I do not see how these observations help the appellant. They only state the obvious, namely, that if there was a law within the meaning of the amended article, no question of infringing the fundamental right would arise. There is no force in this argument. This question anyhow does not affect my decision, as I have come to the conclusion that the Press Notes issued by the Government clearly infringed the fundamental right of the petitioner.

But, in view of the fact that the period for which licence was asked had run out, the application in respect thereof has become infructuous and, therefore has to be dismissed. In the result, the appeal is dismissed, but, in the circumstances of this case, without costs.

STATE OF WEST BENGAL

v.

S. K. GHOSH

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.,)

Attached Property, Disposal of—Termination of Criminal Proceeding for scheduled offence—Order of District Judge—Validity—Forfeiture, if a penalty—Criminal Law Amendment Ordinance, 1944(38 of 1944), ss. 13(3), 12(1)3.—Criminal Law Amendment Ordinance, 1943 (29 of 1943), as amended by Criminal Law (1943 Amendment) Amending Ordinance, 1945(12 of 1945), s.10—Constitution of India, Art. 20(1)—Indian Penal Code, 1860(Act 56 of 1860), ss. 120B, 409, 53.

The respondent, who was the Chief Refugee Administrator of Burma Refugee Organisation from November, 1942, to August 25, 1944, was tried under ss. 120B and 409 of the Indian Penal Code by the Second Special Tribunal, functioning under the Criminal Law Ordinance No. 29 of 1943 as amended by Criminal Law (1943 Amendment) Amending Ordinance No. 12 of 1945. On an application made on

1962

State of West Bengal v. S.K. Ghosh

behalf of the Provincial Government under s. 3 of the Criminal Law Amendment Ordinance, No. 38 of 1944, the District Judge attached certain properties as having been purchased by the respondent with money procured by the said offence. The Special Tribunal found the respondent guilty and sentenced him to rigorous imprisonment for five years and a fine of Rs. 45 lacs as in its view the money procured by the offences exceeded that amount. On appeal by the respondent the High Court affirmed the order of conviction and sentence. There was a further appeal to this Court and this Court affirmed the finding of the High Court that at least Rs. 30 lacs must have been misappropriated and refused to interfere. Thereafter the District Judge, on an application made under s. 13 of the 1944 Ordinance passed the order, out of which the present appeal arose, directing that Rs. 30 lacs together with the cost of attachment should first be forfeited to the Union of India from the attached properties and thereafter the fine of Rs. 45 lacs was to be recovered from the residue of the attached properties and directed the receiver to report as to the valuation and the cost of attachment and management of the attached properties. The respondent appealed to the High Court and the two Judges of the Division Bench hearing the appeal agreed in quashing the order of the District Judge; one of them on the ground that no order having been obtained under s. 12(1) of that Ordinance, no application lay under s. 13(3) thereof and the other on the ground that since forfeiture was not prescribed as punishment before the 1944 Ordinance and that Ordinance came into force after the offence has been committed, any forfeiture ordered under the Ordinance would contravene Art. 20(1) of the Constitution. The State of West Bengal appealed.

Held, that the order of the High Court must be set aside and that of the District Judge resorted.

Section 12(1) of the 1944 Ordinance only required that at the request of the prosecution the court should give a finding as to the amount of money or the value of the property that had been procured by the accused by the commission of the offence, no matter whether such representation was by application or oral, and if the court gave the finding that would be sufficient compliance with the section. Where such a finding was given under s. 10 of the 1943 Ordinance as amended in 1945, that finding would also satisfy the requirement of s. 12(1) of the 1944 Ordinance.

Of the two kinds of property contemplated by s. 3 of the 1944 Ordinance for the purpose of attachment, s. 12 was concerned only with the determination of the value of such

property alone as had been procured by the offence and the Criminal Court had thereunder to evaluate such property and none others. Since what was attached in this case was not property procured by the commission of the offence, what the Criminal court was required to do was to declare the amount of money procured by the offence. It was for the District Judge to value other properties purchased by that money when he considered the question of forfeiture under s. 13(3) and that was what the District Judge did in this case.

