

**Bharat Traders and ors. Vs. Special Chief Judicial Magistrate and ors.**

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**Court :** Allahabad

**Decided On :** Feb-25-1988

**Reported in :** [1989]176ITR462(All)

**Judge :** K.C. Agarwal and ;B.L. Yadav, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 11 and 11(1);  
[Constitution of India](#) - Articles 14, 21 and 226

**Appeal No. :** Civil Miscellaneous Writ No. 4827 of 1984

**Appellant :** Bharat Traders and ors.

**Respondent :** Special Chief Judicial Magistrate and ors.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** Sudhir Chandra, Adv.

**Judgement :**

**K.C. Agarwal, J.**

1. This petition under Article 226 of the Constitution has been filed by Bharat Traders, a partnership firm, having its head office at Kanpur and four others for quashing of the Notification No. 84-Bha. Sa(2)/VII. A. N. 225-79 dated Lucknow, September 16, 1982, issued in exercise of the powers under proviso to Sub-

section (1) of Section 11 of the Code of Criminal Procedure, 1973. The notification is as under :

'In exercise of the powers under proviso to Sub-section (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor, after consultation with the High Court of Judicature at Allahabad, is pleased to establish with effect from the date of publication of this notification in the Gazette, a special court of Judicial Magistrate of the First Class for all districts of Uttar Pradesh with its place of sitting at Allahabad, to try cases arising under the enactments specified in the Schedule below in any local area within the State of Uttar Pradesh.'

2. The Schedule below the notification mentions 12 Acts to be covered by it. The petitioners have challenged the validity of the notification on the grounds that :

(i) one single court cannot be established for the entire State as the entire State is not a 'local area' ;

(ii) the State does not have power under proviso to Section 11(1), Code of Criminal Procedure, to create a special court for trying a class of cases for the entire State ;

(iii) the notification cannot operate in the metropolitan areas in the State of UP. ;

(iv) the notification is violative of the provisions of Chapter XIII of the Code of Criminal Procedure with regard to the jurisdiction of Magistrates for the trial of offences ;

(v) creation of a special court at Allahabad is discriminatory and is violative of Article 14 of the Constitution ; and

(vi) the notification interferes with the right of personal liberty conferred by Article 21 of the Constitution.

3. The aforesaid writ petition and several others were classified and kept in one group for arguments. A counter-affidavit has been filed on behalf of the State of Uttar Pradesh justifying the notification. Before we deal with the arguments, we may notice the notification dated August 7, 1987, by which the notification referred

to above has been modified and a new Special Court of the Special Magistrate, First Class, has been created at Kanpur. The relevant portion of this notification is quoted below :

'In exercise of the powers under proviso to Sub-section (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), read with Section 21 of the General Clauses Act, 1897 (Act No. X of 1897), and in continuation and partial modification of Government Notification No. 84, Bha. Sa. (2)/VII. A. N. 225/79 dated September 16, 1982, the Governor, after consultation with the High Court of Judicature at Allahabad, is pleased to establish Special Court of Judicial Magistrate of the First Class as specified against each in column 2 of the Schedule I below with place of sitting as specified against each in column 3 and to exercise jurisdiction in the local area as specified against each in column 4 thereof to try cases arising under the enactments specified in the Schedule II below arising within their respective local areas'.

4. Schedule I gives the names of the districts which have been assigned to the Special Court of Judicial Magistrate, First Class, Kanpur. These districts are Kanpur Nagar, Kanpur Depot, Banda, Hamirpur, Jalaun, Meerut, Gha-zibad, Bulandshahr, Muzaffarnagar, Saharanpur, Dehradun, Uttar Kashi, Tehri Garhwal, Agra, Aligarh, Mathura, Etah, Mainpuri, Farrukhabad, Jhansi and Etawah.

5. The subsequent notification provides that the cases arising out of the local areas of jurisdiction in column 4 thereof shall be tried at Kanpur. If we uphold the notification to be valid, the irresistible result would be that those cases, which have been excluded from the jurisdiction of the Special Court of Judicial Magistrate at Allahabad would be liable to be transferred to the Special Court of the Judicial Magistrate, Kanpur. The notification dated August 7, 1987, will apply to all cases pending at Allahabad. The word 'tried' used in this notification leads us to the said conclusion. It has to be considered with regard to the particular context in which it is used and with regard to the claim and purpose of the provision under consideration. The obvious context is that the jurisdiction of the Special Magistrate, Allahabad, be bifurcated into two to enable provision for speedy trial to the person implicated or involved therein.

