

JAGANNATH SONU PARKAR

v.

STATE OF MAHARASHTRA

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Criminal Trial—Special Judicial Magistrates—Notification constituting and conferring powers on—Change In venue of trial and appeal—If discriminatory—Notification dated December 29, 1961, of Bombay Government—Code of Criminal Procedure, 1898 (Act V of 1898), s. 14—Bombay Separation of Judicial and Executive Functions Act, 1951 (Bom. 23 of 1951)—Constitution of India, Art. 14.

Section 14 of the Code of Criminal Procedure, as amended by Bombay Act 23 of 1951, empowered the State Government to appoint a qualified person as a special Magistrate and to confer upon him powers conferrable upon a Judicial Magistrate in respect of a particular case or a particular class or classes of cases or in regard to cases generally in any local area. By a notification dated December 29, 1961, the Government appointed Mr. G to be a Special judicial Magistrate for the area comprising Greater Bombay and Ratnagiri District and conferred upon him all the powers of a Presidency Magistrate in respect of the trial of the Deogad Gold Seizure case. The petitioners, who are accused in the case, moved the Supreme Court for a writ of *certiorari* for quashing the notification on the ground that the notification and the amended s.14 infringed Art. 14 of the Constitution.

Held, that the amended s. 14 does not offend Art. 14 and is valid. There is substantially no difference between the powers conferrable by the unamended and by the amended s. 14.

M. K. Gopalan v. State of Madhya Pradesh, [1955] 1 S.C.R. 168, *relied on*.

Held, further that the notification constituting a Special Magistrate for the trial of the petitioners was not discriminatory. Amended s. 14 contemplates both a case which is pending and one which may be instituted after the date of the constitution of the Special Magistrate. The constitution of a Special Magistrate does not amount directly or indirectly to a transfer of any

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case. The fact that Mr. G may hold the trial at Bombay and not at Deogad while other similarly situated would be tried at Deogad may result in inconvenience to the petitioners but this could not sustain the plea of discrimination. The charge against the petitioners is in respect of conspiracy at Bombay, Deogad and other places and the petitioners could have been lawfully tried at Bombay. The notification constituted a Special Magistrate and conferred jurisdiction on him both over the place where the petitioners are alleged to have conspired and the place where the offences are alleged to have been actually committed. It did not amount to discrimination that from the judgment of the Special Magistrate an appeal would lie to the High Court while if the petitioners were tried by a Magistrate at Deogad, an appeal would lie to the Sessions Judge and then a revision would lie to the High Court. The difference of the venue results from the nature of the jurisdiction exercised by the Magistrate trying the case and not from any unequal dealing by the notification.

ORIGINAL JURISDICTION: Writ Petition No. 65 of 1962.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

A. S. R. Chari, R. K. Garg and K. R. Chandhri, for the petitioners.

N. S. Bindra and R. H. Dhebar, for the respondents.

1962. October 11. The Judgment of the Court was delivered by

SHAH, J.—Being in possession of evidence that the petitioners and others were concerned in the commission of offences of conspiracy to smuggle gold from foreign countries into the port of Deogad in the District of Ratnagiri, contrary to the provisions of the Sea Customs Act and the Foreign Exchange Regulation Act, P. N. Kalyankar, Sub-Inspector of Customs and Central Excise, arrested the petitioners and produced them before the Judicial Magistrate F Class,

Deogad. On December 29, 1961, the Government of Maharashtra promulgated a notification in exercise of the powers conferred by s. 14 of the Code of Criminal Procedure, 1898 (as amended by Bombay Act XXIII of 1951 in its application to the State of Maharashtra) appointing Mr. V. M. Gehani to be a Special Judicial Magistrate having jurisdiction over the area comprising Greater Bombay and Ratnagiri District, and conferred upon him all the powers of a Presidency Magistrate in respect of the trial in the case involving the seizure of approximately 49,990 tolas of foreign gold and known as the 'Deogad Gold Seizure Case.'

