Basappa Vs. the State

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Court : Karnataka

Decided On : Apr-18-1958

Reported in : AIR1959Kant1; AIR1959Mys1; ILR1958KAR288; (1958)36MysLJ580

Judge : S.R. Das Gupta, C.J., N. Sreenivasa Rau and ;A.R. Somanatha Iyer, JJ.

Acts : States Reorganisation Act, 1956 - Sections 7, 49, 49(2), 50, 50(1), 54 and 119; Code of Civil Procedure (CPC), 1908; Indian Penal Code (IPC), 1860 - Sections 34, 114, 147, 148, 193, 211 and 302; Evidence Act - Sections 132; Mysore Chief Court Regulation, 1884; Mysore Chief Court Act, 1930; Constitution of India (Amendment) Act

Appeal No. : Criminal Appeal No. 81 of 1956

Appellant : Basappa

Respondent : The State

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : N.P. Moganna, Adv.

Judgement :

Hombe Gowda, J.

1. The appellant Basappa has been convicted of an offence under Section 211 of the Indian Penal Code for having falsely charged Basappa, son of Muruliah and nine others of Doddametikurke village in Arsikere Taluk of having committed the murder of one Basappa of the same village on the evening of 1-10-1952, by the learned Sessions Judge, Mysore Division in Hassan Sessions Case No. 4 of 1956 and sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs. 100/- and in default to suffer simple imprisonment for a further period of one month.

2. The relevant facts are as follows One Basappa, son of Maruliah. a resident of Doddame-tikurke village in Arsikere Taluk was found murdered in front of Anjaneya Temple of the village at about 10 P.M. on 1-10-1952. The appellant Basappa appeared before the Patel of the village and lodged information to the effect that Basappa, son of Maruliah and nine others of the village, who bore illwill against the deceased made a murderous attack on Basappa with sharp instruments, while he was returning from his field in front of the Anjenaya Temple of the village.

The appellant gave the Patel to understand that the attack on Basappa was made in his presence and that he escaped from the place when the attackers began to chase him also. The Pate! reduced the information into writing and obtained the signature of the appellant to it. He then sent the report to the Sub-Inspector of Police of Arsikere village through the present appellant on the very same night. The Sub-Inspector of Police recorded the further statement of the appellant in the Police Station and registered a case for offences under Sections 302, 147, 148, 34 and 114 of the Indian Penal Cede against Basappa and nine others of Doddametikurke village.

After necessary investigation a charge-sheet for offences under Sections 302, 147 and 148 read with Sections 34 and 114 of the Indian Penal Code was placed against the ten accused persons named by the appellant in his report to the Patel and the Sub-Inspector of Police in Criminal Case No. 472 of 1952-55 on the file of the First Class Magistrate, Hassan. The appellant was cited as one of the witnesses in the charge-sheet. While the appellant was examined as the first

witness for the prosecution in the Magistrate's Court, he gave evidence to the effect that the information that he had conveyed to the Patel and the Sub-Inspector of Police that deceased Basappa was attacked by the accused in his presence was not true.

As a result of the evidence of the appellant the accused were discharged by the learned Magistrate, Then the Inspector of Police made an application to the Magistrate for permission to prosecute the appellant under Sections 193 and 211 of the Indian Penal Code for having lodged a false complaint against Basappa and others. After hearing the objections of the appellant, the learned Magistrate allowed the application of the Inspector of Police for taking action against the appellant. Then the Inspector of Police placed a charge-sheet against the appellant for offences punishable under Sections 193 and 211 of the Indian Penal Code in respect of the false information lodged by him with the Patel and the Police.