The forfeiture provided under s. 18(3) of the 1944 Ordinance was not a penalty within the meaning of Art.20(1) of the Constitution. Nor could it be equated to forfeiture of property under s. 53 of the Indian Penal Code The Ordinance provided for no punishment or penalty, but for attachment of the money or property procured by the offence or any other property of the offender in case the above property was not available, to prevent the disposal or concealment of such property. The forfeiture provided by it was in effect a speedier method of realising Government money or property than by a suit which the Government was entitled to bring without in any way affecting the right to realised the fine imposed by the Criminal Court in connection with the offence. That section was not concerned with any conviction or punishment and Art. 20(1) could, therefore, have no applications to orders passed under it.

Rao Shiv Bahadur Singh v. *State of Vindha Pradesh*, (1953) S.C.R. 1188, referred to.

CRIMINAL APPELLATE JURISDICTION, Criminal Appeal No. 140 of 1959.

Appeal from the judgment and order dated August 20/22, 1958, of the Calcutta High Court, in Criminal Appeal No. 176 of 1958.

B. Sen, P. K. Chatterjee and *P. K. Bose*, for the appellant.

N. C. Chatterjee and *S. C. Mazumdar*, for the respondent.

C. K. Daphtary, Solicitor-General of India, B. R. L. Iyengar and *P. D. Menon*, for the Intervener.

1962

State of West Bengal
v.
S.K. Ghosh

Wanchoo J.

1962. April 16. The Judgment of the Court was delivered by

WANCHOO, J.—This is an appeal on a certificate granted by the Calcutta High Court. The respondent was appointed the Chief Refugee Administrator of the Burma Refugee Organisation in November, 1942, and held that post till August 25, 1944 when he was suspended. He was believed to have embezzled large sums of money belonging Government which were at his disposal as the Chief Refugee Administrator, in conspiracy with certain persons. It was in that connection that he was suspended on August 25, 1944, and investigation into the alleged offences began thereafter. In that connection, the respondent was arrested in October, 1944, and was bailed out. Eventually, on July 21, 1945, the respondent was prosecuted under ss. 120-B and 409 of the Indian Penal Code before the Second Special Tribunal constituted under the Criminal Law Amendment Ordinance, No. 29 of 194.; (hereinafter referred to as the 1943-Ordinance). In the mean time, the Criminal Law Amendment Ordinance No. 38 of 1944 (hereinafter referred to as the 1944-Ordinance) was passed. The object of this Ordinance was to prevent the disposal or concealment of money or other property procured by means of certain scheduled offences punishable under the Indian Penal Code, and one of the offences to which this Ordinance applied was s. 409 of the Indian Penal Code, and any conspiracy to commit such offence. Section 3 of this Ordinance provided that where the Provincial Government had reason to believe that any person had committed (whether after the commencement of this Ordinance or not) any scheduled offence, the Provincial Government was empowered (whether or not the Court had taken cognizance of the offence) to make an application to the District Judge within the local limits of whose jurisdiction the

said person ordinarily resided or carried on his business, for the attachment of the money or other property which the Provincial Government believed the said person to have procured by means of the offence. But if for some reason such money or property could not be attached, the Provincial Government was given power to apply for the attachment of other property of the said person of value as nearly as might be equivalent to that of the aforesaid money or property. Section 3 therefore provided for something like what is attachment before judgment in a civil court, and the Provincial Government was authorised to apply for attachment either of the money or property with respect to which the offence was said to have been committed and if that was not available, other property of equal value could be attached even though no offence had been committed with respect to that other property. Consequently on November 21, 1944, an application was made on behalf of the Provincial Government before the District Judge for attachment of certain properties under s. 3 of the 1944-Ordinance on the ground that these properties had been purchased by the respondent with moneys procured by him by committing offences under ss. 120-B and 409 of the Indian Penal Code. On February 22, 1945, another application was made for attachment of certain other properties. The District Judge ordered attachment of these two sets of properties after hearing the respondent and the orders of attachment have been extended from time to time. This took place even before the case of the respondent was sent up for trial before the Special Tribunal.

