The State vs Pyarey Mohan Lal Srivastava on 8 April, 1953

Equivalent citations: AIR1953ALL694, AIR 1953 ALLAHABAD 694

JUDGMENT

Mukerji, J.

1. This is an application in revision by the State against an order of the learned Sessions Judge of Lucknow holding that by virtue of Section 7 of the Criminal Law Amendment Act (Act 46 of 1952), he had no jurisdiction to continue the trial of the case. Section 7 of the Criminal Law Amendment Act of 1952 is in these words :

> "7(1) Notwithstanding anything contained in the Code of Criminal Procedure 1898 (Act 5 of 1898) or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by Special Judges only. '

2. Every offence specified in Sub-section (1) of Section 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.

3. When trying any case, a Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial." (2) The facts of the present case need be stated now. The opposite party Pyarey Mohan Lal Srivastava along with five others was suspected of having committed an offence cf taking bribe. Pyarey Mohan Lal Srivastava v/as suspended from his duties on 7-12-1948. The matter was investigated by the police, who submitted a charge sheet on 20-3-1950. The trial commenced before the committing Magistrate on 6-4-1950, and an order of commitment was made by the Magistrate on 28-5-1951, that is to say, the proceedings remained in the Court of the Magistrate for over one year; indeed 72 witnesses were examined before the Magistrate on behalf of the prosecution. On 21-4-1952, the trial opened in* the Court of Session and continued in that Court from day to day except Fridays, Saturdays and other public holidays upto 27-8-1952. The prosecution examined no less than 54 witnesses before the Sessions Judge. In the conduct of the trial from the stage at which the enquiry started in the Court of the Committing Magistrate to the date when the learned Sessions Judge made his order, which is the subject-matter of this revision, namely, 15-12-1952, there has not only been an extraordinary amount of delay, but there has also been a good deal of recording of evidence, which obviously means expenditure of time and money of the accused. If the view of the learned Sessions Judge is accepted, then the result will be that the accused and the prosecution will have to commence the trial afresh, necessitating more expenditure of time and money and a good deal of unnecessary harassment to the accused.

4. We may mention another circumstance which in our judgment is of importance, namely, that this particular case as also all the cases in respect of which the other reference has been filed were enquired into by Shri Girja Shanker Misra, who was a special Magistrate of the first class, and it was he who made in this and all those cases orders of commitment to the Court of Session. Shri Girja Shankar Misra has now been appointed a Special Judge, we are informed by counsel for the State, under Section 6 of the Criminal Law Amendment Act of 1952. The position, therefore, would be, if the view of the learned Sessions Judge in regard to the interpretation of Section 7 of the Act were accepted, that Sri Girja Shankar Misra, who made the commitments In the cases would be trying those very cases as Special Judge, The law never has countenanced the same officer conduct both the commitment proceedings as also the trial consequent upon such commitment. The accused has a valuable right under the law of being tried by a Judge who has not conducted the inquiry in the case. If we were to accept the interpretation, which has been put by the learned Sessions Judge on Section 7, we would be destroying this valuable right of the accused in all these cases, inasmuch as. we shall be letting them stand their trial before a Judge who has already made up his mind, in regard to there being, at least, a prima facie case against the accused.

5. A reading of Section 7 of the Criminal Law Amendment Act which we have quoted earlier in this judgment indicates to us that the section has not been made retrospective by the Legislature specifically. In our judgment there are no necessary implications arising from the phraseology used which can force us to hold that the section is retrospective in its effect. The normal rule of interpretation is that unless amending law indicates clearly that the intention of the Legislature was to make it retrospective, Courts do not generally view such law as being retrospective. In cases where parties have acquired certain valuable rights under the old law, then Courts have always refused to deprive parties cf that valuable right by inter-preting a change in the law as being retrospective, unless of course the Legislature clearly said so. The only word in the section which possibly caused difficulty to the learned Sessions Judge is the word 'only' after the words 'special Judges' in Section 7 (1) of the Criminal Law Amendment Act of 1952. In our judgment the use of the word 'only' in that sequence does not make the section retrospective in its application. It only emphasizes the fact that Special Judges were to have exclusive jurisdiction from the moment the Act came into force in respect of offences mentioned in Section 6 of the Criminal Law Amendment Act and no more.

6. Learned counsel for the State has relied on an authority of the Madras High Court in -- 'The State v P. K. Swamy', reported in AIR 1953 Mad 451 (A), where Somasundaram J. took the same view which we have taken of Section 7. That learned Judge held that Section 7 was not retrospective and the Courts would not hold the change as merely, a change in the law of procedure because, by this change substantive rights of accused persons were affected. Somasundaram J., pointed out that in Madras an accused was entitled to have a jury assisting a learned Sessions Judge at his trial and that such a right was a substantive and a valuable right which could not be taken away by a change of the law as had been made by Section 7 of the Criminal Law Amendment Act. No doubt trial with the aid of assessors does not enjoy the same sanctity as a trial with the aid of a jury, yet, in our judgment, on principle there is no basic difference, for trial with the aid of assessors can be just as valuable for the accused as a trial with the aid of a jury. The only distinction that we can see between a jury trial and a trial with the aid of assessors is that the verdict of a jury is binding on the learned Sessions Judge;

while the verdict of a body of assessors is not so binding. Nevertheless, the verdict of assessors has a good deal of persuasive value for a Judge trying the case with their aid. The essential principle on which both rest is the utility of enlisting the aid of the average citizen in the administration of justice. This is a principle of far-reaching significance in a democratic State.

7. We may further point out that Section 7 if it was intended to be retrospective in its effect would have itself provided for a Sessions Judge seized of a case returning that case or sending it to a Special Judge for trial. There is, we find, no provision in the Criminal Law Amendment Act (Act 46 of 1952) whereby a Judge seized of a sessions trial has been authorized or directed to send such a case to a Special Judge, Under the scheme of this Amendment, trials by Special Judges commence on a commitment made to them in that behalf by a Magistrate. There being no provision in the Amendment Act for Special Judges being competent to try cases sent to them by Sessions Judges, we find it difficult to say how the Special Judge would have jurisdiction, properly speaking, to try those cases. The creation of a Court of a Special Judge is a creature of the special statute and we would have expected this special statute to provide for all contingencies in which such Special Judges could act; indeed this Amendment has provided by Section 10 for the transfer of cases pending before any Magistrate to the file of Special Judges. Section 10 is in these words: "All cases triable by a Special Judge under Section 7 which, immediately before the commencement of this Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the Special Judge -having jurisdiction over such cases." If the intention of the Legislature was that sessions trials involving offences mentioned in Section 6 of the Criminal Law Amendment Act were also to be so transferred to the file of the Special Judge then it would have been clearly put down by the Legislature in this section or in some other separate section.

8. From what we have stated above, we are of the opinion that the learned Sessions Judge of Lucknow was not right in holding that he had no jurisdiction to continue the trial of the case pending in his Court. We consequently set aside his order dated 15-12-1952, and direct that he should continue the trial of Pyarey Mohan Lal Srivastava and others in accordance with law.