

M. Subbarayudu and ors. Vs. the State

M. Subbarayudu and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/425319

Court : Andhra Pradesh

Decided On : Dec-06-1954

Reported in : AIR1955AP87; 1955CriLJ770

Judge : Subba Rao, C.J., ;Bhimasankaram and ;Satyanarayana Raju, JJ.

Acts : Code of Civil Procedure (CPC), 1898 - Sections 209 and 437; [Andhra State Act, 1953](#) - Sections 53

Appeal No. : Criminal Revn. Case No. 603 and Criminal Revn. Petn. No. 563 of 1954

Appellant : M. Subbarayudu and ors.

Respondent : The State

Advocate for Def. : Public Prosecutor, ;Adv. General, Amicus Curiae and ;C. Kondaih, Adv.

Advocate for Pet/Ap. : O. Chinnappa Reddy and ;C. Padmanabha Reddy, Advs.

Judgement :

Subba Rao, C.J.

(1) This Full Bench has been constituted to decide a fundamental question, which is arising every day, namely, whether and to what extent the Andhra High Court is bound by the decisions of the Madras High Court delivered before 5.7.1954.

(2) The facts of the case that led to the reference may be briefly stated. The petitioners were the accused in P. R. C. No. 2 of 1953. The Sub-Divisional Magistrate, Dharmavaram, discharged the accused for an offence under S. 395, Penal Code, and converting the case into a Calendar case, directed the accused to be tried for the other offences with which they were charged. In revision, the District Magistrate, Gooty, set aside that Order under Ss. 435 and 436, Criminal P. C. and directed the Sub-Divisional Magistrate to commit the accused to the Court of Session to take their for all the offences with which they were charged. The accused have filed this Criminal Revision Petition against that Order.

(3) In revision, the main question raised was whether under S. 209(i), Criminal P. C., when a Magistrate finds that there are not sufficient grounds for committing the accused for trial and directs such persons to be tried before himself, the revisional powers under S. 437 can be exercised even before the conclusion of the trial before such Magistrate. Chandra Reddy J., who admitted the revision directed the same to be posted before a Division Bench as it was represented to him that a Full Bench decision of the Madras High Court covering the point required re-consideration. The Revision Petition was accordingly posted before a Division Bench. The respondent relied upon the Full Bench decision of the Madras High Court in -- 'Nalla Baligadu In re', : AIR1951 Mad0 (FB) (A), wherein it was ruled that the powers under S. 437, Criminal P. C. can be exercised even before the conclusion of the trial before the Magistrate. If the Full Bench decision of the Madras High Court was binding on this Court, it would follow that the Revision Petition was liable to be dismissed.

In the circumstances, the learned Counsel for the petitioners contended that the Andhra High Court would not be bound by the decisions of the Madras High Court, Reliance was placed upon the decision of our learned brother Umamaheswaram, in -- 'Subba Reddi v. Govinda Reddi', (S) : AIR 1955 AP49 (B), wherein the learned Judge observed that the Andhra High Court, which was inaugurated in July 1954 is not bound by the decisions of the Full Bench of the Madras High Court, or other High Courts and is at liberty to examine the question in the light of well established legal principles and arrive at a proper conclusion. As this question is arising very often in this Court, the Division Bench thought that the said question

should be decided finally and authoritatively by a Full Bench. Hence, the Revision Petition was directed to be posted before a Full Bench.

(4) The argument of Mr. Chinnappa Reddy, the learned counsel for the petitioner may be put thus : The binding nature of the decision of one Court over another depends upon the fact whether both the Courts are Courts of co-ordinate jurisdiction. If so, on a principle of judicial comity, the decision of one Court is binding on another. The Andhra High Court and the Madras High Court are not Courts of co-ordinate jurisdiction, for, the idea of co-ordination implies a concurrent and simultaneous jurisdiction. Whatever may be said about the decisions of the composite High Court between 1.10.1953 and 5.7.1954, the decisions prior to 1.10.1953 are not decisions of a Court of co-ordinate jurisdiction. In any view, the said principle has no application to criminal cases. The Advocate General who appeared as *amicus curiae* at our request, conceded that the High Court of Andhra and Madras are not Courts of co-ordinate jurisdiction, but argued that on the principle of *stare decisis* the decisions of the Madras High Court prior to 5.7.1954 should be followed by this High Court. The learned Public Prosecutor, who appeared for the State, further contended that the provisions of the Andhra State Act (30 of 1953) would indicate that the law of the Madras High Court which term is wide enough to include Judge-made law, is also binding on the Andhra High Court.