The respondent was eventually convicted by the Special Tribunal after a protracted trial on August 31, 1949. In the meantime, the Criminal Law (1943 Amendment) Amending Ordinance, No. 12 of 1945, (hereinafter referred to as the 1945

1962

State of West Bengal v. S. K. Ghosh

Wanchoo J

Ordinance) came into force on May 12, 1945. By this Ordinance, s. 10 of the 1943 Ordinance was amended and the amended section was in these terms :—

> "When any person charged before a Special Tribunal with an offence specified in the Schedule is found guilty of that offence, the Special Tribunal shall, notwithstanding anything contained in the Indian Penal Code (XLV of 1860), whether or not it imposes a sentence of imprisonment, impose a sentence of fine which shall not be less in amount than the amount of money or value of other property found to have been procured by the offender by means of the offence."

Therefore, when the Special Tribunal found the respondent guilty of the offences under ss. 120-B and 409 of the Indian Penal Code it sentenced him to rigorous imprisonment for five years and a fine of Rs. 45 lacs on the charge of conspiracy, and the reason why the fine was fixed at Rs. 45 lacs was that in the view of the Special Tribunal, the money procured by the respondent by means of the offence was over Rs. 45 lacs. The respondent went in appeal to the High Court from his conviction and the High Court upheld the conviction as well as the sentence of fine. The High Court however found that the money procured by the respondent by the commission of the offence of conspiracy was at least Rs. 30 lacs. Even so, the High Court did not interfere with the sentence of fine imposed by the Special Tribunal as it was of the view that s. 10 of the 1943 Ordinance as amended in 1945 prescribed the minimum limit of fine only and it was open to the Special Tribunal under the ordinary law to impose any amount of fine. The respondent then came in appeal to this Court, which was dismissed. This Court held that on the finding it was clear that at least Rs. 30 lacs had been misappropriated by the respondent as a result of the conspiracy and the

minimum fine therefore had to be of that order; but considering the serious nature of the defalcation made by the respondent and the position of trust in which he had been placed, this Court found it impossible to interfere with the sentence. Judgment of this Court was delivered on December 12, 1956.

On January 8, 1957, an application was made to the District Judge concerned under s. 13 of the 1944-Ordinance, and it was prayed that as it had been found by the courts that the respondent had procured at least a sum of Rs. 30 lacs by committing the offences specified in the Schedule to the 1943-Ordinance, the properties attached under s. 3 of the 1944-Ordinance, which were in the hands of a receiver, might be confiscated and receiver be ordered to hand over all the properties in his hands to the Government of India. An *ex parte* order was passed by the District Judge allowing the application on January 10, 1957. Thereafter, applications were made by the respondent and his wife for vacating this *ex parte* order and on May 11, 1957, the *ex parte* order was vacated. Finally, on March 22,1958, the District Judge passed the order which is now under appeal, after hearing the respondent and his wife. The main objection taken before the District Judge appears to have been that there was no finding under s. 12 of the 1944-Ordinance and therefore it was not open to the District Judge to take action under s. 13 of the 1944-Ordinance. The District Judge repelled this objection and held on a construction of ss. 12 and 13(3) of the 1944-Ordinance that the amount of Rs. 30 lacs together with the cost of attachment had first to be forfeited to the Union of India from the properties attached and thereafter the fine of Rs. 45 lacs was to be recovered from the residue of the said attached properties. As however it was not possible to forfeit properties to the

1962

State of West Bengal v. S. K. Ghosh

Wanchoo J.

value of Rs. 30 lacs without valuation of the properties, the District Judge directed the receiver to report as to the cost of attachment including the cost of management of the properties attached. He also directed the parties to submit their estimates as to the value of the properties attached, with the proviso that, if there was no agreement between them, a valuer would be appointed by the court to evaluate the properties under attachment.

The respondent then went in appeal to the High Court and challenged the order of the District Judge. This appeal was heard by a Division Bench of the High Court consisting of Mitter and Bhattacharya, JJ. Two points were urged before the High Court in this connection. The first was that as no proceedings under s. 12 of the 1944-Ordinance had been taken as to the money which had been procured by the commission of the offence and no finding had been arrived at under that section, it was not open to the District Judge to take proceedings under s. 13 of the 1944-Ordinance. Secondly, it was urged that even if it were open to the District Judge to take proceedings under s. 13, the proceedings could not go on in view of Art. 20(1) of the Constitution.

