Sudhakar Shastri vs State Through Shyam Behari And Ors. on 29 September, 1955

Equivalent citations: AIR1957ALL267, 1957CRILJ492, AIR 1957 ALLAHABAD 267, 1956 ALL. L. J. 117

JUDGMENT

Desai, J.

1. This is an application in revision against an order passed by the Sessions Judge, Faizabad on appeal from a judgment of Shri Mahabir Prasad, a Special Magistrate first class convicting the opposite-parties under Section 379, I. P. C. The learned Sessions Judge has set aside the judgment of the Special Magistrate as a nullity and ordered the case to be retried by another Magistrate in the following circumstances.

The Special Magistrate was conferred first class magisterial powers under some notification. On 30-11-1950 another notification was issued by the State Government extending those powers for a further period ending on 31-12-1953. The Special Magistrate tried the case against the opposite-parties and convicted them on 20-3-1953. In the Gazette of 21-3-1953, a notification dated 14-3-1953 was published; it was stated in the notification that the first class powers conferred upon the Special Magistrate under the notification of 30-11-1950 were withdrawn under Section 41 (1) of the Code of Criminal Procedure.

The date with effect from which the powers were withdrawn is not mentioned in the notification. The Special Magistrate was not aware of this withdrawal of his powers on 20-3-1953; he became aware for the first time on 28-3-1953 when the contents of the notification were communicated to him through the District Magistrate. He cased to exercise the powers since 28-3 1953. In the Gazette of 16-5-1953 another notification dated 6-5-1953 was published under which first class magisterial powers were conferred upon the Special Magistrate, but not with retrospective effect.

2. The learned Sessions Judge was of the view that the Special Magistrate ceased to be a Magistrate with effect from 14-3-1953 and had no jurisdiction to try the case against the opposite-parties and the judgment of 20-3-1953 was a nullity. He, therefore, ordered re-trial. The complaint, , at whose instance the opposite-parties were prosecuted under Section 379, I. P. C., has come up in revision. He contends that the notification withdrawing the powers became effective or operative on the date on which its contents were brought to the notice of the Special Magistrate and, in any case, on the date on which the notification was published in the Gazette and that consequently he had every jurisdiction to pronounce judgment on 20-3-1953.

Magisterial powers are conferred upon a person under Section 14 of the Code of Criminal Procedure. It is laid down in Section 39 of the Code that 'every order conferring powers will take effect from the date on which it is communicated to the person so empowered. Withdrawal of magisterial powers is done by Government Under Section 41 which, however, contains no provision, analogous to that in Section 39, laying down when the order of withdrawal takes effect. There is thus no statutory provision fixing the date on which an order of withdrawal takes effect.

It was contended on behalf of the State that the order under consideration took effect on 14-3-1953, the date on which it is presumed to have been signed by some person. In the absence of any statutory provision, the Court will have to decide the matter by applying the principles oil justice, equity and good conscience. Common sense requires that before a Magistrate can cease to exercise his magisterial powers, he must know that they have been withdrawn. He may not become aware of the withdrawal at the moment the powers are withdrawn by the authority conferring them and unless he knows that they have been withdrawn, he cannot possibly cease to exercise them.

The withdrawal can be brought to his notice either by sending a copy of the order to him or by publishing it in the Gazette. But unless either of the two steps are taken, it cannot be said that he has ceased to be a Magistrate. It is clear that the notification, though, it might have been signed by some person on 14-3-1953, could not take effect immediately. It was argued on behalf of the State that the Special Magistrate Ceased to have jurisdiction on 14-3-1953 and that the only effect of his not being aware of the fact on 20-3-1953 was that his exercising jurisdiction on that date would be deemed to be bona fide and he would not be liable criminally or civilly.

We do not think that this is the correct view. We have no reason to think that the Legislature was content with only making a Magistrate not liable criminally or civilly. Why should it have allowed him to do an act without Jurisdiction at all ? To one Who has suffered by imprisonment or otherwise under an act done by a person in authority without jurisdiction, it is no consolation that the person had acted bonafide. Nor would it be equitable or just to place the person, for no fault of his, in the wrong (by considering him as having acted without Jurisdiction) .

He may not be liable to criminal prosecution for the damages, but why should it be thought at all that he usurped jurisdiction? The mere fact that it is not laid down in Section 41 when the order of withdrawal would take effect does not mean that the Legislature did not intend it to take effect on communication. It might have been a case of mere omission on the part of the Legislature. If an order conferring powers is to take effect on the date on which it is communicated to the person concerned, an order withdrawing powers should all the more take effect on the date on which it is communicated to him.

It may be that the Legislature made the special provision in Section 39 so that a person who exercises powers between the date/ of the notification conferring them and the date, on which they are communicated to him may next at his sweet will take shelter behind the notification. The legislature might have thought that a Magistrate may cease to exercise powers on coming to know of their withdrawal even before the withdrawal is notified in the Gazette or is formally communicated to him, but might not have considered it advisable to give such option in the matter of conferment of

such powers and might have decided that the powers should not be exercised unless the conferment is communicated to the person.