(5) We shall first trace the history of the Constitution of the Andhra High Court to discover, if possible any principle regulating the binding nature of the decisions of the Madras High Court. The Madras High Court, before Independence, was constituted by Letters Patent and was governed by the various Acts passed from time to time by the Parliament of England. When India became a Dominion by virtue of the Indian Independence Act of 1947 which took effect on 15.8.1947, there was no change in the constitution of the High Court. When India became a Republic, the jurisdiction and powers of the Madras High Court were regulated by the Constitution of India, which came into force on 26.1.1950. The former High Courts were continued in respect of the respective States. Under Art. 225, subject to the provisions of the Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by

the Constitution, the jurisdiction of, and the law administered in, an existing High Court, and the respective powers of the Judges thereof in relation to the administration of Justice in the Court was declared to be the same as immediately before the commencement of the Constitution. In some directions, additional powers were also conferred.

(6) The Parliament, by passing Act 30 of 1953, constituted the Andhra State, which came into effect on 1.10.1953. Under S. 28 of the said Act, it was provided that there shall be a separate High Court for the State of Andhra from the 1st day of January 1956 or such an earlier date as may be appointed under sub-s. (2). Section 40 of the Act provided that the jurisdiction of High Court of Madras shall extend to the State of Andhra and the said High Court shall, in relation to the territories of the State, continue to have such jurisdiction as it had immediately before the appointed day. By virtue of the said provision, the High Court of Madras continued to have such jurisdiction over the area comprised in the Andhra State.

Under sub-s. (2) of S. 28, the President notified 5.7.1954 as the date for the inauguration of the High Court of Andhra and the Andhra High Court was duly constituted on that date. Section 30 provides that the said High Court of Andhra shall have, in respect of the territories for the time being included in the State of Andhra, all such original, appellate and other jurisdiction as, under the law, in force immediately before the prescribed day, is exercisable in respect of the said territories, or any part thereof by the High Court at Madras. Section 53 which prescribes in respect of the said territories, the territorial extent of the laws, says that the provisions of Part II which deal with the formation of the Andhra State, shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies and territorial references in any such law to the State of Madras shall, until otherwise provided by a competent Legislature or other competent authority, continue to have the same meaning.

Section 32 prescribes that the law in force immediately before the prescribed day with respect to practice and procedure in the High Court at Madras, shall with necessary modifications, apply in relation to the High Court of Andhra. It also lays

down that the rules or orders which are in force immediately before the prescribed day with respect to practice and procedure in the High Court at Madras shal, until varied or revoked by rules or orders made the High Court of Andhra apply with the necessary modifications in relation to practice and procedure in the High Court of Andhra as if made by that Court.

(7) It will therefore be seen that, in effect and substance, the territorial jurisdiction of the composite Madras High Court was split up from 5.7.1954 and the Madras and the Andhra High Courts have the same jurisdiction subject to some exceptions with which we are not concerned now, over the area comprised in the two different States. The composite High Court, which was His Majesty's Court, before the Constituion, became one governed by the Constitution. For a short period, the same High Court exercised jurisdiction over the two States. after 5.7.1954, two different Courts came into existence. The same procedure governing the Madras High Court continued to govern the Andhra High Court till it was modified in accordance with law. The splitting up of territorial jurisdiction had not the effect of changing the law obtaining in the respective territories. The Andhra High Court is therefore, in a real sense an offshoot of the Madra High Court exercising the same jurisdiction and administering the same laws, which the Madras High Court had exercised before 5.7.1954 in the territories included in the Andhra State. To use a convenient terminology, the Andhra High Court may be treated an one succeeding to the High Court of Madras and exercising all the powers and administering the same law which the Madras High Court exercised in the territories comprised in the Andhra State.

(8) It may be convenient at this state to notice the case law and the passage from the text-books cited at the bar on the Law of Precedent. The English Law on the subject has been succinctly summarised in 18 Halsbury's Laws of England page 210, para. 535 :

'It may be laid down as a general rule that part alone of a decision of a Court of Law is binding upon Courts of co-ordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined.'