Mitter, J., on a construction of ss. 12 and 13 of the 1944-Ordinance held that only if an order s.12 had been obtained, it would be open to take action under s. 13; but as in his view no order under s. 12 had been obtained, and all that had been found was that the respondent had obtained at least Rs. 30 lacs by the commission of the offence under s. 10 of the 1943 Ordinance as amended in 1945, that was not what was required under s. 12. Therefore, he held that no proceedings under s. 13 could be taken for forfeiture of Rs. 30 lacs worth of properties and all that could be done was only to recover the fine of Rs. 45 lacs. In vew of this finding, Mitter, J.,

did not express any opinion as to the applicability of Art. 20(1) of the Constitution.

Bhattacharya J. on the other hand did not agree with the view expressed by Mitter J. on the interpretation of ss. 12 and 13 of the 1944-Ordinance. In his opinion, the District Judge had jurisdiction to forfeit properties worth Rs. 30 lacs under s. 13. But he was of opinion that s. 53 of the Indian Penal Code refers to forfeiture as punishment as distinct from fine and as the punishment of forfeiture, as contemplated by the 1944-Ordinance had yet to take place, Art. 20(1) of the Constitution would apply. His reason for coming to this conclusion was that the 1944-Ordinance came into force on August 23, 1944, while the real and effective period during which the offences were committed ended with July 1944. Therefore, according to him, as forfeiture was not prescribed as a punishment before the 1944-Ordinance and as that Ordinance came into force after the offences with which the respondent was charged had been committed, no forfeiture could be ordered under the 1944-Ordinance as that would be violative of Art. 20(1) of the Constitution. He therefore agreed with Mitter J. that the order of the District Judge should be quashed but for a different reason. Thereafter, the State of West Bengal applied for a certificate, which was granted; and that is how the matter has come up before us.

The contention of the appellant is that the view of Mitter J. that a specific order in terms of s. 12 of the 1944-Ordinance was required in this case was not correct, and that in any case an order under s. 12 had been passed in substance in this case by the court trying the respondent and therefore the District Judge would have jurisdiction to forfeit properties up to the value of Rs. 30 lacs under s. 13. Incidentally, Mitter J. had also held

1962

State of West Bengal v. S. K. Ghosh

Wanchoo J.

that it was the duty of the court trying the respondent to value properties attached under s. 12, and as that had not been done it was another ground for holding that no action could be taken under s. 13. This view of Mitter J. is also challenged by the appellant. The appellant further challenges the view of Bhattacharya J. that Art. 20(1) applies in the circumstances of this case, and it is contended that the provision in s. 13 of the 1944 Ordinance for forfeiture is not a punishment but merely a method of realising money of the Government which had been embezzled by the respondent and therefore Art. 20(1) had no application. It is urged that it would have been open to Government to file a suit to recover the money or the property embezzled and that s. 13 only provides a speedier remedy for attaining the same object. Learned counsel for the respondents on the other hand supports the view taken by the High Court on both points and urges that there is no reason to interfere with the order passed by the High Court.

We shall first consider the view of Mitter J. as to the interpretation of ss. 12 and 13 of the 1944 Ordinance. The two sections read as follows : —

> "12. *Criminal Courts to evaluate property procured by scheduled offence*:—
>
> (1) Where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed under this Ordinance in connection with such offence, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.
>
> (2) In any appeal or revisional proceedings against such conviction, the appellate or

revisional court shall, unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal in a trial such as is referred to in sub-section (1), the appellate or revisional Court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.

13. *Disposal of attached property upon termination of criminal proceedings* :—

(1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the Provincial Government shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or revisional Courts thereon.

(2) Where it is reported to the District Judge under sub section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the criminal Courts is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the

1962

State of West Bengal
v.
S. K. Ghosh

Wanchoo J.

property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to His Majesty such amount or value as is found in the final judgment or order of the criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence, together with the cost of attachment as determined by the District Judge ; and where the final judgment or order of the criminal Courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 6 the District Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the cost of attachment of the transferee's property as determined by the District Judge shall be forfeited to His Majesty from the attached property of the transferee or out of the security given in lieu of such attachment ; and the District Judge may order, without prejudice to any other mode of recovery, that any fine referred to in sub-section (3) or any portion thereof not recovered under the sub-section shall be recovered from the attached property of the

transferee or out of the security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under sub-section (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn, or as the case may be, the remainder of the security returned, under the orders of the District Judge."