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On January 10, 1962, the Government of Maharashtra gave consent in writing as required by s. 196-A sub-section (2) of the Code of Criminal Procedure to the institution of criminal proceedings against the petitioners and eight others for offences punishable "under s. 120B of the Indian Penal Code, 1860 read with s. 167(81) of the Sea Customs Act, 1878 (as amended) and s. 120B of the Indian Penal Code read with s. 167(81) of the Sea Customs Act, 1878 (as amended) and s. 8(1) of the Foreign Exchange Regulation Act, 1947 (as amended) and s. 120B of the Indian Penal Code read s. 8(1) with and s. 23 of the Foreign Exchange Regulation Act, 1947 (as amended)". Thereafter H. R. Jokhi, Assistant Collector of Customs & Central Excise, Marine & Prevention Division, Collectorate of Central Excise Bombay instituted a complaint in the Court of the Special Magistrate appointed under the Notification dated December 29, 1961, against 16 persons (including the petitioners) alleging that they were parties to a conspiracy at Bombay, Janjira, Dabhol and Deogad (the latter three places being in the District of Ratnagiri) and other places to smuggle large quantities of gold into India, with a view to evade or attempt to evade payment of duty thereon and to evade or attempt to evade the prohibition and

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restrictions in force relating thereto during the period from about October 1959 to the end of April 1961 or thereabout in breach of the provisions of the Sea Customs Act, 1878 and the Foreign Exchange Regulation Act, 1947, and that the said persons had in pursuance of the "conspiracy and with continuing purpose and design" in or about the month of April 1961 acquired or were concerned in importing and acquiring possession, contrary to the Sea Customs Act and the Foreign Exchange Regulation Act, gold totalling 49,990 tolas valued at over Rs. 70,00,000/-. The petitioners applied to the Special Magistrate that they be tried at Deogad or at Ratangiri the headquarters of the District, for they were permanent residents of Deogad carrying on their respective occupations at Deogad, that they had already made their individual arrangements for their defence at Deogad and that it would be just and convenient that their trial should take place in the District of Ratnagiri. The Magistrate rejected their application. The petitioners then moved the High Court of Judicature at Bombay praying for an order that the case against the petitioners be transferred for trial to the court of some judicial Magistrate at Deogad or at Ratnagiri competent to try the case: in the alternative the petitioners prayed that the Special Magistrate Mr. Gehani be directed to try the said case either at Deogad or at Ratnagiri at which place all 'facilities' were available. The High Court dismissed their application. The petitioners then moved this Court under Art. 32 of the Constitution for a writ of *certiorari* or other appropriate writ or direction quashing the Notification dated December 29, 1961, issued by the Government of Maharashtra or in the alternative declaring s. 14 of the Code of Criminal Procedure as amended by the Bombay Act 23 of 1951 *ultra vires* and void and for an order that the case be heard at Deogad or at Ratnagiri in the State of Maharashtra by any Magistrate competent to enquire into or try the case. By this petition

the petitioners submitted that s. 14 of the Code of Criminal Procedure as amended by the Bombay Legislature by Act 23 of 1951 and the Notification dated December 29, 1961, issued by the Government of Maharashtra appointing Mr. Gehani as Special Judicial Magistrate and investing him with the powers of a Presidency Magistrate, infringed Art. 14 of the Constitution.

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Sub-section (1) of s. 14 of the Code as amended, in so far as it is material, provides :

“14. *Special Magistrates.*—(1) The State Government may, in consultation with the High Court, confer upon any person who holds or has held any judicial post under the Union or a State, or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the Official Gazette, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or classes of cases, or in regard to cases generally in any local area.”