The principle, underlying the aforesaid proposition, has been clearly stated by Odgers in his Book 'In the Common Law', 3rd Edition, Vol. I, pages 64 -- 65 as follows :

'There is no statute or common law rule by which one Court is bound to abide by the decision of another of equal rank ; it does so simply from what may be called the comity among Judges. In the same way, there is no common law or a statutory rule to oblige a court to bow to its own decisions ; it does so on the ground of judicial comity. This so-called comity has, however, been formulated into rules which, though unwritten, are habitually followed by our Courts.'

(9) The scope of the rule was elucidated by the Court of Appeal in -- 'Young v. Bristol Aeroplane Co.', 1944 - 2 All ER 293 (C). The question there was whether the Court of Appeal was not bound by its own earlier decisions. Lord Greene, M. R., exhaustively considered the question and came to the following conclusion :

'On a carefull examination of the whole matter, we have come to the clear conclusion that this Court is bound to follow privious decisions of its own as well as those of Courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those already mentioned which for convenience we here summarise (i) The Court is entitled and bound to decide which of two conflicting decisions of its own it will follow, (ii) The Court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot in its opinion stand with a decision of the House of Lords. (iii) The Court is not bound to follow a decision of its own if it is satisfied that decision was given per incuriam.'

The statement of law is clear but the decision does not denne what are Courts of co-ordinate jurisdiction. The question whether the Rangoon High Court in exercise of its ordinary original and appellate jurisdiction was not bound by the reports of decisions of the Chief Court of Lower Burma was raised and decided by the Full Bench of the Rangoon High Court in -- 'Ma Mya v. Ma Thein', AIR 1927 Rang 4 (D). The Full Bench Cunliffe J. dissenting, held that the High Court was not bound by the said reports. The decision turned upon the question whether the Chief Court of Lower, Burma, which was replaced by the High Court, which had terriotrial jurisdiction not only in respect of lower Burma but also upper Burma, was

a Court of co-ordinate jurisdiction. Rutledge C. J. held that

'to decide whether the decisions of the late Chief Court are binding upon this Courts, we must decide whether it is a Court of co-ordinate jurisdiction.'

(10) A Division Bench of the Travancore Cochin High Court in -- 'Unni Kunchu Moldeen v. Subramonia, Iyer', AIR 1953 Trav-C 283 (E) had to consider whether the decisions of the former Travancore and Cochin High Court were binding on the post-Constitution High Courts of Travancore-Cochin. 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 and Cochin High Courts 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 Courts, whose jurisdiction extended only over parts of the present State, were not Courts of co-ordinate jurisdiction with the present High Court. Neither of the former Courts had jurisdiction over the entire area of the present Travancore -- Cochin State.

(11) So too, a Full Bench of the Madhya Bharat High Court in -- 'Chandulal v. Babulal', AIR 1952 Madh B 171 (F) held that the Madhya Bharat High Court could not be looked upon as successor to Indore High Court or any High Court of any covenanting State and, therefore, the High Courts of the former covenanting States could not be regarded as Courts of co-ordinate jurisdiction. In that view, they held that the judgments of those Courts were not binding on the High Court.

(12) The Supreme Court in -- 'State of Bihar v. Abdul Majid', : (1954) IILLJ678SC (G), held that the Supreme Court of India was in no way bound by the decisions given by the former Federal Court of India or by the Privy Council. There is no discussion but the conclusion may be sustained on the basis that, in the view of the Supreme Court, neither the Privy Council nor the Federal Court were Courts of co-ordinate jurisdiction with the Supreme Court. It is, therefore, manifest that the binding nature of the precedents of one Court on another depends upon the fact whether such Courts are Courts of co-ordinate jurisdiction or not.

This leads us to a more difficult question, viz., what are Courts of co-ordinate jurisdiction. The learned counsel for the petitioners contended that courts of co-ordinate jurisdiction are those, which exercise simultaneous jurisdiction over the same area, or in respect of the same subject-matter. The learned Advocate General on the other hand, equated the words 'co-ordinate jurisdiction' with the word 'concurrent jurisdiction'. Though the decisions already cited may afford illustration, they do not definitely define the term 'co-ordinate jurisdiction'. In my view, co-ordinate jurisdiction does not connote the same idea as concurrent jurisdiction or simultaneous jurisdiction.