We have already pointed out that the provision for making an application for attachment is contained in s. 3 of the Act. Section 5 then provides for investigation of objections to attachment and under sub-s. (3) thereof the District Judge is authorised to pass an order making the attachment absolute or varying its by releasing a portion of the property from attachment or withdrawing the order. In the present case, the District Judge made the order absolute and the properties have continued under attachment ever since. It may be mentioned that under s. 3 two kinds of properties may be attached; namely, (i) the property which has been procured by the commission of the offence, whether it be in the form of money or in the form of movable or immoval property, and (ii) properties other than the above. In this case, the charge against the respondent was that he had embezzled money. The reason why the application for attachment under s. 3 was made was that he had used the money procured by commission of the offence in purchasing certain properties. Therefore, the properties attached in this case were not actually the properties procured by the offence but other properties. But s. 13 applies whether the property attached is of one kind or the other, and the District Judge would have jurisdiction to deal with the property

1962

State of West Bengal
v.
S. K. Ghosh

Wanchoo J.

attached under s. 13 for the purpose of forfeiture provided s. 12 has been complied with.

The question therefore that falls for consideration is the meaning of s. 12(1). The sub-section lays down that before the judgment is pronounced by the court trying the offender if it is represented to the court that an order of attachment of property had been passed under s. 3 in connection with such offence, the court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence. Clearly all that s. 12(1) requires is that the court trying the offender should be asked to record a finding as to the amount of money or value of other property procured by the accused before it by means of the offence for which he is being tried. There is no procedure provided for making the representation to the court to record a finding as to the amount of money or value of other property procured by the offence. In our view, all that s. 12(1) requires is that at the request of the prosecution the court should give a findi as to the amount of money or value of other p: perty procured by the accused. Representation may be by application or even oral so long as the court gives a finding as to the amount of money or value of other property procured by the offence that would in our opinion be sufficient compliance with s. 12(1). It is not necessary that the court when it gives a finding as to the amount of money or value of other property procured by means of the offence should say in so many words in passing the order that it is making that finding on a representation under s. 12 (1). It is true that under s. 10 of the 1943 Ordinance as amended in 1945 the court when imposing a fine has to give a finding as to the amount of money or value of other property found to have been procured by the offender by means of the offence in order that it

may comply with the provisions of s. 10 as to the minimum fine to be imposed. We see no reason however why a finding given for the purpose of s.10 determining the amount of money or the value of other property found to have been procured by the offender by means of the offence should not also be taken as a finding under s. 12(1) of the 1944-Ordinance. The result of the two findings in our opinion is exactly the same, the only deffere-nce being that under s. 10 of 1943-Ordinance, as amended in 1945, the court may do this *suo mote* while under s. 12 (1) of the 1944-Ordinance it has to be done on the representation made by the prosecution. The result however in either case is that a finding as to the amount of money or the value of other property procured by the offender by means of the offence is given. That is what both s. 10 of the 1943-Ordinance, as amended in 1945, and s. 12(1) of the 1944-Ordinance require. It is true that in this case there was no written application by the prosecution under s. 12(1) of the 1944-Ordinance, but it may very well be that the court may have been asked orally to determine the amount of money or value of property procured by the offence. In any case so long as a finding is there as to the amount of money or value of other property found to have been procured by means of the offence that will satisfy the requirement of s. 12(1) of the 1944-Ordinance. We are therefore of opinion that the view taken by Bhattacharya J. is the correct view and the view taken by Mitter J. is not correct.

Further what s. 13(3) of the 1944-Ordinance which provides for forfeiture requires is that there should be in the final judgment of the criminal court a finding as to the amount of money or value of property in pursuance of s. 12. As soon as that finding is there, the District Judge would know the amount he is to forfeit, and the purpose of the

1962

State of West Bengal
v.
S. K. Ghosh

Wanchoo J.