The District Magistrate of Hassan, who conducted the enquiry, framed a charge for an offence under Section 211 of the Indian Penal Code against the appellant and committed him to take his trial before the Court of Session, Mysore Division. It is in respect of this charge that the appellant was tried before the Sessions Judge, Mysore Division in Hassan Session Case No. 4 of 1956. The learned Sessions Judge, who recorded the evidence of the prosecution witnesses and the one witness examined on behalf of the appellant held that the appellant was guilty of an offence under Section 211 of the Indian Penal Code for having falsely implicated Basappa and nine others who were accused in C.C. No. 472 of 1952-53 on the file of the First Class Magistrate, Hassan and convicted and sentenced the appellant as stated above. It is the legality and correctness of this decision that is challenged in this appeal.

3. It cannot be, and it is not disputed that Exhibit P-2, the report sent by the Patel of Dodda-metikurke village was based on the information laid before the Patel by the present appellant; that Exhibit P-2(a) is the further statement of the appellant recorded by the Police Officer at the station on 2-10-1952. It is proved by the evidence of P.W. 1 Sri N.S. Krishnamurthi, the then First Class Magistrate at

Hassan that Exhibit P-5 is the copy of the evidence given by the present, appellant on oath in Criminal Case No. 472 of 1952-53 on 9-12-1952.

4. It was argued for the appellant that the learned Sessions Judge was entirely wrong in having allowed the prosecution to rely upon the previous deposition of the appellant in Criminal Case No. 472 of 1952-53 on the file of the First Class Magistrate, Hassan and to have allowed the same to be marked as an exhibit in the case to prove that the information lodged by the appellant to the Police was false. It is argued that if Exhibit P-5, the previous statement of the appellant in the Committal Court, is excluded there is absolutely no evidence on record to hold that the information laid by the appellant as recorded in Exhibit P-2 and Exhibit P-2(a) is false and that the appellant had laid the information with the intention of causing harm or injury to Basappa and others who were accused in Criminal Case No. 472 of 1952-53 on the file of the First Class Magistrate, Hassan.

Reliance is placed on Sundaramma v. Government of Mysore, 43 Mys HCR 675 (A), wherein a Division Bench of this Court held that when a witness is called upon to give evidence for the prosecution and gives evidence he is protected by the proviso to Section 132 of the Evidence Act in respect of what he deposes in the ordinary course of his examination and that the said evidence cannot be used against the witness subsequently when he figures as an accused person. The correctness of this decision has not been questioned till now and if that is the right view the appellant cannot be convicted on the basis that the version given by him in Exhibit P-5 being directly contrary to what he had stated' in Exhibit P-2 and Exhibit P-2(a), the later information is false.

The learned Advocate-General while admitting that the decision referred to above Supports the contention of the learned counsel for the appellant, contends that this decision cannot bind this Court as it is now constituted from 1-11-1956. It is urged' that the pre-constitution High Court which succeeded the Chief Court of Mysore cannot be considered to be a Court of co-ordinate jurisdiction and that since the post-constitution High Court was abolished from 1-11-1956 as a result of the Reorganisation of the States and this High Court as an independent High Court was constituted and came into existence on and from 1-11-1956, the decisions of

the previous Chief Court of Mysore and the previous High Courts cannot bind this High Court. There is considerable force in this argument.

As a result of the Reorganisation of the States several areas which were under the jurisdiction of the different High Courts have been brought within the jurisdiction of the new High Court of Mysore with the result that the regions governed by different judge-made laws are now brought together for the first lime and a new Court is administering justice over the new jurisdiction. In the above circumstances it cannot reasonably be argued that this Court is bound by the precedents established in one or other of the earlier jurisdictions without making an invidious distinction and without coming in conflict with one set of precedents or other.