Concurrent jurisdiction is defined in Wharton's Law Lexicon to mean the jurisdiction of several different tribunals, both authorised to deal with the same subject-matter at the choice of the suitor. But no definition is given of co-ordinate jurisdiction in any of the Law Dictionaries. In Chamber's Twentieth Century Dictionary (Mid-Century Version), the meaning of the word 'co-ordinate' is given as 'of the same order or rank'. Roget in 'Thesaurus of English Words and Phrases' gives that word under the heading 'comparative quantity.' According to the author, it connotes an idea of sameness of quantity or degree.

It is, therefore, clear that the connotation of the word 'co-ordination' is not the same as that of the words concurrence or simultaneity. Simultaneity or co-existence is not a necessary ingredient of co-ordination. Co-ordination is more comprehensive and takes in successive acts of the same status or level. It would not be inappropriate to call a successor Court a Court of co-ordinate jurisdiction, with its predecessor if their jurisdictions at the point of time they exercised it are similar to or co-extensive with each other. The cases cited at the Bar amply show that the said word was understood in the wider sense indicated by me. If it was not used in the sense indicated by me, the entire discussion of Rutledge C. J., in AIR 1927 Rang 4 (D) would be unnecessary for the Rangoon High Court could have disposed of the matter on the basis that the successor High Court could not be a Court of co-ordinate jurisdiction with its predecessor the Chief Court of Lower Burma. But, on the other hand, the learned Chief Justice assumed that they would be Courts of co-ordinate jurisdiction if the other tests laid down by him were satisfied. At pp. 4 - 5, the learned Judge laid down the following tests :

'To decide whether the decisions of the late Chief Court are binding upon this Court we must decide, whether it is a Court of co-ordinate jurisdiction. Admittedly, it is not so in respect of territorial jurisdiction, as the Chief Court's jurisdiction was confined to Lower Burma, while the High Court's jurisdiction extends to upper Burma as well. In origin, the Chief Court was the creation of the Indian Legislature, and it was not a Court of Record. The High Court by its Letters Patent is the creation of the King Emperor and is declared to be a Court of Record. It is in fact the King's Court which the Chief Court never was. Its jurisdiction in certain respects such as contempt and mandamus is greater than that of the Chief Court. I am, therefore, of opinion that the Chief Court cannot be held to be a Court of co-ordinate jurisdiction with the High Court.'

(13) If the tests laid down by the learned Judge were satisfied, he would have certainly held that the Chief Court of Lower Burma was a Court of co-ordinate jurisdiction with the High Court, Though Lord Greene, M. r., in (1944) 2 All ER 293 (C) was only considering the question of the binding nature of the earlier decisions of the Court of Appeal on the same Court or a Division of that Court, the learned Judge did not expressly or by necessary implication indicate that a predecessor Court could not be a Court of co-ordinate jurisdiction with its successor or vice versa. When the decision of -- 'Mills v. Jennings', (1880) 13 Ch D 639 (H) was cited, Lord Greene pointed out that in that case, Cotton L. J., justified his dissent from an earlier decision of the old Court of Appeal in Chancery on the ground that it was not uncommon to reconsider decisions given by the old Court of appeal in Chancery. That passage is relied upon in support of the argument that the simultaneous exercise of jurisdiction by two Courts is a necessary condition for the application of the doctrine of co-ordinate jurisdiction. I do not think that the learned Lord meant to make any such distinction. He only pointed out the practice followed by the Court of Appeal in dealing with the earlier decisions of the old Court of Appeal in Chancery, Nor can the decision of the Division Bench of the Travancore-Cochin High Court be legitimately invoked by the learned Counsel for the petitioners in support of his contention. There, if I may say so, the learned Judge rightly assumed that the High Courts of Travancore and Cochin, which exercised only jurisdiction over small areas were not Courts of co-ordinate jurisdiction with the High Court of Travancore-Cochin. This was not on the principle that the earlier

Courts were not exercising jurisdiction simultaneously with the present High Court, but because of the fact that their jurisdiction was not co-extensive with that of the present High Court.

(14) In AIR 1952 Madh B 171 (FB) (F). Chaturvedi J., Who delivered the judgment, based his conclusion on the following principle :

'It is true that these smaller units had integrated to form the new Madhya Bharat State ; but it is not true that the High Courts of covenanting States had also integrated to form the present Madhya Bharat High Court. In fact the High Courts in covenanting States were altogether abolished and an independent High Court with power and stability and fresh outlook had come into existence. Consequently High Courts of former covenanting States cannot be regarded of equal rank with the present Madhya Bharat High Court.'

