

A

STATE OF MYSORE

FAKRUSAB BABUSAB KARANANDI

December 17, 1976 and March 7, 1977

v.

B

[P. N. BHAGWATI, A. C. GUPTA AND JASWANT SINGH, J.J.]

Cognizance of an offence under s. 60(b) of the Mysore Excise Act, 1965 for an offence under s. 34 thereof—Mysore Ordinance No. 4 of 1970 amending s. 60(b) and introducing a new s. 60B; Mysore Amendment Act No. 1 of 1971—Effect of—Competency of the judicial magistrate in returning the complaint filed by a Police Officer and refusing to take cognizance of the offence under s. 60(b) as amended by Mysore Ordinance 4 of 1970 which represented the law as it then stood.

C

The Mysore Ordinance 4 of 1970 which came into effect from 7th August 1970 omitted the words "or police" in s. 60(b) of the Mysore Excise Act, 1965 which provided for taking of cognizance by the Magistrate "on his own knowledge or suspicion or on the complaint or report of an excise or police officer". It also inserted a new s. 60B whereby offence under s. 34 was made cognizable and the provisions of the Criminal Procedure Code 1898 with respect to cognizable offences made applicable to such offence. The earlier position which obtained prior to the said Ordinance was restored by the Mysore Amendment Act No. 1 of 1971 which received the President's assent on 20th January 1971 but which was deemed to have come into force on 7th August 1970. Section 23 of the 1971 Act provided that the amendment to s. 60 made by the Ordinance of 1970 shall be deemed never to have been made and the provisions of s. 60 as they stood prior to the said amendment shall be deemed to continue to be in force.

D

E

The judicial Magistrate, Badami, on a complaint filed by a police officer refused to take cognizance of an offence for the illegal possession of 4½ tolas of ganja under section 34 of the Mysore Excise Act 1965 in view of the provisions of s. 60(b) *ibid* which represented the law as it then stood. The revision application before the Sessions Court was dismissed on 15-1-1971. A further revision filed before the High Court on 14-6-1971 was also dismissed *in limine*. However after the dismissal of the revision by the High Court on a fresh complaint filed by the police in respect of the same offence as per the amending Act I of 1971, the judicial Magistrate took cognizance of the offence, convicted the accused and sentenced him to simple imprisonment for three months and also to pay a fine of Rs. 100/-. Notwithstanding the conviction the State pressed its appeal by special leave against the judgment of the High Court dismissing the revision.

F

Allowing the appeal, the Court,

HELD: (1) The High Court as well as the court of Sessions were clearly in error in affirming the order made by the learned judicial Magistrate. [547A]

G

(2) The charge sheet was validly filed before the learned judicial Magistrate by the Police and the Judicial Magistrate was entitled to take cognizance of the offence on the basis of such charge sheet. [547A-B]

(3) The result of the enactment of s. 23 by Mysore Act I of 1971 was that the amendment made in s. 60 clause (b) by deleting the words "or police" by Mysore Ordinance No. 4 of 1970 as obliterated and wiped out with retrospective effect so that in the eye of the law it was never made at all. [546F]

H

(4) It is now well-settled law that when a legal fiction is enacted by the Legislature the court should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect to it. The clear effect of the legal fiction enacted in s. 23 of Mysore Act No. 1 of 1971 was that the

words "or police" were always there in cl. (b) of s. 60 even at the time when the charge sheet was presented before the learned Magistrate and if that be so, the learned Magistrate was in error in refusing to take cognizance of the complaint on the ground that the charge sheet was not filed by an excise officer but by the police. [546G-H, 547A]

M. K. Venkatachalam I.T.O. & Anr. v. Bombay. Dyeing & Mfg. Co. Ltd. [1959] S.C.R. 703, applied.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 16 of 1972.

Appeal by Special Leave from the Judgment and Order dated 14-6-1971 of the Mysore High Court in Criminal Revision Petition No. 229 of 1971.

N. Nettar, for the Appellant.

K. R. Nataraja, for the Respondent.

The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal by special leave raises a short but interesting question of law. The facts giving rise to the appeal are few and briefly stated as follows :

On 1st October, 1970 the police filed a chargesheet against the respondent in the court of the Judicial Magistrate, First Class, Badami, charging him with having committed an offence punishable under Section 34 of the Mysore Excise Act, 1965. The learned Judicial Magistrate by an order dated 3rd October, 1970 refused to take cognizance of the offence on this charge-sheet, since it was filed by the Police and not by an Excise official. The view taken by the learned Magistrate was that under Section 60 clause (b) as amended by Mysore Ordinance No. 4 of 1970 which represented the law as it then stood, it was not competent to him to take cognizance of an offence punishable under Section 34, except on the complaint or report of an Excise Officer and since the charge-sheet in the present case was filed by the police and not by an Excise Officer, he was precluded from taking cognizance of the offence. The learned Judicial Magistrate on this view directed that the charge-sheet be returned to the police and ordered release of the respondent. The State thereupon preferred a Revision Application to the Sessions Court, Bijapur. The learned Sessions Judge agreed with the view taken by the Judicial Magistrate and holding that the Judicial Magistrate was right in refusing to take cognizance of the offence on the charge-sheet filed by the police, rejected the Revision Application summarily. This led to the filing of a Revision Application by the State before the High Court. The High Court too summarily rejected the Revision Application and hence the State preferred the present appeal with special leave obtained from this Court.