finding is that if the District Judge is asked to make a forfeiture under s. 13 (3) he should know exactly the amount which he is require to forfeit. So long therefore as the criminal court trying an offender has given a finding as the amount of money or value of other property procured by means of the offence in the judgment that in our opinion is sufficient compliance with s. 12(1) of the 1944-Ordinance and the requirement therein that it should be on the representation of the prosecution is a mere formality. Obviously, even a determination under s. 10 of the 1943-Ordinance as amended in 1945 of the amount procured by the offence must be at the instance of the prosecution, for it is the prosecution which will provide the material for that determination which in turn will be the basis on which the fine will be determined by the court under s. 10. The view taken therefore by Mitter J. that there must be a specific finding in terms to the effect that on the representation of the prosecution the court finds under s. 12(1) that such and such amount was procured by means of the offence is not correct. In our opinion, there was a finding in this case by the criminal court about the amount of money procured by the respondent by means of the offence, namely at least Rs. 30 lacs. Therefore, the District Judge would have jurisdiction on the basis of the finding to proceed to forfeit the property attached up to that value.

We are further of opinion that the view taken by Mitter J. that the property attached under s. 3 of the 1944 Ordinance has to be valued by the criminal court is obviously incorrect and is not born out by the terms of s. 12(1). We have pointed out that under s.3 an application can be made for attaching two kinds of property, namely, (i) the money or other property procured by means of the offence; and (ii) property other than the above. What s. 12(1) requires is that where money has

been procured by the offence, the Criminal Court shall determine the amount of that money. Where instead of money some other property, say, for example, diamonds or rubies, have been procured by means of the offence, the Criminal court shall value that other property. But under s. 12(1) only the amount of money procured by means of the offence or the value of the property procured by means of the offence has to be determined by the criminal court. Section 12 has nothing to do with the determination of the value of the property other than that procured by the offence and the criminal court has not to evaluate this other property, which comes under the second head under s. 3 mentioned above. We have already pointed out that in this case, the property procured by the offence was only money and therefore all that the criminal court had to do was to declare the amount of money procured by the offence and that it has done by finding that it was at least Rs. 30 lacs. Property attached under s. 3 in this case was not the property procured by the commission of the offence. The two applications under s. 3 themselves show that the respondent had procured money by means of the offence and had later converted that money into this property. The property attached in this case therefore was not property which had been procured by the commission of the offence and there was therefore no question of the valuation of the property attached under s. 3 by the criminal court under s. 12. With respect, the error in which Mitter J. seems to have fallen is to confuse the property which was procured by the commission of the offence with the other property which was not procured by the commission of the offence and which could also be attached under s. 3. This other property has not to be valued by the criminal court; it will be valued by the District Judge when he comes to consider the question of forfeiture under s. 13(3) and this is exactly what the District Judge

1963

State of West Bengal v. S. K. Ghosh

Wanchoo J.

has ordered in this case. We must therefore hold that the District Judge had jurisdiction to order forfeiture out of the property attached to the extent of Rs. 30 lacs, as that was amount found by the criminal court to have been procured by the commission of the offence, and in order to effect forfeiture he would naturally have jurisdiction to have the property attached valued in order to enable him to forfeit it under s. 19(3) to the extent of the amount procured by means of the offence.

This brings us to the contention which found favour with Bhattacharya J., namely, that the provision of s. 13(3) is a punishment and that as the 1944-Ordinance was not in force at the time when the offence was committed s. 13(3) could not be applied to the respondent inasmuch as Art. 20(1) lays down that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Two arguments have been urged on behalf of the appellant in this connection. In the first place, it is urged that the respondent remained in office till August 25, 1944 while the Ordinance came into force on August 23, 1944 and therefore the conspiracy by means of which the money was procured continued till after the Ordinance had come into force and therefore Art.20(1) can have no application, for it cannot be said that the respondent was being subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In the second place, it is urged that the forfeiture provided by s. 13(3) is not a penalty at all within the meaning of Art. 20(1), but is merely a method of recovering money belonging to the Government which had been embazzled. It is urged that the Government could file a suit to recover the money embezzled and s. 13(3) only provides a speedier remedy for that purpose and

the forfeiture provided therein is not a penalty within the meaning of Art. 20(1).