'It is not a case where a High Court had succeeded either a Chief Court or a Court of Judicial Commissioner and so the ratio decidendi in -- 'AIR 1927 Rang 4 (D), -- 'Gurbhaj v. Lachhman', AIR 1925 Lah 341 (I) ;-- 'Sherkhan v. Muzaffar Khan', AIR 1920 Lah 321 (1) (J) and -- 'Lachhman Singh v. Naman', AIR 1929 Lah 174 (K) cannot be made applicable to the case before us. The relation between the Court of Appeal and the Court of Exchequer chamber in England is also not in any way genuinely applicable to the relation of Madhya Bharat High Court and the former High Court of Indore State.'

It will be seen from the abovesaid observations that the learned Judge did not equate a Court of co-ordinate jurisdiction with that of simultaneous jurisdiction. Indeed he applied the test whether the former High Court could be regarded as of equal rank with the present Madhya Bharat High Court. He also distinguished the decisions, which recognised successor Courts as Courts of co-ordinate jurisdiction with its predecessor as inapplicable as, in his view, the Madhya Bharat High Court was not a successor to the earlier Courts of the covenanting States.

(15) The decision of the Supreme Court in -- ' : (1954) IILLJ678SC (G)' is not of much help in the present case for neither His Majesty deciding a case on the advice of the Privy Council nor the Federal Court entrusted only with a limited

jurisdiction could be considered to be Courts of co-ordinate jurisdiction with that of the present Supreme Court of India.

(16) The question, therefore, is whether the Madras High Court is a Court of co-ordinate jurisdiction with the Andhra High Court. As aforesaid, the Andhra High Court in effect and substance succeeded to the entire jurisdiction exercised by the Madras High Court within the territories comprised in the Andhra State. At first, the Madras High Court exercised jurisdiction over the entire composite State. After the constitution of the Andhra High Court the composite High Court exercised jurisdiction over the territories of the two States. After the inauguration of the Andhra High Court, the jurisdiction was split up and two High Courts are now exercising jurisdiction separately over the two States. The jurisdiction exercised by the Madras High Court over the composite State till 1.10.1953 and over the two States from 1.10.1953 to 5.7.1954 was co-extensive with the present jurisdiction exercised by the Andhra High Court in all respects except in regard to territorial jurisdiction. The content of the jurisdiction exercised by the Madras High Court and the present Andhra High Court is the same, though the area over which the said jurisdiction is exercised is now limited in the case of both the Courts. If the Andhra High Court is not a Court of co-ordinate jurisdiction, it could reasonably be argued that the present Madras High Court is also not a Court of co-ordinate jurisdiction with its predecessor, the composite High Court, or, at any rate with the Madras High Court before the Constitution. I would, therefore, apply the following test to ascertain whether the two High Courts are of co-ordinate jurisdiction or not. viz.,

'Whether the two Courts are of equal rank and status or of equal authority and exercised similar jurisdiction.'

(17) Applying the test, I have no hesitation to hold that the Madras High Court and the Andhra High Court are Courts of co-ordinate jurisdiction.

(18) Even if they are not Courts of co-ordinate jurisdiction, in my view, the principle of State decisis may usefully be invoked in public interests. In Broome's Legal Maxims, p. 103, 9th edition, the said doctrine was stated as follows :

'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 'Jus dicere et non jus dare'.

(19) In Salmond's Jurisprudence, 10th Edition, p. 183, the principle was further elaborated in the following manner :

'It does not follow that a principle once established should be reversed simply because it is not as perfect and rational as it ought to be. It is often more important that the law should be certain than that it should be ideally perfect. These two requirements are to a great extent inconsistent with each other, and we must often choose between them. Whenever a decision is departed from, the certainty of the law is sacrificed to its rational development and the evils of the uncertainty thus produced may far outweigh the very trifling benefit to be derived from the correction of the erroneous doctrine. The precedent, while it stood unreversed, may have been, counted on in numerous cases as definitely establishing the law. 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 none the less 'Communis error facit jus'. 'It is better', said Lord Eldon, that 'the law should be certain than that every Judge shall speculate upon improvements in it'.