By s. 6-A which was also added by Bombay Act 23 of 1951 in the Code, constitution of different classes of Judicial Magistrates was provided, and under that head were included Presidency Magistrates. The State Government was, under the amended Code, competent to appoint a person with the requisite qualifications a Special Magistrate and to confer upon him the powers conferred or conferrable under the Code on a Judicial Magistrate in respect of a particular case or a particular class or classes of cases or in regard to cases generally in any local area. Section 14 of the Code of Criminal Procedure as originally enacted prohibited the

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appointment of a Special Magistrate to function in any local area within the Presidency towns, but that limitation upon the power of the State Government has, by the amendment made by Bombay Act 23 of 1951, been removed, and it is now open to the Government of Maharashtra to constitute a Special Judicial Magistrate with power to function in any local area including Greater Bombay. The expression 'local area' includes any part of a State, and it may cover more than one District. The Government of Maharashtra therefore could appoint Mr. Gehani a Special Judicial Magistrate, having jurisdiction over Greater Bombay and the District of Ratnagiri and could confer upon him the powers of a Presidency Magistrate in respect of the trial of the case known as the Deogad Gold Seizure Case.

In *M. K. Gopalan v. The State of Madhya Pradesh* ⁽¹⁾ the validity of s. 14 of the Code of Criminal Procedure 1898 (V of 1898) was challenged on the plea that it was void because it infringed the fundamental right of equality before the law guaranteed by Art. 14 of the Constitution. This Court held that a law vesting discretion in an authority to appoint a Special Magistrate under s. 14 of the Code of Criminal Procedure to try cases entirely under the normal procedure cannot be regarded as discriminatory and is not hit by Art. 14 of the Constitution. There is substantially no difference between the powers conferrable by s. 14 of the Code as originally enacted and s. 14 as amended by Bombay Act 23 of 1951. Apart from certain procedural matters such as consultation with the High Court before entrustment of the said powers, the only difference made by the Bombay Act is that a Special Magistrate may be appointed even in respect of a Presidency town. Section 14 contemplates that a Special Magistrate may be entrusted with powers which are conferrable by or under the Code on a Judicial Magistrate. A Presidency Magistrate being a Judicial Magistrate under

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s. 6-A as added by the Bombay Legislature, powers conferrable on a Presidency Magistrate may lawfully be conferred upon a Special Judicial Magistrate who has been appointed for the Presidency town with or without any additional locality. Section 20 of the Code of Criminal Procedure provides that every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues. There is, however, nothing in this section which detracts from the authority which may be exercised by the State Government under s. 14 to appoint a Special Judicial Magistrate in respect of a Presidency Town nor is there any prohibition against the investiture of powers of a Presidency Magistrate upon such Magistrate in respect of a locality outside the Presidency town so long as he has jurisdiction also over a Presidency Town. On the principle of *M. K. Gopalan's case* ⁽¹⁾, s. 14 of the Code of Criminal Procedure, as amended, cannot be regarded as infringing Art. 14 of the Constitution.

Validity of the Notification issued by the Government of Maharashtra directing the trial by Mr. Gehani who had jurisdiction both over the Greater Bombay area and the District of Ratnagiri may now be considered. Relying upon the judgment of this Court in *Bidi Supply Company v. The Union of India* ⁽²⁾, it was submitted that the impugned Notification was unauthorised. That was a case where an assessee who was ordinarily assessed to income-tax by Officers within the town of Calcutta was informed by letter dated January 25, 1955, in pursuance of s. 5 (7-A) of the Income-tax Act, 1922 (XI of 1922) as amended by Act XL of 1940 the assessment records of the assessee were transferred from the Income-tax Officer, Calcutta to the Income-

