Gokaraju Rangaraju Etc vs State Of Andhra Pradesh on 15 April, 1981

Equivalent citations: 1981 AIR 1473, 1981 SCR (3) 474, AIR 1981 SUPREME COURT 1473, 1981 (3) SCC 132, 1981 SCC(CRI) 652, 1981 BBCJ 187, 1981 CRIAPPR(SC) 236, 1981 MADLJ528, 1981 CHANDLR(CIV&CRI) 560, (1981) ALLCRIC 203, (1981) CHANDCRIC 133

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, A.P. Sen, Baharul Islam

PETITIONER:
GOKARAJU RANGARAJU ETC.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT15/04/1981

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 1473 1981 SCR (3) 474
1981 SCC (3) 132 1981 SCALE (1)706
CITATOR INFO :
R 1983 SC 194 (51)
R 1987 SC 454 (10)
R 1987 SC1748 (18,19)
R 1987 SC2111 (12)
R 1988 SC 162 (20)
RF 1990 SC1480 (76)

ACT:
De facto doctrine-Nature and scope of-Appointment of District Judge declared void-Judgment rendered by him, whether becomes void.
Interpretation of Statutes-Abundans cautela non nocet when applied-Legislature, whether makes superfluous legislation.

HEADNOTE:

The appellants in both the appeals were convicted of certain offences by two District Judges.' By the time the appeals went up for hearing to the High Court, the appointment of the two District Judges was quashed by this Court as being in violation of Article 233 of the Constitution.

The appellants contended before the High Court that having regard to the fact that the Supreme Court had quashed the appointment of District Judges, the judgments rendered by them in these two cases became void. The High Court, rejecting the contention, held that since the District Judges held office under lawful authority, the judgments rendered by them during the tenure of their office were valid and that in any event the validity of the judgments could not be questioned in collateral proceedings.

In appeal to this Court it was contended that trial by a Sessions Judge appointed in violation of Article 233 was not a trial by a Sessions Judge duly appointed to exercise jurisdiction in a Court of Sessions under section 9, Cr.P.C. and that the appellants' liberty was being taken away otherwise than in accordance with the procedure established by law and that the Constitution (Twentieth Amendment) Act, 1966 would be a surpluses if the de facto doctrine was applied to judgments rendered by persons appointed as District Judges contrary to the provisions of Article 233 of the Constitution

Dismissing the appeals,

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HELD: The two Judges who gave the judgments in the two cases were not usurpers or intruders but were persons who discharged the functions and duties of Judges under colour of lawful authority. So long as an office is validity created it matters not that the incumbent was not validity appointed. A person appointed to a post of Sessions Judge would be exercising jurisdiction in the

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Court of Session and his judgments and orders would be those of that court and would continue to be valid notwithstanding that his appointment to such court might be declared invalid. On that account alone it cannot be said that the procedure prescribed by law had not been followed. [487 E-F]

Milward v. Thatsher [1787] 2 T. R. 81 @ 87, Seaddling v. Lorant [1851] 3 HLC 418, re. James (An Insolvent) [1977] 2 W.L.R. 1, Norton v. Shelby Counrty [1886] 118 US 425-30 Law Ed. 178; referred to.

The doctrine of de facto envisages that acts permitted de facto by the officers within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers de

jure [478 H]

The de facto doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made but the acts of those who hold office de facto are not so easily undone. They may have lasting repercussions and confusing sequels if attempted to be undone. [479 B]

Pulin Behari v. King Emperor [1912] 15 Cal Law Journal 517 @ 574, Immedisetti Ramkrishnaiah Sons v. State of Andhra Pradesh and Anr AIR 1976 A.P 193; referred to.

A defective appointment of a de facto judge cannot be permitted to be questioned in a litigation between two private litigants. If this were not so, so soon as a Judge pronounces a judgment litigation may be commenced for a declaration that the judgment was void because the judge was no judge. To question a Judge's appointment in an appeal against his judgment is such a collateral attack. [485 B-C]

The de facto doctrine saves acts done by a Judge whose appointment has later been declared void, from being invalidated. The doctrine is recognised in Article 71(2) (which declares that acts done by the President in the exercise of his powers shall not be invalidated by reason of the election being declared void) and section 107(2) of the Representation of the People Act, 1951 (which provides that acts of a reason participating as member of Parliament or a State Legislature shall not be declared invalid by reason of his election being declared void). The doctrine, therefore, is no stranger to the Constitution and the laws. [485 E-F]