(20) There is no reason why the aforesaid salutary principle should not be followed in the case of decisions delivered by the Madras High Court when the Andhra area was under its jurisdiction. During that period, titles were settled transactions took place, settlements made, agreements entered into, wills executed and

expectations raised on the basis of the decisions of the Madras High Court. If the Andhra High Court is now free to start from scratch, it would be introducing confusion in the law of the land and disturbing titles acquired. It would also become a fruitful source of litigation. Further the Madras High Court has had long and well-established traditions and was presided over by some of the Distinguished Judges of our land. This High Court would do well in its own interests and that of the Public to continue the great and abiding traditions laid down by the Madras High Court for generation and to be inspired by its noble examples.

(21) The learned counsel for the petitioners contended that this legal position could lead to the anomaly of this High Court being bound by a judgment of a Division Bench of the Madras High Court though reversed by a Full Bench of that Court after 5.7.1954. I do not think the difficulty pointed out is insurmountable. The Division Bench of the Andhra High Court in the said contingency, if they agree with the Full Bench, would be at liberty to refer the question to a Full Bench of the Andhra High Court. I would, therefore, hold that even if the two High Courts are deemed to be not Courts of co-ordinate jurisdiction, this High Court shall follow the Madras High Court follows its own decisions and subject to the same limitations.

(22) Even so, the learned Counsel for the petitioners contended that the principle of stare decisis is not applicable where the liberty of the subject is concerned and, in support of his contention, reliance is placed upon -- 'R. V. Taylor', (1950) 2 All ER 170 (L) Lord Goddard C. J., at p. 172 observed :

'In civil matters it is essential in order to preserve the rule of stare decisis that should be so, but this Court has to deal with the liberty of the subject and if, on reconsideration, in the opinion of a full court the law has been either misapplied or misunderstood and a man has been sentenced for an offence, it will be the duty of the Court to consider whether he has been properly convicted. The practice observed in civil cases ought not to be applied in such a case'.

(23) It is not necessary to express my final opinion on this question as I have held that the Andhra High Court and the Madras High Court prior to 5.7.1954 are Courts of co-ordinate jurisdiction.

(24) It then remains to consider the argument of the learned Public Prosecutor that S. 53 of the Andhra State Act (Act 30 of 1953) would have the effect of making the decisions of the Madras High Court binding on the Andhra High Court -

(25) Section 53 reads :

'The provision of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial differences in any such law to the State of Madras or of Mysore, shall untilt otherwise provided by a competent Legislature or other competent authority, continue to have the same meaning'.

(26) Part II of the Act provides for the formation of the Andhra State and the transfer of territory from Madras to Mysore. A combined reading of the two provisions can only mean that the change of territories provided for by Part II of the Act will not make any change in the law obtaining in that territory before the change. till otherwise provided by a competent Legislature. If there was a law obtaining in the Andhra area before the Constitution of the Andhra State to the effect that the Madras High Court decisions would be binding on the Andhra High Court, this provision can legitimately be involved. But obviously there could not have been any such law, for the simple reason that there was no High Court of Andhra in existence prior to its constitution. On this simple ground, this contention should be negatived.

(27) I shall now consider the procedure to be followed by this High Court in dealing with decisions of the Madras High Court prior to 5.7.1954. The general principle is that this High Court shall follow the decisions of the Madras High Court prior to the said date in same manner in which the Madras High Court would follow its own decisions. The conditions when a Court can differ from a Court of co-ordinate jurisdiction have been succinctly stated by Lord Greene M. R., in 1944 -- 2 All ER 293 (C) in a passage already referred to.

(28) That summary was given in considering the question whether the Court of Appeal was bound to follow its previous decisions. In the course of the judgment, Lord Greene M. R. pointed out that, for the application of that principle, there could

not be a distinction between a Full Court or a Division of that Court. It does not purport to deal with the rules to be followed to solve the conflict that may arise between the various Divisions of the same Court or between individual Judges thereof. As a Judge of the Madras High Court, I dealt with that question in -- 'K. C. Nambiar v. State of Madras', : AIR1953 Mad351 (M). There, after considering the English and Indian decisions on the subject, I said :

'I am not therefore prepared on the English Authorities cited and on the arguments advanced, to depart from the well recognised practice and the salutary conventions established in this Court.