It is interesting to notice that the decision of this High Court in 43 Mys HCR 675 (A) referred to above is in direct conflict with the Full Bench decisions of the High Courts of Bombay and Madras and therefore, by following the decision we are sure to come in conflict with the decisions of those two High Courts. It is, therefore, reasonable to think that the new High Court cannot with any propriety apply the precedents of any of those Courts and in me circumstances the Court has to help it-'self by starting with a clean slate. The learned Advocate-General submitted that since the question about the binding nature of the decisions of the former Chief Court of Mysore and the High Court of Mysore is likely to arise very often it is desirable that the question is dealt with by a Full Bench arid a final and authoritative decision is pronounced. We feel that the prayer ot the learned Advocate-General is quite reasonable. We, therefore, refer the following question for a decision to a Full Bench

'Whether and to what extent this High Court is bound by the decisions of the Chief Court of Mysore and the High Court of Mysore delivered prior to 1-11-1956?'

The records of this case may be placed before His Lordship, the Hon'ble Chief Justice for constituting a Full Bench and referring the matter for decision.

S.R. Das Gupta, C.J.

5. The question referred to this Full Bench for decision is :

'Whether and to what extent this High Court is bound by the decisions of the Chief Court of Mysore and the High Court of Mysore delivered prior to 1-11-1956?'

6. In the year 1881, the Court of the Judicial Commissioner, who was then the head of the judicial administration in the territories of Mysore, wad designated as the Chief Court of Mysore, and by the Mysore Chief Court Regulation, 1884, its constitution was statutorily amended with effect from 23-5-1884. By the provisions of Mysore Act XII of '1930 this Chief Court became designated as the High Court of Mysore which will be referred to by me as the High Court of the former State of Mysore.

The jurisdiction of this High Court, which exercised jurisdiction over the territories of the former State of Mysore, was extended to the State of Coorg with effect from 1-4-1933, and to a part of the District of Bellary, which was until then in the State of Madras, with effect from 1-10-1953.

7. The Former State of Mysore, over which its High Court was exercising jurisdiction until the first day of November, 1956, when there was a reorganization of the Suites of the Union of India, was one of the Part B States specified in the first schedule to the Constitution of India. By the States Reorganisation Act, 1956, enacted by the Parliament for the Reorganisation of the States of India and for matter connected therewith, a new State known as the State of Mysore was formed under the provisions of Section 7 of that Act comprising the territories specified in that section.

Those territories were the territories of the then existing State of Mysore to which I have already referred as the former State of Mysore, together with parts of the then existing States of Bombay, Hyderabad, Madras and the entire State of Coorg. By that Act, five more new States were also formed and by Sub-section (2) of Section 49 of the Act, it was provided that as from the appointed day which was the first day of November 1956, there shall bo established a High Court for three of those new States of which the State of Mysore was one. By Sub-section (1) of Section 50 of that Act it was provided that-

'50. Abolition of certain Courts.--(1) AS from the appointed day, the High Courts of all the existing Part B States, except Jammu and Kashmir, and the Courts of the Judicial Commissioners for Ajmer, Bhopal, Kutch and Vindhya Pradesh shall cease to function and are hereby abolished.'

8. As from the first day of November 1956, the High Court of the then existing Part B State of Mysore, which was also exercising jurisdiction over the State of Coorg, was thus abolished and ceased to function and this High Court was established for the new State of Mysore.

9. This High Court, therefore, which was established after the reorganisation of the States, can by no means be said to be the representative of the High Court of the former State of Mysore. As a result of the reorganisation, different parts of different States have been combined and a new State of Mysore has come into existence. This High Court, which was established after such reorganization, is a High Court exercising jurisdiction over this new State which, as I have mentioned, consists of not only the old State of Mysore but also parts of the old States of Madras, Bombay and Hyderabad.

There is therefore no reason for saying that this High Court is a representative of the High Court of the former State of Mysore. In fact by the States Reorganisation Act the old High Court was abolished and this High Court was established. This is not a case of extending the jurisdiction of an existing High Court but this is a case of abolishing the old High Court and establishing a new one which has to exercise jurisdiction over the new State formed as a result of the reorganisation.