The Constitution (Twentieth Amendment) Act, 1966 is an instance where the de facto doctrine was applied to remove and taint of illegality being attributed to the judgments or orders passed by District Judges appointed before 1966 otherwise than in accordance with the provisions of Articles 233 and 235 of the Constitution and which appointments were declared invalid by this Court in Chandra Mohan v. State of U.P., [1967] 1 SCR 77. [485 H]

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It is not a necessary inference from the Twentieth Amendment That but for that amendment the judgments, decrees etc. Of those District Judges would have been void. As a general rule Parliament may be presumed not to make superfluous legislation. But This presumption is not a strong presumption in that it is not uncommon to find statutes containing provisions introduced because abundas cautela non nocet (there is no harm in being cautious). [486 C-D]

The statutory reiteration of the law, a clear judicial pronouncement on a subject notwithstanding, only leads to the inference that The statute making body, though mindful of the real state of the law, was acting under the influence

of excessive caution. The Constitution (Twentieth Amendment) Act, 1966 is one such instance. [486 E-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 234 of 1976.

Appeal by special leave from the judgment and order dated the 5th December, 1975 of the Andhra Pradesh High Court in Criminal Revision Case No. 816 of 1974 (Criminal Revision Petition No. 732 of 1974).

AND Criminal Appeal Nos. 315 and 316 of 1976.

Appeals by special leave from the judgment and order dated the 12th April, 1976 of the Andhra Pradesh High Court in Criminal Appeal Nos. 31 O & 311 of 1975.

P. Govindan Nair and A. Subba Rao for the Appellant in Crl. A. No. 234/76.

M. N. Phadke, and B. Kanta Rao for the Appellant in Crl. A. Nos.315 & 316 of 1976.

G. N. Rao for the Respondent in all the appeals. The Judgment of the Court was delivered by CHINNAPPA REDDY, J. What is the effect of the declaration by the Supreme Court that the appointment of an Additional Sessions Judge was invalid on judgments pronounced by the Judge prior to such declaration is the question for consideration in these criminal appeals. The question may seem to be short and simple but it cannot be answered without enquiry and research. An answer, on first impression, may be 'a judgment by a judge who is not a judge is no judgment'' a simple, sophisticated answer. But it appears second thoughts are necessary. What is to happen to titles settled, declarations made, rules issued, injunctions and decrees granted and even executed ? What is to happen to sentences imposed ? Are convicted offenders to be set at liberty and to be tried again '! Are acquitted accused to be arrested and tried again ? Public Policy is clearly involved. And, in the tangled web of human affairs, law must recognise some consequences as relevant, not on grounds of pure logic but for reasons of practical necessity. To clear the confusion and settle the chaos, judges have invented the de facto doctrine, which we shall presently examine. de facto doctrine is thus a doctrine of necessity and public policy.

Crl. A. No. 234 of 1976 arises out of a proceeding under S.6A of the Essential Commodities Act, by which the District Revenue officer West Godavari, Andhra Pradesh, ordered the confiscation of Rs. 203.74 kgs. Of paddy and Rs. 302.25 kgs. of rice. The appellant, Gokaraju Rangaraju, preferred an appeal under S. 6C of the Essential Commodities Act to the Court of Session, West Godavari. The appeal was heard by Shri G. Anjappa, Additional Sessions Judge and was rejected. The appellant preferred a Criminal Revision Petition before the High Court of Andhra Pradesh. Criminal Appeal Nos. 315 and 316 of 1976 arise out of Sessions Case No. 12 of 1975 in the Court of Session, Guntur Division' The case was heard and the judgment was pronounced by Shri Raman Raj Saxena, II

Additional Sessions Judge, Guntur. The convicted accused preferred appeals to the High Court of Andhra Pradesh. By the time the Criminal Revision case filed by Gokaraju Rangaraju and the Criminal Appeals filed by the appellants in Crl. Appeals Nos. 315 and 316 of 1976 came up for hearing before the High Court of Andhra Pradesh, this Court by its judgment dated 2nd September 1975 quashed the appointment of Shri G. Anjappa, Shri Raman Raj Saxena and two others as District Judges Grade II, on the ground that their appointment was in violation of the provisions of Art. 233 of the Constitution. Thereupon a point was raised in the Criminal Revision case as well as in the Criminal Appeals that the judgments rendered by Shri Anjappa and Shri Raman Raj Saxena were void and required to be set aside. The High Court overruled the point raised by the present appellants and held that though the appointment of Shri Anjappa and Shri Raman Raj Saxena as District Judges Gr. II was invalid, yet they were not mere usurpers but had held office under lawful H authority and therefore, the judgments rendered by them were valid and could not be questioned in collateral proceedings. The present appeals have been preferred by special leave granted by this Court. In Criminal Appeals Nos. 315 and 316 of 1976, however, the special leave granted by this Court was limited by the order granting leave to the question whether the judgments rendered by Sessions Judges were void where their appointment as Sessions Judges was subsequently declared illegal.