If I did, I would be introducing only confusion and uncertainty and put the subordinate judiciary in a very unenviable position. I would, therefore, unreservedly follow the procedure obtaining in our Court which is supported by principle and found satisfactory in practice. A single Judge is bound by a decision of a Divisional Bench exercising appellate jurisdiction. If there is a conflict of Bench decisions, he should refer the case to a Bench of two Judges who may refer it to a Full Bench. A single Judge cannot differ from a Divisional Bench unless a Full Bench or the Supreme Court overruled that decision specifically or laid down a different law on the same point. But he cannot ignore a Bench decision, as I am asked to do on the ground that some observation of the Supreme Court made in a different context might indicate a different line of reasoning. A Divisional Bench must ordinary respect another Divisional Bench of co-ordinate jurisdiction, but if it differs, the case should be referred to a Full Bench. This procedure would avoid unnecessary conflict and conclusion that otherwise would prevail'.

I do not see any reason with the aforesaid practice obtaining in the Madras High Court shall not be followed in this High Court. To the aforesaid statement, I would add that even a single Judge shall not differ from the judgment of another Judge of the same Court. If he does not agree, the proper course for him is to refer the case to a Bench of two Judges. If this procedure is followed from the beginning, there will not be any confusion created by conflict of decisions. The public will know their rights and the Subordinate Courts will be in a position to administer the settled law without any difficulty. I hope and trust that in the interests of the smooth and

efficient judicial administration of the State, this High Court will in future follow strictly the aforesaid procedure without any deviation.

(29) As the Full bench Decision of the Madras High Court covers the exact point raised in the present case, we follow it and dismiss the revision petition.

Bhimasankaram, J.

(30) I am of the same opinion, but I would like to add a few words of my own particularly because my learned brother Umamaheswaram J., has taken the opposite view (Vide (S) : AIR 1955 AP49 (B)). I propose to approach the consideration of the matter by propounding two questions (1) Is there a rule of law, statutory or otherwise, which makes it obligatory on this Court to follow the precedents in question (2) Even if there is no such rule, and this Court can elect to follow them or not -- what should be our choice -- to be bound or to be free ?

(31) I prefer to rest my decision primarily on my answer to the second question. To start with, the territory over which the Andhra High Court exercises jurisdiction is part of the territory over which the composite Madras High Court exercised jurisdiction. There is no doubt that, if the Madras High Court had continued to exercise jurisdiction, the precedents of the Madras High Court would have been enforced over the whole of this territory. Should the mere constitution of a new High Court make any difference to the Judge-made law that ought to prevail here Now, for instance, it is well known that quite a large body of the rules of the Hindu Law as administered in India is Judge-made. Why should we rouse apprehension in the minds of the citizens of the Andhra State that those rules so long held to obtain in this part of India are subject to reconsideration and possibly to reversal, all because a new High Court has been ushered into existence Lawyers and the litigant public alike will be perplexed and confused. The security of titles to property based on the law as previously understood will be needlessly imperilled. The very idea that what has been recognised to be well-established law will be re-examined by this Court will, I entertain no doubt, be a prolific source of undesirable and speculative litigation. Indeed, it seems to me, the whole object of the rule of stare decisis will be defeated. I think it is our clear duty to do everything to avoid

that result.

There is nothing in the genesis of our Courts which gives us a free hand to deal with the earlier law as laid down by the Madras High Court. There may be cases where the constitution of a new Court involves the welding of two or more jurisdictions each previously under a different Court. In such a case, regions governed by different judge-made rules of law are brought together for the first time and a new Court administering justice over the new jurisdiction cannot properly hold itself bound by the precedents established in one or other of the earlier jurisdictions without making an invidious distinction and without upsetting one set of precedents or other. That, to my mind, is the case with the Travancore and Cochin High Court. It would not be in accordance with the reasonable expectations of the citizens of that new State that the new Court should follow either the Travancore or the Cochin Judge-made law. The decision therefore, in AIR 1952 Trav-C 283 (E) seems to me unexceptionable.

Again, where small territorial units are integrated to form a new State, and a new and independent High Court is established with jurisdiction over the whole State without reference to the jurisdiction of the previous local Courts as is the case with Madhya Bharat, according to the Chief Justice of that Court, the new Court may have no precedents of a parent Court to follow, or would have to apply the precedents of a former Court with a narrower territorial jurisdiction. In such cases, the Court cannot help starting with a clean state. In breaking new ground therefore, it would not be disappointing any natural expectations on the part of the people as to established rules of law. The view taken in AIR 1952 Madh-B 171 (FB) (F) may with respect be considered right.