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tax Officer, Special Circle, Ranchi in the State of Bihar and that he do correspond in future regarding the assessment proceedings with that Income-tax officer. The assessee had received no previous notice of the intention of the Income-tax authorities to transfer the assessment proceedings from Calcutta to Ranchi, nor had he any opportunity to make any representation against the said decision. The assessee challenged by a petition to this Court the validity of the order of transfer contending that it violated the equal protection clause of the Constitution. Section 64 of the Income-tax Act provides for the normal place of assessment of assesses. By sub-section (1) it provides that where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate, or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate. In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides. By sub-section (5) of s. 64 it is provided, *inter alia*, that the provisions of sub-s. (1) and (2) shall not apply where by any direction given or any distribution or allocation of work made by the Commissioner of Income-tax under sub-s. (5) of section 5, or in consequence of any transfer made under sub-s. (7A) of s. 5, a particular Income-tax Officer has been charged with the function of assessing that assessee. This Court held in *the Bidi Supply Company's case* (1) that sub-s. 5 (7A) of s. 5 as it stood at the material time contemplated transfer of a pending case for a particular year. It was observed that "the provision that such a transfer may be made 'at any stage of the proceedings' obviously postulates proceedings actually pending, and 'stage' refers to a point in between the commencement and the termination of those proceedings. Further the provision that such transfer shall not render necessary

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the reissue of notice already issued by the Income-tax Officer from whom the case is transferred quite clearly indicates that the transfer contemplated by the sub-section is the transfer of a particular case actually pending before an income-tax Officer of one place to the Income-tax Officer of another place." The decision of the Court turned on the meaning of the word 'case' used in sub-s. 5(7A) as enacted by the Income-tax Act Amendment Act, 1940 and this Court held that the expression 'case' meant an assessment case of a particular year. After this decision the Legislature intervened and by the Income-tax Amendment Act 26 of 1956 it added an explanation that the word 'case' in relation to any person whose name is specified in the order of transfer means all proceedings under the Income-tax Act in respect of any year which may be pending on the date of the transfer, and includes all proceedings under this Act which may be commenced after the date of the transfer in respect of any year. The principle of the case in *Bidi Supply Company* ⁽¹⁾ has no relevance in considering the validity of the Notification issued under s. 14 of the Code of Criminal Procedure as amended by the Bombay Act 23 of 1951. The assessee in *the Bidi Supply Company's case* ⁽¹⁾ obtained the benefit of a lacuna in the provisions of the Indian Income-tax Act, there being apart from a provision for transfer of a pending case, no general power to transfer future assessment proceedings. A Notification under s. 14 of the Code of Criminal Procedure is an order constituting a Special Magistrate with jurisdiction over a certain local area and with powers which are normally exercisable by a Judicial Magistrate. The constitution of a Special Magistrate does not amount either directly or indirectly to a transfer of any 'case': nor are there any such considerations present in that order as were pointed out by this Court in *the Bidi Supply Company's case* ⁽¹⁾ relating to the meaning of the word 'case' used in the Income-tax Act, as would compel us to

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hold that a 'case' within the meaning of s. 14 means a pending case only. Under s. 14 the State Government is competent to appoint a special Judicial Magistrate in respect of 'any particular case or a particular class or classes of cases or in regard to cases generally in any local area'. The words used in s. 14 must mean a case which is either pending or which may be instituted after the date of the constitution of the Special Magistrate.

It was then submitted that the Notification appointing a Special Magistrate, for trial of the intended complaint against the petitioners, having regard to the circumstances of this case, and conferring upon him the powers of a Presidency Magistrate operated discriminatively against the petitioners, for, it was said, other persons similarly situated as the petitioners were ordinarily liable to be tried by the Magistrate within whose jurisdiction the offence was alleged to be committed, and could not be required to go to a distance of more than three hundred miles from their normal place of residence to defend themselves. It was urged that Mr. Gehani being a Presidency Magistrate for the trial of the case against the petitioners and others he would be sitting in Bombay where he normally functions, and it would result in great inconvenience to the petitioners to be called upon to attend the sittings of the Court in Bombay specially when there are Magistrates available in Deogad who are competent to hear and decide the case against the petitioners. By the Notification Mr. Gehani has been invested with the powers over Greater Bombay and Ratnagiri District. His jurisdiction therefore extends over the whole of the Greater Bombay area and the District of Ratnagiri. There is no provision in the Code of Criminal Procedure which enjoins upon a Magistrate the duty to hold his sitting in any particular place. Under s. 9(2) of the Code of Criminal Procedure the State Government is required to direct at what place or