It is difficult to see how under these circumstances this High Court can be said to be a representative or successor-in-interest of the High Court of the former State of Mysore. If it can be held to be a representative or successor-in-interest of the High Court of the former State of Mysore, then it can be equally called a representative-in-interest of the High Courts of the former State of Bombay and/ or of Madras and/or of Hyderabad. It is no more a representative of the one than of the other. If then, as I have held, this High Court is not a successor-in-interest of the High Court of the former State of Mysore, then there is no reason as to why this High Court should be bound by the decisions of the Chief Court of Mysore or

of the High Court of Mysore delivered prior to 1-11-1956.

10. Mr. Venkataramayya, who appeared for the appellant in the Criminal Appeal, out of which this reference arises, in the course of his argument, finding it difficult to maintain his contention that this High Court is a successor in-interest of the High Court of the former State of Mysore, look a slightly different stand with regard to this question.

He then contended that this I High Court exercising jurisdiction over territories which originally belonged to five different States should, however, regard itself as bound, though not absolutely, by the previous decisions of only one of the four High Courts which were exercising jurisdiction over their respective territories prior to the reorganization of the States for the reason that this Court and the High Court of the former State of Mysore should be regarded as Courts of co-ordinate jurisdiction.

11. I am wholly unable to accept this contention. Mr. Venkataramayya's argument, if accepted, would lead to incongruous results, namely that the decisions of each one of the four High Courts would sometimes be binding upon this Court and sometimes not, depending upon the area from which the appeal in question has to be decided. If, for instance, an appeal has come from the area which originally belonged to Madras State, the decision of the Madras High Court will have to be followed. But if, on the other hand, an appeal coming from Bombay State has to be dealt with, then the said decision will have no binding effect. This State of affairs would lead to confusion and inconsistency in judicial decisions. j I am therefore of opinion that this contention of Mr. Venkataramayya is equally untenable.

12. In the result, therefore, the answer to the question referred to us should, in my opinion, be in the negative.

Nittoor Sreenivasa Rau, J.

13. While agreeing, with respect, that the answer should be as indicated by my Lord the Chief Justice, I may make a few supplementary observations, some of them relating to the question itself and the others to the position resulting from the

answer.

14. In considering the question referred to, it would be profitable briefly to notice some of the decisions of other High Courts and Tribunals when they were confronted with analogous problems, for, in recent years, there have been similar instances of change of jurisdiction, powers and constitution of High Courts and other Tribunals. We may start with the decision reported in Ma Mya v. Ma Thein, AIR 1927 Rang 4 (B). That was a decision of a Full Bench of nine Judges of that High Court.

The questions that arose for consideration were whether the Rangoon High Court was bound by the authorised reports of decisions of the Chief Court of Lower Burma in its ordinary original jurisdiction and similarly in its appellate jurisdiction. On an examination of the provisions governing the constitution of the Chief Court of Lower Burma and those relating to the Rangoon High Court which exercised jurisdiction both over Lower Burma and Upper Burma and enjoyed somewhat larger powers. The Court by a majority of eight held that the lower Burma Chief Court was not a Court of co-ordinate jurisdiction and that the Rangoon High Court was not bound by the decisions of the Lower Burma Chief Court.

At the same time it was observed that the principle of stare decisis should be applied to those decisions in no narrow or technical spirit. A Full Bench of three Judges of the Madhya Bharat High Court in the ease reported in Dagdu v. Tulsiram, AIR 1950 Madh-B 31 (C), considered the question whether that High Court was bound by the decisions of the Indore High Court, Indore being one of the States which together with a number of other States covenanted to form a new State called the United State of Gwalior, Indore and Malwa. They held that the decisions were binding on the ground that the Indore High Court was a Court of co-ordinate jurisdiction in relation to the new High Court.

This view, however, was emphatically dissented from by a later decision of a Full Bench of the Madhya Bharat High Court consisting of five Judges.