We do not think it necessary for the purpose of this appeal to decide whether the facts that the respondent continued in office till August 25, 1944 and the Ordinance came into force on August 23, 1944, would take the case out of the ambit of Art. 20(1), for we have come to the conclusion that the forfeiture provided under s. 13(3) is not a penalty at all within the meaning of Art. 20(1) and the second argument urged on behalf of the appellant must prevail. Now the 1944-Ordinance is an independent Ordinance and is not an amendment to the 1943-Ordinance. It is true that the Ordinance is termed "The Criminal Law Amendment ordinance": but its provisions will show that it deals mainly with recovery of money or property belonging to Government procured by the offender by means of the offence. An analysis of provisions of the 1944 Ordinance will show this clearly. Section 3 provides for application for attachment of property; s. 4 provides for an *ad interim* attachment; s. 5 provides for investigation of objections to attachment; s. 6 provides for attachment of property of *mala fide* transferees; s. 7 provides for execution of orders of attachment and s. 8 for security in lieu of attachment; s. 9 for administration of attached property and s. 10 for the duration of attachment. Section 11 provides for appeals. Then come ss. 12 and 13. Lastly there are s. 14 which bars certain proceedings and s. 15 which protects certain actions taken in pursuance of the Ordinance. It will therefore be clear that the Ordinance provides for no punishment or penalty; all that it provides is attachment of the money or property procured by the offence or any other property of the offender if the above property is not available and the purpose of the attachment is to prevent the disposal or concealment of such

1963

State of West Bengal
v.
S. K. Ghosh

Wanchoo J.

property. Section 13(3) with which we are particularly concerned lays down that the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to His Majesty such amount or value as is found in the final judgment or order of the criminal courts in pursuance of s. 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge. It is further provided that where the final judgment or order of the criminal court has imposed or upheld a sentence of fine on the said person, the District Judge may order without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment. The forfeiture by the District Judge s. 13(3) cannot in our opinion be equated to forfeiture of property which is provided in s. 53 of the Indian Penal Code. The forfeiture provided in s. 53 is undoubtedly a penalty or punishment within the meaning of Art. 20(1); but that order of forfeiture has to be passed by the court trying the offence, where there is a provision for forfeiture in the secton concerned in the Indian Penal Code. There is nothing however in the 1944-Ordinance to show that it provides for any kind of punishment for any offence. Further it is clear that the Court of District Judge which is a principal court of civil jurisdiction can have no jurisdiction to try an offence under the Indian Penal Code. The order of forfeiture therefore by the District Judge under s. 13(3) cannot be equated to the infliction of a penalty within the meaning of Art. 20(1). Article 20(1) deals with conviction of persons for offences and for subjection of them to penalties. It provides firstly that "no person shall be convicted of any offence except for violation of a law in force at the

1952

State of West Bengal
v.
S. K. Ghosh

Wanchoo J.

time of the commission of the act charged as an offence". Secondly, it provides that no person shall be "subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence". Clearly, therefore Art. 20 is dealing with punishment for offences and provides two safeguards, namely, (1) that no one shall be punished for an act which was not an offence under the law in force when it was committed, and (ii) that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. The provision for forfeiture under s. 13(3) has nothing to do with the infliction of any penalty on any person for an offence. If the forfeiture provided in s. 13(3) were really a penalty on a convicted person for commission of an offence we should have found it provided in the 1943-Ordinance and that penalty of forfeiture would have been inflicted by the criminal court trying the offender.

The argument for the respondent is apparently based on the use of the word "forfeited" in s. 13(3) and also on the use of the word "forfeiture" in s. 53 of the Indian Penal Code. There is no doubt that forfeiture in s. 53 of the Indian Penal Code is a penalty but when s. 13(3) speaks of forfeiting to His Majesty the amount of money or value the other property procured by the accused by means of the offence, it in effect provides for recovery by the Government of the property belonging to it, which the accused might have procured by embezzlement etc. The mere use of the word "forfeited" would not necessarily make it a penalty. The word "forfeiture" has been used in other laws without importing the idea of penalty or punishment within the meaning of Art. 20(1). Reference in this connection may be made to s. III (g) of the Transfer of Property Act (No. 4 of 1882) which talks of

1963

State of West Bengal v. S. K. Ghosh

Wanchoo J.

determination of a lease by forfeiture. We are therefore of opinion that forfeiture provided in s. 13(3) in case of offences which involve the embezzlement etc. of government money or property is really a speedier method of realising Government money or property as compared to a suit which it is not disputed the Government could bring for realising the money or property and is not punishment or penalty within the meaning of Art. 20(1). Such a suit could ordinarily be brought without in any way affecting the right to realise the fine that may have been imposed by a criminal court in connection with the offence.