places the Court of Session shall ordinarily hold its sitting, but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein. There is, however, no similar provision in respect of the sittings to be held by Magistrates. The Special Judicial Magistrate Mr. Gehani having the power therefore to sit at any place within his local area as defined by the terms of his appointment, this Court cannot speculate as to what place Mr. Gehani will function in the exercise of his jurisdiction. The question is one for his discretion. It may be remembered that the petitioners had moved the High Court of Bombay asking for the transfer of the case from the Court of Mr. Gehani to any Magistrate functioning in the District of Ratnagiri, because of the alleged ground of inconvenience, and that application was rejected by the High Court. It cannot be now urged by the petitioners that the trial at Bombay is inconvenient to them and may prejudice a fair trial. It is true that under the Code of Criminal Procedure "every offence shall ordinarily be enquired into and tried by a Magistrate of the local area in whose jurisdiction it was committed", but the charge in this case against the accused is in respect of a conspiracy at Bombay, Deogad, Dabhol, Janjira and other places to commit offences under the Sea Customs Act and the Foreign Exchange Regulation Act and also of commission in pursuance of the conspiracy of substantive offences under those Acts. It is the prosecution case that importation of gold contrary to law took place in the area of Deogad port whereas the offenders conspired at different places including Bombay. By designating a Special Magistrate who would have jurisdiction both over the place where the offenders are alleged to have conspired and the place where offences were

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actually committed, the State has taken care to see that the trial of the case is held by a Magistrate who has territorial jurisdiction in both areas. It is not suggested that the Notification was issued for any ulterior purpose. The State has having regard to the special circumstances constituted a Special Magistrate, as it was entitled to, and the Notification does and even suggest the place where the Magistrate is to hold his sittings. The ground of inconvenience in support of the plea of discrimination cannot therefore be sustained.

It is urged that against the order of conviction which may be passed by Mr. Gehani who is invested with the powers of a Presidency Magistrate an appeal would lie only to the High Court whereas if the case were tried before a Magistrate of Ratnagiri District an appeal would lie to the Court of Session and a further revision application to the High Court. This it was pointed out made a substantial difference of procedure between persons similarly situated. It is true that if the complaint was filed in the Court of Magistrate having jurisdiction over Deogad alone, as it could lawfully be filed, an appeal would, against an order of conviction, lie to the Court of Session, Ratnagiri and an application in the exercise of revisional jurisdiction to the High Court from the order of the Court of Session. But it is difficult to hold that this amounts to any discrimination. Apart from the fact that the trial by a special Magistrate and an appeal directly to the High Court against the order of the Magistrate may be regarded normally as more advantageous to the accused persons, the distinction between Courts to which the appeal may lie arises out of the constitution of the Special Magistrate and not any special procedure evolved by the Notification. On the allegation made in the complaint, the complainant could lawfully institute proceedings in the Court of a Presidency Magistrate at Bombay or of any competent Magistrate in the District of Ratnagiri.

Such Magistrates would by virtue of s. 182 of the Code of Criminal Procedure entertain the complaint and appeals from orders of conviction recorded by them would lie to the High Court, or the Court of Session, according as the Magistrate, trying the case was a Presidency Magistrate, or a Judicial Magistrate of the First Class. The difference of the venue results from the nature of the jurisdiction exercised by the Magistrate trying the case, and not from any unequal dealing by the executive constituting the Courts of the Magistrates. It is because powers exercisable by a Presidency Magistrate are conferred upon the Special Magistrate, as they may lawfully be conferred, that the incidental right of appeal which is prescribed by the statute is exercisable in the High Court, and not in the Court of Session. We do not think that there is any discrimination practised by the Notification constituting a Special Magistrate for the trial of the case against the petitioners and others.

The petition therefore fails and is dismissed.

Petition dismissed.

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