They held that none of the High Courts which was previously functioning in any of the covenanting States could be regarded as a Court of co-ordinate jurisdiction

with the new High Court established for the whole State. At the same time it was observed that the decisions of the Indore High Court were certainly entitled to the greatest respect.

The Travancore-Cochin High Court, in the case reported in Kunhu Moideen v. Subramania Iyer. AIR 1953 Trav-C. 283 (D), held that the decisions of the former Travancore and Cochin High Courts were only of persuasive value and did not bind the Tra-vancore-Cochin High Court. A single Judge of the Andhra High Court expressed the view in three cases, i.e., in M. Venkayya v. M. Seshayya, AIR 1954 Andh 29 (E), In re, Billa Masthan : AIR 1955 AP33 and D. Subbareddi v. G. Govindareddi : AIR 1955 AP49 , that the Andhra High Court was not bound by the decisions of the Madras High Court. But a Full Bench of the Andhra High Court overruled this decision and expressed the view that the High Court was bound by the decisions of the Madras High Court delivered before the Constitution of the Andhra High Court in the same manner as the Madras High Court would be bound.

This conclusion was based on the ground that the Andhra High Court was in a real sense an offshoot of the Madras High Court exercising the same jurisdiction and administering the same laws which the Madras High Court had exercised before the Constitution of the Andhra High Court and that, therefore, it was a Court of co-ordinate jurisdiction with the Madras High Court.

It has to be noticed that no area was included in the Andhra State which did not originally form part of the Madras State consequently falling within the jurisdiction of the Madras High Court. This was the main basis for the decision. There are observations in the judgment which indicate that the position might be different if the new High Court exercised jurisdiction also over territories not under the jurisdiction of the old one. Thus referring to the decision of the Travancore-Cochin High Court reported in AIR 1953 Trav-C 283 (D) it is observed :

'The Full Bench disposed of the question with the observation that it had been repeatedly told by that Court that decisions of the former Travancore-Cochin High Court were only of persuasive value for them and that those decisions did not bind them. That decision was obviously based upon the assumption that the former

State High Court whose jurisdiction extended only to parts of the present State were not Courts of co-ordinate jurisdiction with the present High Court. Neither of me former Courts had jurisdiction over the entire area of the present Travancore-Cochin State'.

15. As has been pointed out by the learned Chief Justice, the territories of the former State of Mysore and areas from Former States of Bombay, Hyderabad, Madras and the former State of Coorg have gone to make up the new State of Mysore and different High Courts were exercising jurisdiction over those areas. It may be assumed that after the Constitution came into operation these High Courts were for all practical purposes exercising rowers and performing functions of the same character.

If, so, there is no reason for holding that the decisions of one of these High Courts are of a binding character while those of the others are not. Either the decisions of all the High Courts must be held to be binding or none of them. The former position would obviously lead to anomalous results. It is no doubt true that by virtue of Section 119 of the States Reorganization Act, 1956, the laws operative in the respective areas continue to be operative until otherwise provided by a competent legislature or other competent authority.

It should, however, be stated that such laws do not include what is called Judge-made law as has been held in AIR 1927 Rang 4 (B) in similar circumstances. Still, in view of the territorial limitations to the application of such laws, no anomaly may theoretically arise in regarding the decisions of the respective High Courts as binding. Even in such matters, difficulties may arise in practice when there are identical provisions in the corresponding statutes operative in the different areas in respect of the same subject-matter and the pre-existing High Courts have taken different views in respect of such provisions.

But a whole body of Central enactments is operative in the State and it would be impossible for this Court to regard the decisions of all the High Courts which previously exercised jurisdiction over the various areas to be binding when their views differ on a question arising in respect of any such law. At the same time it could not prefer the view of any one of them to the views of others as a rule. Such

preference can only result from an independent examination of the several views, which necessarily means that none of them is binding.