We may in this connection refer to *Rao Shiv Bahadur Singh* v. *The State of Vindhya Pradesh* (1) where Art. 20(1) came to be considered. In that case it was held that "the prohibition contained in Art. 20 of the Constitution against convictions and subjections to penalty under *ex post facto* laws is not confined in its operation to post-Constitution laws but applies also to *ex post facto* laws passed before the Constitution in their application to pending proceedings." This Court further held that Art. 20 prohibits only conviction or sentence under an *ex post facto* law, and not the trial thereof. Such trial under a procedure different from what obtained at the time of the offence or by a court different from that which had competence at that time cannot *ipso facto* be held to be unconstitutional. Therefore, this case shows that it is only conviction and punishment as defined in s. 53 of the Indian Penal Code which are included within Art. 20(1) and a conviction under an *ex post facto* law or a punishment under an *ex post facto* law would be hit by Art. 20(1); but the provisions of s. 13(3) with which we are concerned in the present appeal have nothing to do with conviction or punishment and

(1) [1953] S.C.R. 1188.

therefore Art. 20(1) in our opinion can have no application to the orders passed under s. 13 (3).

Learned counsel for the respondent however drew our attention to the Criminal Law (1943 Amendment) Amending Ordinance, No. 7 of 1946, by which s. 10 of the 1943-Ordinance was further amended. It is not disputed that the Ordinance of 1946 by which s. 10 was further amended had no application to the trial of the respondent. This will clear from the judgment of the High Court in appeal filed by the respondent from his conviction. In that appeal the High Court held that s. 10, as amended by the 1946-Ordinance, could not apply to the case, which was pending before the tribunal on the date when the 1946-Ordinance became law. Therefore, the respondent cannot take advantage of the provisions of s. 10, as amended by the 1946-Ordinance and his case must be governed by s. 10 as it was after the amendment of 1945. It is clear that though s. 10 of the 1943-ordinance, as amended in 1945, provided for a minimum fine, it still left it open to the criminal court to pass any fine above the minimum. Further the fine as passed under s.10, as it was in 1945, was one fine and not divided into two parts as was the case under the Ordinance of 1946. Again, as the High Court pointed out in the appeal of the respondent from his conviction, "the liability to fine in addition to a sentence of imprisonment for an offence of criminal breach of trust by a public servant, or for an offence of criminal conspiracy to commit an offence under section 409 of the Indian Penal Code was thus not created for the first time by section 10 of the Ordinance. The liability was already there under the Indian Penal Code. But while under the Penal Code, it was discretionary for the court to pass a sentence of fine, in addition to a term of imprisonment, section 10 of the Ordinance (the 1943-Ordinance) made it compulsory for the court to pass a

1963

State of West Bengal v. S. K. Ghosh

Wanchoo J.

sentence of fine also—" and fixed the minimum. But it was always open to a Court of Session under the Penal Code to award any amount of fine and there was no statutory upper limit to such imposition except that it shall not be excessive (see s. 63 of the Indian Penal Code). Therefore, the fine of Rs. 45 lacs imposed in this case has nothing to do with the amount to be forfeited under s. 13(3) and simply because that fine was imposed after taking into account the amount embezzled would make no difference so far as s. 13(3) is concerned. That section clearly contemplates that the District Judge will first forfeit the attached properties upto the amount of money determined under s. 12 and thereafter if any further properties are left the fine imposed by the criminal court may be realised from those properties. The fact that the fine imposed by the criminal court may have taken into account under s. 10 of the 1943-Ordinance the amount of money procured by means of the offence makes no difference to the interpretation of s. 13(3). Therefore, the District Judge was right in holding that out of the properties attached he had first to forfeit properties up to the value of Rs. 30 lacs under s. 13(3) and thereafter if any properties are left, it will be open to Government to realise the fine of Rs. 45 lacs from such properties. The respondent therefore cannot take advantage of the amendment of s. 10 of the 1943-Ordinance by the 1946-Ordinance, and on the law as it stood in 1945 and as applicable to the respondent, the order of the District Judge is in our opinion correct.

We therefore allow the appeal and setting aside the order of the High court restore the order of the District Judge who will now take further steps in accordance with law.

Appeal allowed.