Shri Govindan Nayar learned counsel for the appellants in Crl. A. No. 234 of 1976 and Shri Phadke, learned counsel for the appellants in Crl. Appeals Nos. 315 & 316 of 1976, argued before us that the judgments rendered by Shri Anjappa and Shri Raman Raj Saxena were void as they were never duly appointed as District Judges. It was urged that there was no need for them to question the appointment of Shri Anjappa or Shri Kaman Raj Saxena as their appointment had already been quashed by the Supreme Court. It was said that the de facto doctrine was based on public policy and necessity and that in the present case neither public policy or necessity required that the judgments should not be set aside. No inconvenience would be caused by ordering a rehearing of the appeals or a retrial of the accused. It was also urged that the attack, if any, on the appointment of Shri Anjappa and Shri Raman Raj was not collateral attack. It was submitted that a question of jurisdiction could be raised at any stage in a criminal case and a trial by a Sessions Judge who was appointed in violation of Art. 233 was not a trial by a Sessions Judge duly appointed to exercise jurisdiction in a Court of Session under S. 9 of the Code of Criminal Procedure. It was argued that the de facto doctrine was not an absolute doctrine. It was subject to certain limitations. One such limitation was that imposed by Art. 233 of the Constitution. A person appointed as a District Judge contrary to the provisions of Art. 233 was no judge and his judgments were no judgments. It was submitted that the 20th Amendment of the Constitution would be a surplusage if the de facto doctrine was to be applied to judgments rendered by persons appointed as District Judges contrary to the provisions of Art. 233 of the Constitution. It was also suggested that the Fundamental Right of the appellants under Art. 21 of the Constitution was violated as their liberty was being taken away otherwise than in accordance with the procedure established by law.

We are unable to agree with the submissions of the learned counsel for the appellants. The doctrine is now well established that "the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure" (Pulin Behari

v. King Emperor). As one of us had occasion to point out earlier "the doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine" (vide Immedisetti Ramkriashnaiah Sons v. State of Andhra Pradesh and Anr.

In Pulin Behari v. King Emperor, (Supra) Sir Ashutosh Mukerjee J. noticed that in England the de facto doctrine was recognised from the earliest times. The first of the reported cases where the doctrine received judicial recognition was the case of Abbe of Fountaine decided in 1431. Sir Ashutosh Mookerjee noticed that even by 1431 the de facto doctrine appeared to be quite well known and, after 1431, the doctrine was again and again reiterated by English Judges.

In Milward v. Thatcher, Buller J. said:

> "The question whether the judges below be properly judges or not. can never be determined, it is sufficient if they be judges de facto. Suppose a person were even criminally convicted in a Court of Record, and the Recorder of such Court were not duly elected, the conviction would still be good in law, he being the judge de facto".

In Seaddling v. Lorant, the question arose whether a rate for the relief of the poor was rendered invalid by the circumstance that some of the vestry men who made it were vestry men de facto and not de jure. The Lord Chancellor observed as follows:

> With regard to the competency of the vestry men, who were vestry men de facto, but not vestry men de jure, to make the rate, your Lordships will see at once the impor-
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> tance of that objection, when you consider how many public officers and persons there are who were charged with very important duties, and whose title to the office on the part of the public cannot be ascertained at the time. You will at once see to what it would lead if the validity of their acts, when in such office, depended upon the propriety of their election. It might tend, if doubts were cast upon them, to consequences of the most destructive kind. It would create uncertainty with respect to the obedience to public officers and it might also lead to persons, instead of resorting to ordinary legal remedies to set right anything done by the officers, taking the law into their own hands". Some interesting observations were made by the Court of Appeal in England in re James (An Insolvent). Though the learned Judges constituting the Court of Appeal differed on the principal question that arose before them namely whether "the High Court of Rhodesia" was a British Court, there did not appear to be any difference of opinion on the question of the effect of the invalidity of the appointment of a judge on the judgments pronounced by him. Lord Denning M. R., characteristically, said: "He sits in the seat of a judge. He wears the robes of a judge. He holds the office of a judge. May be he was not validly appointed. But, still,

> he holds the office. It is the office that matters, not the incumbent ..... so long as the man holds the office and exercises it duly and in accordance with law, his orders are not a nullity. If they are erroneous they may be upset on appeal. But if not erroneous they should be upheld". Lord Denning then proceeded to refer to the State of Connecticut v. Carroll decided by the Supreme Court of Connecticut, Re Aldridge decided by the Court of Appeal in New Zealand and Norton v. Shelby County decided by the United States Supreme Court. Observations made in the last case were extracted and they were:
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> "Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as the validity of his acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions.. The official acts of such persons are recognised as valid on grounds of public policy, and for the protection of those having official business to transact."