Nor can it be suggested that this Court should apply to cases arising in different areas the law as interpreted by the High Courts respectively exercising jurisdiction formerly over those areas in regard to the same provision of law. That would mean that this High Court would not be functioning as an integral entity but would have split itself into different entities, possibly taking different views on the same question of legal principle arising from interpretation or application of any provision of law. There cannot be an after illustration of this point than the case which has given rise to this reference. The Bombay and Madras High Courts on the one hand and the erstwhile Mysore High Court on the other have taken conflicting views in regard to the meaning of the proviso to Section 132 of the Evidence Act.

All the three High Courts were exercising jurisdiction over areas now under the jurisdiction of this Court and the provision in question occurs in a Central enactment operative over the whole area of the new State. The corresponding provision of the Mysore Evidence Act, which was considered by the erstwhile Mysore High Court was in identical terms. Further, rights of parties residing or carrying on business in different areas may come up for decision in the same case; what are the precedents to be followed then? The only logical way in which such anomalies as are indicated above can be avoided is to hold that this Court is not bound by the decisions of any of the High Courts which were exercising jurisdiction over the integrating areas.

16. Reference has been made in the course of arguments to Section 54 of the States Reorganisation Act. It only relates to the law and rules pertaining to practice and procedure in the High Court and has no bearing on the general question of precedents which relates to interpretation of the law.

17. But does this mean that a total vacuum is created in regard to judicial proceedings? Reference has already been made to the observations in the reported decisions mentioned above to the allied principle of Stare decisis. It has to be remembered that the establishment of this High Court as a new High Court is a part of the Re-organization of the States which necessarily implied a

reorganization of the various branches of administration and not a breach in the continuity of their functioning. Such continuity is no less essential in the judicial branch of administration.

The smooth continuity of the administration of justice is possible only by giving proper respect to the principle of stare decisis. If the previous decisions of the different High Courts are to be totally disregarded, not only would there be a grave possibility of unsettlement of rights and legitimate expectations in regard to the vindication of rights but confusion would be caused in the minds of subordinate Courts. In this connection, the observations in AIR 1927 Rang 4 (B) bearing on this aspect of the matter and reiterating well settled principles may usefully be quoted :

'The decisions, however, of the Chief Court are conditional authorities of the highest value to which the greatest weight and respect must be attached. Though for the reasons given I do not consider that the Chief Court is a Court of co-ordinate jurisdiction with the High Court, it was, for 22 years, the highest Court in the larger and more important part of the province subject only to appeal to His Majesty in Council. It consisted of men of great learning and experience with an intimate knowledge of the local customs and habits of the people of the Province, and it would be disastrous if the Judges of the Court should consider themselves free to set those decisions at naught except for the best and most urgent of reasons.

In my opinion the principle of stare decisis should be applied to these decisions in no narrow or technical spirit. The reasons for this principle have been often declared, but I may refer to them as stated by Broom and Sir John Salmond, as those reasons apply with great force to the question under consideration : 'It is then an established rule to abide by former precedents, stare decisis, where the same points come again in litigation, as well to keep the scale of justice steady and not liable to waver with every new Judge's opinion, as also because the law in that case being solemnly declared, what before was uncertain and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter according to his private sentiments; he being sworn to

determine not according to his own private judgment, but according to the known laws of the land--not delegated to pronounce a new law, but to maintain the old Judiciary et non jus dare (Broom's Legal Maxims, page 103, 9th Edition)'.

It does not follow that a principle once established should be reversed simply because it is notas prefect and rational as it ought to be; it is oftenmore important that the law should be certain thanthat it should be ideally perfect. These two requirements are to a great extent inconsistent with eachother, and we must often choose between them.Whenever a decision is departed from, the certaintyof the law is sacrificed to its rational development andthe evils of uncertainty thus produced may far outweigh the very trifling benefit to be derived from thecorrection of the erroneous doctrine. The precedent,while it stood unreversed, may have been countedon in numerous cases as definitely establishing thelaw.

