

A

P. PHILIP

v.

THE DIRECTOR OF ENFORCEMENT, NEW DELHI &
ANOTHER

March 3, 1976

B

[R. S. SARKARIA AND N. L. UNTWALIA, JJ.]

Interpretation of statutes—Saving provision—Words and Phrases—Meaning of Petition—Criminal Procedure Code 1973 Sec. 484(2)—(a) Revision application pending before Sessions Court under Cr. P. Code 1898, whether petition.

C

In February, 1971, the Director of Enforcement made a complaint against 4 accused for violation of certain provisions of the Foreign Exchange Regulations Act, read with section 120-B of the Indian Penal Code.

D

The appellant herein who was accused No. 2 made an application before the Trial Court raising two preliminary objections to the maintainability of the complaint and prayed for its dismissal. The Trial Court by its judgment dated 5-9-1973 dismissed the application holding that the points raised should be considered after recording the evidence. The appellant filed a Revision Application to the Sessions Court under section 435 of the Code of Cr. Procedure 1898, which was dismissed in August, 1974. The appellant filed a Revision Application to the High Court which was dismissed by the High Court on the ground that it was not maintainable in view of section 399(3) of the new Code.

In an appeal by Special Leave, the appellant contended :

E

At the time when the Revision petition was filed before the Sessions Judge the old Code was in force and in view of section 484 of the new Code the application had to be disposed of in accordance with the old Code. The respondents on the other hand, contended that the word 'application' in section 484(2) of the new Code is a word of limited import and that it would include only those applications which could be finally disposed of by the Sessions Judge.

F

HELD : The word 'application' in the saving provision immediately follows the term 'appeal'. It, therefore, takes some colour from the collection of words in which it occurs. It is synonymous with the term 'petition' which means a written statement of material facts, requesting the Court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognised by law. There is no doubt that the word 'application' as used in clause (a) of section 484 of the new Code will take in a revision application made under section 435 of the Old Code. The Revision Application made by the appellant was pending before the Sessions Judge when the new Code came into force. Therefore, it was required to be disposed of in accordance with the provisions of the Old Code. [534D—F, G—H]

G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 76 of 1976.

T. C. Raghavan and N. Sudhakaran for the appellant.

Debabrata Mookerjee and R. N. Sachthey for respondent No. 1.

H

The Judgment of the Court was delivered by

SARKARIA, J. This appeal by special leave is directed against an order, dated July 1, 1975, of the High Court of Kerala, dismissing

the Criminal Revision Petition filed by the appellant. It raises questions with regard to the scope and interpretation, *inter alia*, of ss. 399 (3) and 484(2) (a) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the New Code). The facts are these :

On February 2, 1971 the Director of Enforcement, New Delhi made a complaint against four accused persons. alleging the commission of offences under s. 120-B, Penal Code and s. 5(1) (aa) and 5(1) (c) of the Foreign Exchange Regulation Act, 1947 (for short, called the Act) in the Court of the District Magistrate, Ernakulam.

The appellant herein was accused No. 2 in that complaint. By an application he raised two objections to the maintainability of the complaint and prayed for its dismissal. First, the opportunity as required under the proviso to s. 23(3) of the Act was not given to the accused for showing that he had permission from the Reserve Bank of India for doing the alleged acts. Second, that the complainant did not comply with the conditions in the proviso to s. 23D (1) of the Act, in as much as there was on additional material before him to come to the conclusion that the penalty which he is empowered to impose under s. 23, would not be adequate and that consequently, it was necessary to file a complaint in Court.

By an order dated September 5, 1973, the trial court dismissed the application holding *inter alia* "that the points raised here will be considered after recording the evidence". On the same day, against this order dated September 5, 1973, accused No. 2 (P. Philip) filed Cr. Revision Petition No. 27 of 1973 under s. 435 of the Code of Criminal Procedure, 1898 (hereinafter called the Old Code) before the Sessions Judge, Ernakulam, who dismissed the same by an order dated August 6, 1974. Aggrieved by the order of the Sessions Judge, P. Philip preferred Cr. Revision Petition No. 393 of 1974 to the High Court. This Revision was heard by a Division Bench along with two other Revisions (Cr. Rev. Petns. Nos. 409 and 411 of 1974) and dismissed, without going into the merits, on the ground that it was not maintainable in view of s. 399(3) of the New Code.

Mr. Raghavan, learned Counsel for the appellant contends that the order under appeal is manifestly erroneous because at the time when the revision petition was filed before the Sessions Judge, the old Code was in force, and in view of s. 484 of the New Code, it had to be disposed of in accordance with the old Code.

As against this, Mr. D. Mukherji submits that the word "application" in s. 484(2) (a) of the Code of 1973 is a word of limited import. According to the Counsel only those applications which could be finally disposed of by the Sessions Judge would be covered by this word. Since the revision application, in the instant case—proceeds the argument—was one for reference to the High Court under s. 438 of the Code of 1878, and could not be finally disposed of by the Sessions Judge at his level, it would not be an "application" within the contemplation of s. 484(2) (a) of the Code of 1973. It is pointed out that procedural rights are not vested rights, that whereas a right of

A appeal is a substantive right, the procedural facility to move in revision does not involve such a right. On these premises it is maintained that the saving clause in s. 484 should be very strictly construed, with the result that the Code of Criminal Procedure, 1973 will govern all revisions which were pending on April 1, 1974 when it came into force.

B We are unable to accept the interpretation of s. 484(2) (a) of the new Code suggested by the learned Counsel for the respondents. The language of this provision is clear. Its material part runs as under.

“(1) The Code of Cr. Procedure 1898 (V of 1898) is hereby repealed.

C (2) Notwithstanding such repeal :—

(a) If, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, contained, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898) as in force immediately before such commencement.....as if this Code has not come into fore.....”

It will be seen that the word “application” in the saving provision contained in clause (a) of sub-section (2) of s. 484 immediately follows the term “appeal”. It therefore takes some colour from the collocation of words in which it occurs. It is synonymous with the term “petition” which means a written statement of material facts, requesting the court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognised by law. Thus considered there can be no doubt that the word “application” as used in clause (a) of s. 484 of the Code of 1973 will take in a revision application made under s. 435 of the old Code. Such a revision application does not cease to be an “application” within the purview of the aforesaid clause (a) merely because in the event of the application being allowed, the Sessions Judge was required to make a reference to the High Court under s. 438. Whether such an application is granted or dismissed by the Sessions Judge, he finally disposes of the matter so far as his court is concerned. May be that a purely interlocutory application in a pending action, which by itself is not an independent mode of seeking redress recognised by law is not covered by the word ‘application’ as used in the aforesaid clause (a). But it is not necessary to express any final opinion on that point because a revision application of the kind before us is not by any recokning, such an interlocutory application.

11 In the present case, the revision application made by P. Philip was pending before the Sessions Judge when the New Code came into force. In view of s. 484(2) (a) of the New Code, this revision was required to be disposed of in accordance with the provisions of the old Code.

The above being the position, the learned Judges of the High Court were clearly in error in holding that in view of s. 399(3) of the New Code, the appellant was not competent to maintain a revision in the High Court against the order dated August 6, 1974 of the Sessions Judge. A

For these reasons we allow this appeal, set aside the order of the High Court and send the appellant's revision petition (No. 393 of 1974) back of it for disposal with utmost expedition in accordance with law. B

Appeal allowed and R. P. 393/74 remitted.