On the other hand, where territories under the jurisdiction of one High Court are divided into two, each to be under the jurisdiction of a separate High Court, it seems to me that the principle underlying the rule of precedents requires the continuity of case-law to be maintained, because there is no reason at all why the certainty of the law should be affected. The Andhra High Court is in one sense, new of course but its jurisdiction is a jurisdiction which was once subject to one High Court and until 5.7.1954 governed by the case law as laid down by that High

Court. A Court should be reluctant to favour innovations unless they are indispensable. Precedents are followed in the words of Blackstone.

'as well to keep the scale of justice steady and not liable to waver with a new Judge's opinion as also because 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'.

(32) Those reasons point to the need for conformity and operate with equal force now after the creation of the Andhra High Court as they did before. 'It is better that the law should be certain than that Judges should be free to speculate upon improvements in it' to use the words of Lord Eldon. Reference has been made in the course of argument to the Supreme Court. It seems to me that the position of the Supreme Court in relation to the earlier Federal Court and the Judicial Committee of the Privy Council is quite different from the position of the Andhra High Court in relation to the composite Madras High Court. The Supreme Court is the creation of the Constitution of India, brought into existence by the solemn resolution of the people to constitute India into a Sovereign Democratic Republic. It does not inherit its power, authority or jurisdiction from any other Court. It respects the authority of the decisions of Courts prior to its own establishment, it does so of its own volition because they embody rules of law of long standing and not because it is bound by any anterior authority. Indeed, one might venture to state that it would have savoured of constitutional impropriety for the highest court of an independent nation to bow to the decision of a foreign Tribunal.

Even the Federal Court of India was not in relation to the Supreme Court a Court of co-ordinate or similar jurisdiction. If the Supreme Court felt itself bound by the decisions of the Federal Court, it would be following precedents of a Court with a narrower and very limited jurisdiction and constituted under a different authority ; indeed, a foreign authority -- the Parliament of England. That analogy has no application to the relationship between the composite High Court and this Court. It seems to me, therefore, that there are absolutely no reasons whatsoever why the wholesome rule 'to stand by matters decided and not to stir up points set at rest' should not apply to our High Court so far as the decisions of the Madras High

Court before 5.7.1954 are concerned. No section of the litigant public can complain if we are following established rule, since there is no part of our territorial jurisdiction which was not under the old Madras High Court.

(33) As regards the first question which I raised, I am content to adopt the reasoning of My Lord the Chief Justice. I respectfully agree with him that this Court is a Court of co-ordinate jurisdiction in relation to the old Madras High Court. There is one minor point to which reference must however be made. The learned Counsel for the petitioner pointed out that there may be cases where decisions rendered by Madras High Court before 5.7.1954 may be overruled by the Madras High Court itself, but which in the above view may none the less be binding on the Andhra High Court. I see no difficulty, however. In such cases, where it is brought to the notice of this Court that the earlier decisions have been departed from in Madras this Court will re-consider them in the light of the subsequent rulings. Mr. Chinnappa Reddy has also referred to the decision in (1950) 2 All ER 170 (L). He would have it that the law of precedents is not to be applied in criminal matters with the same strictness as in civil matters and relies on the following passage in that judgment :

'In civil matters, it is essential to preserve the rule of stare decisis that should be so but this Court has to deal with the liberty of the subject and if, on reconsideration, in the opinion of a full court, the law has been either misapplied or misunderstood and a man has been sentenced for an offence, it will be the duty of the Court to consider whether he has been properly convicted. The practice observed in civil cases ought not to be applied in such a case'.

(34) As I understand, this passage, it does not mean that Courts are all equally governed by precedents in criminal cases as in civil matters. All that it says is that a Court will not allow a wrong decision in a criminal case to stand on the ground of stare decisis if, on further consideration by a fuller court, it appears that the law has been misapplied or misunderstood. In civil matters, on the other hand, even a wrong decision is not set aside except 'for the best and most urgent reasons'. The liberty of the subject being one of the strongest of reasons always, a wrong decision relating to it should not be allowed to stand.

(35) For these reasons, I agree that the Full Bench decision of the Madras High Court in : AIR1951 Mad0 (A) should be followed and Criminal Revision 603/51 dismissed.

Satyanarayana Raju, J.

(36) I agree with my Lord, the Chief Justice.

K. S. B.

(37) Revision dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com