Valuable property may have been dealt with in reliance on it, important contracts may have been made on the strength of it; it may have become to a great extent a basis of expectation and the ground of mutual dealings. Justice may, therefore, imperatively require that the decision though founded in error, shall stand inviolate nonetheless commissioner facit jus. 'It is better', said Lord Eldon, 'that the law should be certain than that every Judge should speculate upon improvements in it.' (Salmond's Juris-prudence, page 194, 7th Edition). The reasons given by these learned authors apply, with undiminished force in this province where the Courts have to a great extent been interpreting local law and custom and enactment of only local application'. Observations of similar import will be found in the decisions of Madhya Bharat and Andhra High Courts adverted to above. It may also be added that while the Supreme Court has declared that it is not bound by the decisions of the Privy Council or the Federal Court, it is well known that it will not depart from the principles laid down in the decisions of those Tribunals except for compelling reasons.

17a. In this context, it may be mentioned that the establishment of a new High Court for the new state constituted State of Mysore was no more than one of the expedients of constitutional and legislative amendment adopted to bring about reorganization. Under the States Reorganization Act the States of Kerala, Mysore,

Bombay, Madhya Pradesh, Rajasthan and Punjab were designated as new States. The Andhra, Assam, Bihar, Madras, Orissa, Uttar Pradesh and West Bengal States were retained and alterations were made in the territorial extent of some of these States by additions or subtractions. In respect of the new States of Bombay, Madhya Pradesh and Punjab, the existing High Courts of the former States hearing those names were to be deemed to be the High Courts for the new States.

The old High Courts in Travancore-Cochin, Mysore and Rajasthan ceased to function and new High Courts were established in the States of Kerala, Mysore and Rajasthan. It will be noticed that the extended Andhra State called Andhra Pradesh is considerably larger than the State as it existed prior to the reorganization. That State continues as a State and so does the High Court though the name of the State is changed to 'Andhra Pradesh'. A small area of the old State of Travancore-Cochin was incorporated in the Madras State and another relatively small area was added on to constitute the new State of Kerala: In regard to the Bombay State, a relatively small area was taken away from the old Bombay State and largo areas were added to it from Hyderabad and old Madhya Pradesh to constitute the new State of Bombay.

A similar process was employed to constitute the old States of Madhya Pradesh into the new State. There was very little change in the territorial extent of the Slate of Rajasthan. Still it was constituted into a new State. While the old High Courts of Bombay, Madhya Pradesh and Punjab were retained, their jurisdictions were altered so as to be coterminous with the territories of the new States bearing those names. It will thus be seen that though the expedients employed in the State Reorganization Act and the Constitution Amendment Act were different in regard to the formation of the States mentioned above as also in regard to vesting High Courts with jurisdiction over the respective States, the objective could not have been different, viz., that normally speaking, each State should have a High Court with co-extensive jurisdiction.

It could not have been the aim of reorganization to affect the continuity of judicial administration in different States in different ways. The variation in the expedients

adopted flowed from other causes. It may in this connection be mentioned that according to the States Reorganization Bill and the Constitution Ninth Amendment Bill originally introduced, the High Courts of Travan core-Cochin, old Mysore and old Rajasthan were to become the High Courts of the new States of Kerala, of Mysore and of Rajasthan respectively.

It was as a result of the report of the Joint Select Committee that, instead of continuing the pre-existing High Courts with altered territorial jurisdiction, new High Courts were established in those States for reasons which had nothing whatever to do with the powers and functions of the High Courts. It cannot be seriously urged that because a different expedient was adopted for legislation and Constitutional amendment a totally different position should result in the States where new High Courts were established from the position obtaining in those States where the old High Courts were to function with altered jurisdiction.