3. We are, therefore, not prepared to say that the Legislature never, intended to make the withdrawal of powers dependent on communication of the withdrawal. The learned Government Advocate also contended that if an Act of Legislature can come into effect on the date on which it receives assent, there is no reason why an order should not come into effect on the date on which it is signed. It is true that in some cases an Act comes into effect on the date on which it receives assent, even though it is impossible for the public to know at the moment of its coming into effect that it has come into effect. But as pointed out by the Supreme Court there is a distinction between an Act and an order. In Harla v. State of Rajagthan, AIR 1951 SC 467 (A), Bose J., said at p. 468 :

> "Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so fourth. There must therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in one country may not necessarily be the best in another. But reasonable publication of some sort there must be."

The notification itself does not lay down that 3 the powers are withdrawn with effect from its date. It only bears the date of 14-3-1953; it is not known what significance the date has. It cannot be assumed without any data that the date is meant to be the date on which the withdrawal comes into effect.-

4. Under Section 57(7) of the Evidence Act a Court is bound to take judicial notice of "the accession to office.....functions.....of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette".

It follows that when conferment of powers is notified in the Gazette, unless another notifica tion withdrawing them is published in the Gazette, every Court would be bound to presume that the powers exist.

In this case if the appeal had been heard by the learned Sessions Judge on 20-3-1953, or if the judgment had been pronounced by the Special Magistrate on 15-3-1953 and the appeal had been heard on any date upto 20-3-1953. the learned Sessions Judge would have been bound under Section 57(7) of the Evidence Act to hold that Sri Mahabir Prasad continued to exercise first class ministerial powers. Merely because the learned Sessions Judge heard the appeal on a date after the publication in the Gazette of the withdrawal of the powers, the result of the appeal should not be different.

Whether the Special Magistrate should be held to have exercised jurisdiction not vested in him or not would depend solely upon the fact whether he possessed the jurisdiction or not on the date on

which he exercised it; it cannot be dependent upon the date on which the question is decided by the superior Court. If the learned Sessions Judge could not have held on 20-3-1953 that Sri Mahabir Prasad exercised jurisdiction not vested in him, he could not have held so on a subsequent date also.

5. The operative words in the notification of 14-3-1953 are: "..... .pratham shreni ke Magistrate ke adhikar wapfls liye Jawenge aur wapas liye jate hain". The notification deals with two acts, one to be done in future and the other to be done at the time of the notification it was suggested on behalf of the applicant that the words, "wapas liye jawenge" refer to the withdrawal taking place on 21-3-1953; since the notification was signed on 14-3-1953 but the withdrawal of the powers was to come into effect on 21-3-1953, the words "wapas liye jawenge" were used. Since the notification was published on 21-3-1953 on which date the withdrawal came into effect, the other words "wapas liye jate hain" were used.

We cannot brush aside this explanation as devoid of reasqn. It may not supply a strong argument in favour of the interpretation that we have placed upon the notification, but it does lend support to it and, in any case, is not inconsistent with it.

6. The learned Government Advocate contended that the order of withdrawal was complete when it was signed on 14-3-1953, that nothing was required to be done before giving effect to it and that it was published on 21-3-1953 in the same form in which it was signed. Though the order signed on 14-3-1953 was published in the same form on 21-3-1953, there was certainly a difference between the position as it existed on 14-3-1953 and the position as it existed on 21-3-1953 and it is that while on 14-3-1953 there was no publication, on 21-3-1953 publication came into being. The order was given effect to through publication.

The Special Magistrate concerned and also the public had to be informed that he had ceased to exercise magisterial powers. Undoubtedly there are orders which take effect not on the date on which they are prepared and signed but on a subsequent date oh which they are brought to the notice of the persons who have to comply with them. The order of withdrawal might have been in existence on 14-3-1953, but it does not follow that it was also effective on that date. We, therefore, hold that the order withdrawing the powers of the Special Magistrate did not come into effect prior to 21-3-1953 and the judgment pronounced by ham on 20-3-1953 was Valid.

7. Sri Kedar Nath argued that even if the judgment of the Special Magistrate were without Jurisdiction, the learned Sessions Judge had no power to set aside on appeal. If the judgment were a nullity, it did not exist in the eye of law and if it did not exist if could not be set aside. If the act of the Special Magistrate was not covered by the Code of Criminal Procedure, the learned Sessions Judge could not sit in judgment over it and set it aside. The learned Sessions, judge had power to interfere on appeal with a Judgment if it was a Judgment passed by a person exercising magisterial powers under the Code.

8. We set aside the order of the learned Sessions Judge. He has not heard the appeal on merits; he dismissed it on the preliminary ground that the Special Magistrate has no jurisdiction to pronounce the Judgment. We, there fore, remand the appeal to him for rehearing on merits.