6. Coming to the question of the validity of the first notification, which would, in fact, cover any controversy which may be raised relating to the validity of the second notification as well as about the power of the State Government to issue the same.

7. By notifications of April 20, 1974, and May 7, 1974, the State Government had empowered the Chief Judicial Magistrate at Lucknow, with the jurisdiction to enquire into and try and commit to the Court of Sessions cases in respect of offences occurring anywhere in the State. These notifications were challenged in *T. S. Bajpai v. K. K. Ganguli* [1976] Cr. LJ 514, and this court took the view that constitution of a single court of the Judicial Magistrate to try, enquire into or commit to the Court of Sessions all cases arising in any local jurisdiction was not within the competence of the State Government.

8. After the aforesaid decision in Bajpai's case [1976] Cr. LJ 514 (All), the State issued Ordinance No. 13 of 1976, subsequently converted into (U. P. Amendment) Act, 1976 (U. P. Act No. 16 of 1976) modifying Sections 11 and 13 of the Code of Criminal Procedure. The attempt was to get over the difficulty which was pointed out in Bajpai's case [1976] Cr. LJ 514 (All).

9. In 1976, Parliament passed the Code of Criminal Procedure (Amendment) Act, 1978 (Act No. 45 of 1978). It made amendments in Sections 2(j), 11, 13 and 14. The definition of the words 'local jurisdiction' after amendment is as under :

'Local jurisdiction', in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any-of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by a notification, specify.'

10. The Objects and Reasons for the amendment of this clause are as under :

'The jurisdiction of a Magistrate under the new Code is confined to a district. This has created difficulty in enabling the appointment of Magistrates with jurisdiction beyond a district, such as when Special Judicial Magistrates are to be appointed to try certain categories of cases or cases involving inter-district ramifications. The

definition of the expression 'local jurisdiction' in Section 2(j) is, therefore, being amended to empower the State Government to define the local jurisdiction as extending to the whole of the State or to any part thereof, in the case of Special Courts or Special Judicial Magistrates, where necessary.'

11. The State Government is empowered to declare the whole of the State or any part thereof as local jurisdiction. If read along with the 'Objects and Reasons' for the amendment in the definition of the word 'local jurisdiction', there would be no difficulty in holding that the State Government, now, has power to issue a notification including the whole of the State within the local jurisdiction of a Magistrate.

12. The next question is whether the State Government was empowered to establish one Special Court of the Judicial Magistrate laying down that that court alone will have jurisdiction to try any case or class of cases exclusively. This power has been conferred by the Legislature by adding a proviso to Sub-section (1) of Section 11. Under the main Section, in every district, there shall be established as many Courts of Judicial Magistrates as the State Government may by notification specify. The proviso inserted by the aforesaid amending Act entitles the State Government to establish one court for trying all cases at one place, which the State Government may do after consultation with the High Court. The 'Objects and Reasons' of the proviso inserted for the amendment brought about mentioned in the amended Act were :

'Under the new Code, Courts of Magistrates are established for every district. Sometimes it becomes necessary to set up Courts of Judicial Magistrates for trying special categories of cases, where the jurisdiction has to extend to areas beyond a district. Sub-section (1) of Section 11 is being amended to empower the State Government to establish Special Courts of Judicial Magistrates having jurisdiction throughout any local area and to confer on such courts exclusive jurisdiction to try any particular case or particular class of cases.'

13. We may extract the proviso as well which reads as under :

'Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases and when any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.'

14. Under this proviso, the State Government could establish one Special Court in respect of such cases for the whole of the State which it was advised to do in consultation with the High Court. In exercise of the power mentioned above, all cases of economic offences arising under the 12 Central Acts in any area of the State, including the Metropolitan Area of Kanpur Nagar, became triable by the Special Court at Allahabad exclusively and other courts cease to have jurisdiction with regard to the trial of cases of economic offences.

15. It was urged on behalf of the petitioner's counsel that as Sub-section (1) of Section 11 of the Code of Criminal Procedure excludes a metropolitan area, no notification under Section 11(1), excluding the jurisdiction of the Metropolitan Magistrate, Kanpur, could be issued by the State Government. In view of the notification dated August 7, 1987, this argument has been rendered futile as, under the second notification, cases arising from Kanpur would have to be tried by the Special Court of Magistrate, First Class, Kanpur. We may, however, say a word about the correctness of the submission of learned counsel for the petitioners. It is true that Sub-section (1) of Section 11 of the Code of Criminal Procedure excludes a metropolitan area, but the proviso to Sub-section (1) makes an exception to the provisions of Sub-section (1) of Section 11 and the words 'for any local area' used in the proviso to Sub-section (1) of Section 11 overrides the words 'in every district not being a metropolitan area' used in Sub-section (1). Thus, the net result is that although Kanpur Nagar was a metropolitan area, it is also a district for the purposes of the Code of Criminal Procedure and, therefore, the Special Court of Judicial Magistrate, First Class, Allahabad, had jurisdiction to try economic offences under the 12 Central Acts arising in Kanpur Nagar. We, therefore, find no merit in the submissions relating to the invalidity of the

notification.