18. It appears to me that the anomalous situation mentioned above and the breach of continuity can be avoided when it is remembered that, though this High Court is not bound by the previous decisions of any of the High Courts formerly exercising jurisdiction over the different territories which now together constitute the new State of Mysore, the principle of stare decisis is applicable. I would indicate in general terms the following as working rules for the application of that principle :

(i) In regard to laws, statutory rules and other forms of law operative in the different areas by virtue of the provisions of Section 119 of the States Reorganization Act the principles laid down in the decisions of the High Courts respectively exercising jurisdiction over those territories before the appointed day, i.e., 1-11-1956, should he resorted to for guidance;

(ii) In regard to questions of law uniformly operative over the whole area of the new State, guidance should be taken from the decisions of all the High Courts formerly exercising jurisdiction where all of them have taken the same view;

(iii) where two or more of the pre-existing High Courts have taken conflicting views, the matter will have to be examined afresh;

(iv) when any point is covered by the decision of one or more or the pre-existing High Courts and there is no conflict amongst them, guidance should be taken from such decision or decisions.

These working rules will secure proper respect for the previous decisions and, indeed, promote an organic integration of the judicial principles laid down by the several High Courts to the jurisdiction of which this Court has succeeded, while they are not meant to fetter the right of this Court to take an independent view in regard to any matter when there are compelling reasons, or to re-examine the views in those decisions in circumstances in which it would re-examine its own views.

A.R. Somnatha Iyer, J.

19. I have had the opportunity of reading the judgment prepared by My Lord the Chief Justice and I find myself so completely in agreement with it that what I wish to add is very little.

20. Since this High Court exercises jurisdiction over territories comprising areas over which four High Courts of the States to which they originally belonged were respectively exercising jurisdiction, the proposition that the previous decisions of any one of such High Courts, none of which exercised jurisdiction over the entire area of the present State of Mysore, should be treated as judicial precedents binding on this Court, unless their reversal was demanded in the interests of sound administration of justice, has merely to be stated to be rejected as manifestly unreasonable.

21. This was so obvious to their Lordships of the High Court of the United State of Travancore and Cochin that they pointed out in ILR 1953 Trav-C 206: (AIR 1953 Trav-C 283) (D). That it was repeatedly told by that Court that the decisions of the High Courts of the former States of Travancore and Cochin neither of which exercised jurisdiction over the entire State of the United State of Travancore and Cochin were only of persuasive value to them but did not bind them. On page 213 (of ILR Trav-C.):

(at pp. 285-286 of AIR) of the report, this is what Koshi C.J. said :

'Before concluding we must not omit to mention that the respondent's counsel pressed upon us that we should not fail to follow the Full Bench decision in Krishna Menon v. Venkiteswara Iyer, 32 Co-chin 438 (FB) (H) as it has held the field up till now and has been followed in ever so many cases in the Cochin High Court as well as in the Courts subordinate therto. It was said we should respect it at least on the principle of stare decisis. The short answer to it is what has been repeatedly told by this Court that the decisions of the former Travancore and Cochin High Courts are only of persuasive value for us and that those decisions do not bind us. The application of the principle of stare decisis or the necessity for reference to a Full Bench docs not therefore arise in the case'.

That was also the view taken by the High Court of the new State of Kerala in Lakshmikutty Amma v. Madhavan Pillai : AIR1958 Ker111 .

22. It is clear that any other view would create strange situations when a conflict exists between the previous decisions of the different High Courts which once exercised jurisdiction over those parts which now comprise the new State of Mysore.

23. That being so, the maxim stare decisis on which Mr. Veukataramiah depended and the argument based on the need for consistency in judicial decisions and the danger of want of continuity in the interpretation of the law, which are ordinarily considerations demanding the maintenance by a Court of its own previous decisions, can have no relevance in the present context.

24. In my opinion, we should answer the question referred to us in the negative.

BY THE COURT:

25. Answer to the question referred to the Full Bench is :

This High Court is not bound by the decisionsof the Chief Court of Mysore and of the High Court of Mysore delivered prior to 1-11-1956.

26. Answered in the negative.