Scarman LJ who differed from Lord Denning on the question whether the High Court of Rhodesia was a British Court appeared to approve the view of Lord Denning M. R. in regard to the de facto doctrine. He said:

> "He (Lord Denning) invokes the doctrine of recognition of the de facto judge, and the doctrine of implied mandate or necessity. I agree with much of the thinking that lies behind his judgment. I do think that in an appropriate case our courts will recognise the validity of judicial acts, even though they be the acts of a judge not lawfully appointed or derive their authority from an unlawful government. But it is a fallacy to conclude that, because in certain circumstances our Courts would recognise as valid the judicial acts of an unlawful court or a de facto judge, therefore, the Court thus recognised is a British Court".

The de facto doctrine has received judicial recognition in the United States of America also. In State v. Gardner (Cases on Constitutional Law by Mc. Gonvey and Howard Third Edition 102) the question arose whether the offer of a bribe to a City Commissioner whose appointment was unconstitutional was an offence. Broadbury, J. said.

> "We think that principle of public policy, declared by the English Courts three centuries ago, which gave validity to the official acts of persons who intruded themselves into an office to which they had not been legally appointed, is as applicable to the conditions now presented as they were to the conditions that then confronted the English Judiciary. We are not required to find a name by which officers are to be known, who have acted under a statute that has subsequently been declared unconstitutional, though we think such officers might aptly be called de facto officers."

In Norton v. Shelby Country, Field, J., observed as follows:

> "The doctrine which gives validity to acts of officers de facto whatever defects there may be in the legality of their appointment or election is founded upon considerations of policy and necessity, for the protection of the pub-
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> lic and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in apparent possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result, if in every proceeding before such officers their title could be called in question."

In Cooley's 'Constitutional Limitations', Eighth Edition, Volume II p. 1 355, it is said, "An officer de facto is one who by some colour or right is in possession of an office and for the time being performs its duties with public acquiescence, though having no right in fact. His colour of right may come from an election or appointment made by some officer or body having colourable but no actual right to make it; or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally re-moved or made in favour of a party not having the legal qualifications; or it may come from public acquiescence in the qualifications; or it may come from public acquiescence in the officer holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompanied by such circumstances of official reputation as are calculated to induce people, without inquiry, to submit to or invoke official action on the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence. No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by some one claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be. In all other cases the acts of an officer de facto are as valid and effectual, while he is suffered to retain the office, as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally."

In Black on judgments it is said:

> "A person may be entitled to his designation although he is not a true and rightful incumbent of the office, yet he is no mere usurper but holds it under colour of lawful authority. And there can be no question that judgments rendered and other acts performed by such a person who is ineligible to a judgeship but who has nevertheless been duly appointed, and who exercises the power and duties of the office is a de

facto judge, and his acts are valid until he is properly removed."

The de facto doctrine has been recognised by Indian Courts also. In Pulin Behari v. King Emperor, Sir Ashutosh Mookerjee, J after tracing the history of the doctrine in England observed as follows:

> "The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence or defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined."

In P. S. Menon v. State of Kerala and Ors. a Full Bench of the Kerala High Court consisting of P. Govindan Nair, K.K. Mathew and T.S. Krishnamoorthy Iyer, JJ said about the de facto doctrine:

> "This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individual involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid".

In the judgment under appeal Kuppuswami and Muktadar, JJ observed:

> "Logically speaking if a person who has no authority to do so functions as a judge and disposes of a case the judgment rendered by him ought to be considered as void and illegal, but in view of the considerable inconvenience which would be caused to the public in holding as void judgments rendered by judges and other public officers whose title to the office may be found to be defective at a later date. Courts in a number of countries have, from ancient times evolved a principle of law that under certain conditions, the acts of a judge or officer not legally competent may acquire validity".

A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief.

There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against the judgment is, of course, such a collateral attack.