16. The next question is whether the notification contravenes Article 14 of the Constitution. The submission made by petitioner's counsel was that there was no logical basis for lumping together all the cases arising in the whole of the State and conferring exclusive jurisdiction on the Special Magistrate at Allahabad. It was suggested that creation of one court for the whole of the State is in contravention of Article 39A of the Constitution as well.

17. The underlying principle of Article 14 is that all persons and things similarly situated shall be treated alike both in privileges conferred and liabilities imposed. 'Equality before the law' means that among classes, the law should be equal and should be equally administered and that like should be treated alike. Hence, what it forbids is discrimination between persons who are, substantially, in similar circumstances or conditions. However, Article 14 does not forbid classification which rests upon reasonable grounds of distinction. It prohibits legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. The principle of equality does not mean that every law has to be applied universally to all persons who, by nature, required different treatment. So much has already been said by the Supreme Court on Article 14 of the Constitution that we need not refer to the decisions on those points. In *State v. V C. Shukla*, AIR 1980 SC 1382, the validity of the Special Courts Act was challenged on a number of grounds including those of Articles 14 and 21 before the Supreme Court. The Supreme Court repelled both the arguments. It held (headnote) :

'In view of the finding of the Supreme Court that the classification made by the Special Courts Act complies with the dual test laid down by the court and is a reasonable classification, Article 14 would not be attracted even if the procedure provided by the Act is held to be harsher than that available under the ordinary law.'

18. Another decision to which reference may be made is in *In re Special Courts Bill*, 1978, AIR 1979 SC 478. The propositions numbered as propositions Nos. 6 and 7 in the judgment of the Supreme Court in *Special Courts Bill's* case may be

reproduced below (at page 509) :

'(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.'

19. We have not been satisfied that the trial under the impugned notification would be harsher or onerous. The idea behind the notification appears to be for providing a speedier remedy at the hands of one Special Magistrate who would get expertise by trying only economic offences.

20. The next submission of the petitioner's counsel about Article 21 of the Constitution is equally devoid of substance. Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law.

21. Emphasis was laid by the petitioner's counsel that the concentration of the entire work at one place for the whole of Uttar Pradesh will defeat the entitlement of an accused to get a speedy trial, which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution.

22. The expression 'personal liberty' in Article 21 has been held by the Supreme Court to be of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man. The procedure for that purpose cannot be arbitrary, fanciful or oppressive, otherwise it would be no procedure at all, and the

requirement of Article 21 would not be satisfied.

23. In the instant case, the State Government has issued the impugned notification in consultation with the High Court under Section 11 conferring upon one Special Magistrate the power of deciding all the cases relating to economic offences. The dominant purpose is to achieve not only speedy determination but a determination with the utmost despatch, The Special Magistrate will have no other work to do except deciding cases of economic offences. He would have expert knowledge. In *V. C. Shukla v. State*, AIR 1980 SC 962, the Supreme Court upheld the challenge to the validity of the Special Courts Act, 1979, by which one Special Court had been created for the purpose of trial of a special type of cases.

24. It is common knowledge that in our country long delays are taking place in criminal courts because of the slow motion in which the work is done. Sometimes, the accused, or at some other times, the prosecution is guilty of the same, If the work is in the hands of one Special Magistrate, he may be able to keep a vigil. However, now, two courts have been created in the State of Uttar Pradesh.

25. In the light of the above, we would constrict ourselves within the narrow parameters within which issues arise and dispose of the writ petition by negating the challenge to the notification on the basis of Article 21 of the Constitution. Notification under Section 11(1) has since been issued by the State Government in consultation with the High Court. There is no force in the argument of the same being invalid on account of Articles 14 and 21 of the Constitution.

26. We have already stated above that the cases pending on August 7, 1987, and entertained thereafter would, in accordance with Notification No. 84 Bha. Sa(2)/VII-A. N. 225-79, dated Lucknow September 16, 1982, have to be transferred to the Court of the Special Magistrate, First Class, Kanpur.

27. In the result, the writ petition fails and is dismissed.