge of a minor, whether as a parent, guardian or in any other capacity, lawful or otherwise, who does any act to promote such marriage or permits it to be solemnized or negligently fails to prevent it from being solemnized. These two Sections, therefore, constitute abetment of such marriage an offence. They presuppose that the person abetting the marriage is a domicile of the State of Bombay; for, otherwise one of the important conditions for the validity of the Sections, namely, the domicile of the person constituting the territorial nexus, would be wanting and they would suffer from the vice of extra territorial legislation.

20. Sections 4 and 5 deal with the actual participants in the offence of bigamous marriage and Ss. 6 and 7 with the offence of abetment. On the principle of territorial nexus, which is assumed to apply to the said Sections, they must be, in spite of their comprehensive phraseology, confined only to persons, who are domiciled in the State of Bombay, abetting the contracting of bigamous marriage solemnized outside the State of Bombay or to persons, who are not domiciled in the State of Bombay, entering the said State and committing the said offence. They cannot obviously apply to persons who are not domiciled in the State of Bombay and in respect of offences committed by them outside the State of Bombay. There is, therefore, no basis for the second objection.

21. A few observations in regard to the rule of harmonious construction on which much reliance is placed by the learned Counsel for the appellant are not out of place. In "Craies on Statute Law", 5th Edn., the following exposition of the relevant rule of construction is found at p. 93 :

> "It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers..... and this exposition is ex visceribus actus. But this rule of construction is never allowed to alter the meaning of what is of itself clear and explicit; it is only when, as the Court said in Palmer's Case,)1784) 1 Leach C. C. (4th edit) 355),"

any part of an Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought tot be had to such context for that purpose "; for, as the Judges said in the House of Lords in Warburton v. Loveland, (1831) 2 D. and Cl. 480 (500),"

> no rule of construction can require that when the words of one part of the a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part"." It is not the duty of a Court of law, "said Selwyn, L. J, in In re London Marine Insurance Association, Smith's Case (1869) 4 Ch. A. 611(614)"

to be astute to find out ways in which the object of an Act of the Legislature may be defeated."

This rule enunciated the well-settled principle that, when one part of a statute conveys a clear meaning, it is not permissible to construe the same with reference to another part for the purpose of controlling or diminishing the efficacy of the first part. The practical application of the said rule of construction to the instant case may be stated thus : This case does not raise the question of validity of Ss. 6, 7 or 8A of the Act. Sections 4, 5 and 8, as I have already indicated, can be given without doing violence to the language a harmonious construction and be sustained without attributing any incongruity to the Legislature. On the other hand, if the argument of the appellant be accepted, it would be to introduce a discordant note in the latter group of Sections viz., Ss. 4, 5 and 8 so as to make the substantive Section otiose. It would be a vain attempt to discover a common thread of interpretation between the two groups of Sections which can be worked out independently without any disharmony.

22. This interpretation avoids attributing an incongruity to the Legislature and prevents the introduction of a lacuna in the Act where there is none. I, therefore, agree with the conclusion arrived at by the High Court and dismiss the appeal.

ORDER

23. In accordance with the opinion of the majority the appeal allowed, the order of conviction and sentence passed against the appellant set aside and he is ordered to be acquitted.