We do not agree with the submission of the learned counsel that the de facto doctrine is subject to the limitation that the defect in the title of the judge to the office should not be one traceable to the violation of a constitutional provision. The contravention of a constitutional provision may invalidate an appointment but we are not concerned with that. We are concerned with the effect of the invalidation upon the acts done by the judge whose appointment has been invalidated. The de facto doctrine saves such Acts. The de facto doctrine is not a stranger to the Constitution or to the Parliament and the Legislatures of the States. Art. 71(2) of the Constitution provides that acts done by the President or Vice President of India in the exercise and performance of the powers and duties of his office shall not be invalidated by reason of the election of a person as President or Vice President being declared void. So also Sec. 107(2) of the Representation of the People Act 1951 (Act 43 of 1951) provides that acts and proceedings in which a person has participated as a Member of Parliament or a Member of the Legislature of a State shall not be invalidated by reason of the election of such person being declared to be void. There are innumerable other Parliamentary and State Legislative enactments which are replete with such provisions. The Twentieth Amendment of the Constitution is an instance where the de facto doctrine was applied by the Constituent body to remove any suspicion or taint of illegality, or invalidity that may be argued to have attached itself to judgment, decrees sentences or orders passed or made by certain District Judges appointed before 1966, otherwise than in accordance with the provision of Art. 233 and Art 235 of the Constitution. The Twentieth Amendment was the consequence of the decision of the Supreme Court in Chandra Mohan v. State of Uttar Pradesh and Ors., that appointments of District Judges made otherwise than in accordance with the provisions of Arts. 233 and 235 were invalid. As such appointments had been made in many States, in order to preempt mushroom litigation springing up all over the country, it was apparently thought desirable that the precise position should be stated by the Constituent body by amending the Constitution. Shri Phadke, learned counsel for the appellants, argued that the constituent body could not be imputed with the intention of making superfluous amendments to the Constitution. Shri Phadke invited us to say that it was a necessary inference from the Twentieth Amendment of the Constitution that, but for the amendment, the judgments, decrees etc. of the District Judges appointed otherwise than in accordance with the provisions of Art. 233 would be void. We do not think that the inference suggested by Shri Phadke is a necessary inference. It is true that as a general rule the Parliament may be presumed not to make superfluous legislation. The presumption is not a strong presumption and statutes are full of provisions introduced because abundans cautela non nocet (there is no harm in being cautious). When judicial pronouncements have already declared the law on the subject, the statutory reiteration of the law

with reference to the particular cases does not lead to the necessary inference that the law declared by the judicial pronouncements was not thought to apply to the particular cases but may also lead to the inference that the statute-making body was mindful of the real state of the law but was acting under the influence of excessive caution and so to silence the voices of doubting Thomases by declaring the law declared by judicial pronouncements to be applicable also to the particular cases. In Chandra Mohan' case (Supra) this Court held that appointments of District Judges made otherwise than in accordance with Art. 233 of the Constitution were invalid. Such appointments had been made in Uttar Pradesh and a few other States. Doubts had been cast upon the validity of the judgments, decrees etc. pronounced by those District Judges and large litigation had cropped up. It was to clear those doubts and not to alter the law that the Twentieth Amendment of the Constitution was made. This is clear from the statement of objects and reasons appended to the Bill which was passed as Constitution (20th Amendment) Act. 1966. The statement said:

> "Appointments of District Judges in Uttar Pradesh and a few other States have been rendered invalid and illegal by a recent judgment of the Supreme Court on the ground that such appointments were not made in accordance with the provisions of Art. 233 of the Constitution.... As a result of these judgments, a serious situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these District Judges and a number of Writ Petitions and other cases have already been filed challenging their validity. The functioning of the District Courts in Uttar Pradesh has practically come to a stand-still. It is, therefore, urgently necessary to validate the judgments, decrees, orders and sentences passed or made heretofore by all such District Judges in those States....."

In our view, the de facto doctrine furnishes an answer to the submissions of Shri Phadke based on Sec. 9 Criminal Procedure Code and Art. 21 of the Constitution. The judges who rejected the appeal in one case and convicted the accused in the other case were not mere usurpers or intruders but were persons who discharged the functions and duties of judges under colour of lawful authority. We are concerned with the office that the judges purported to hold. We are not concerned with the particular incumbents of the office. So long as the office was validly created, it matters not that the incumbent was not validly appointed. A person appointed as a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session, and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders, of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. On that account alone, it can never be said that the procedure prescribed by law has not been followed. It would be a different matter if the constitution of the Court itself is under challenge. We are not concerned with such situation in the instant cases. We, therefore, find no force in any of the submissions of the learned counsel.

Shri Govindan Nair attempted to argue that the confiscation was not justified on the merits. We find no reason to interfere with the concurrent findings of fact arrived at by the lower Courts. Shri Phadke requested us to widen the scope of the appeals and to permit him to canvas the correctness of the convictions and sentences also. We declined to do so. All the appeals are dismissed.

P.B.R Appeals dismissed.