Now in order to appreciate the contention that has been raised on behalf of the State in support of the appeal, it is necessary to notice the various changes which Section 60 of the Principal Act went

A through from time to time during the relevant period. Section 60 clause (b) as it originally stood provided that no Magistrate shall take cognizance of an offence punishable under any Section of the Act other than Section 35 or 38 or 46 or 48 "except on his own knowledge or suspicion or on the complaint or report of an Excise or Police Officer". But before the charge-sheet in the present case came to be filed by the Police, an amendment was made in Section 60 clause B (b) by Mysore Ordinance No. 4 of 1970 which came into force on 7th August 1970. Section 18 of this amending ordinance omitted the words "or police" in clause (b) of Section 60. The result was that cognizance of an offence punishable under Section 34 could not be taken by a Magistrate "except on his own knowledge or suspicion or on the complaint or report of an excise officer". Section 60 (B) C was also added at the same time and by this new Section *inter-alia* offence under Section 34 was made cognizable and the provisions of the Code of Criminal Procedure 1898 with respect to cognizable offences were made applicable to such offence. It was on the basis of the amended clause (b) Section 60 that the learned Judicial Magistrate as well as the Sessions Judge held that cognizance of the offence under Section 34 charged against the respondent could not be taken, D since the charge-sheet was filed by the police and not by an excise officer. The learned counsel appearing on behalf of the State contended before us that even on the language of the amended clause (b) of Section 60 without the words "or police", it was competent to the Judicial Magistrate by reason of the enactment of Section 60(B) E to take cognizance of the offence, but it is necessary for us to examine this contention since we find that before the Revision Application came to be heard by the High Court, a further amendment was made in clause (b) of Section 60 by Mysore Act 1 of 1971 and that restored the position which obtained prior to the amendment made by Mysore Ordinance No. 4 of 1970. Mysore Act No. 1 of 1971 was deemed to have come into force on 7th August 1970 and Section 23 of this Act provided *inter-alia* that the amendment to Section 60 made by Mysore Ordinance No. 4 of 1971 shall be deemed never to have F been made and the provisions of Section 60 as they stood prior to the said amendment shall be deemed to continue to be in force. The result of the enactment of this provision by Mysore Act 1 of 1971 was that the amendment made in Section 60 clause (b) by deleting the words "or police" by Mysore Ordinance 4 of 1970, was obliterated and wiped out with retrospective effect so that in the eye of the law it was never made at all. It is now settled law that when a legal G fiction is enacted by the Legislature, the Court should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect in it. We must, therefore, proceed on the basis that the words "or police" were always there in clause (b) of Section 60, even at the time when the learned Judicial Magistrate made his order dated 3rd October, 1970 refusing to take cognizance of the offence and returning the charge-sheet to the police. If these H words were in clause (b) of Section 60 at that time, then obviously the learned Magistrate was in error in refusing to take cognizance of the complaint on the ground that the charge-sheet was not filed by an excise officer but by the police. That is the clear effect of the legal

fiction enacted in Section 23 of Mysore Act 1 of 1971 and that this would be so is amply supported by the decision of this Court in *M. K. Venkatachalam I.T.O. and Another v. Bombay Dyeing and Mfg. Co. Ltd.*⁽¹⁾ The High Court as well as the Court of Sessions, were therefore, clearly in error in affirming the order made by the learned Judicial Magistrate and it must be held that the charge-sheet was validly filed before the learned Judicial Magistrate by the police and the Judicial Magistrate was entitled to take cognizance of the offence on the basis of such charge-sheet.

We accordingly allow the appeal, set aside the orders made by the learned Judicial Magistrate, Sessions Judge and the High Court and remand the case to the Judicial Magistrate with a direction to him to deal with the charge-sheet filed by the police in accordance with law in the light of the observations contained in this judgment.

ORDER

After we delivered the judgment in this case, our attention was drawn to the fact that subsequent to the decision of the High Court, a fresh charge-sheet for the same offence was filed by the police against the respondent and in view of the amendment made in section 60, clause (b) by Mysore Act I of 1971, the learned Judicial Magistrate took cognizance of the offence and tried the respondent and ultimately as a result of the trial, the respondent was convicted and sentenced to imprisonment and in fact by the time the appeal came to be heard by us, he had already served out his sentence of imprisonment. In view of this fact, it is unnecessary to remand the case to the learned Judicial Magistrate for taking cognizance of the offence. We accordingly direct that the last part of the final order made by us which commences with the words "and remand the case" be deleted.

S.R.

Appeal allowed.

¹ (1) [1959] S.C.R. 703.