

In Re: Bhurekhan Walimohammad Khan

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Court : Madhya Pradesh

Decided On : May-04-1965

Reported in : AIR1967MP94; 1967CriLJ381

Judge : S.B. Sen, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 1, 5(2), 14(1) and 29(2); Motor Vehicles Act

Appeal No. : Criminal Revn. No. 377 of 1964

Appellant : In Re: Bhurekhan Walimohammad Khan

Advocate for Pet/Ap. : Sohani, Dy. Govt. Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.B. Sen, J.

1. The question involved in this criminal revision is very short. The Assistant Public Prosecutor filed a complaint under Section 156/112 of the Motor Vehicles Act against one Bhurekhan in the Court of the Additional District Magistrate Ujjain, A memo was received by the said Additional District Magistrate that all cases under Motor Vehicles Act of 1939 should be sent to the Special Magistrates appointed

for the purpose for various Districts. In compliance to this memo the Addl. District Magistrate returned the challan for submitting the same to the Magistrate 1st Class Indore (appointed as Special Magistrate for trial of cases under the Motor Vehicles Act of 1939). The State of Madhya Pradesh has now come up in revision challenging this order of return of challan.

2. The contention of the applicant is that the Addl. District Magistrate Ujjain has jurisdiction to try the offences under the Motor Vehicles Act and the appointment of a special Magistrate under that Act has not deprived the ordinary court of its jurisdiction. Therefore instead of returning challan the Addl. District Magistrate Ujjain should have tried the case himself.

3. The learned Government Advocate relies on Section 5(2) of the Criminal Procedure Code. It is quoted below:-

'All offences under any law other than Indian Penal Code shall be investigated, inquired into and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.'

The Motor Vehicles Act does not provide any special Magistrate or does not say that it should be tried by any particular Magistrate. Under Section 132 of the M.V. Act the only restriction is that 'no Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder'. The Addl. District Magistrate should have tried the case himself. Section 132 of the Act authorises him to do so.

4. I do not think Section 5 Criminal Procedure Code can be called in aid. It only speaks of investigation and mode of trial. It does not speak about the jurisdiction of the Court. For that purpose Section 29 is the appropriate section. I quote below Section 29 for the sake of convenience:

'Offences under other laws-

(1) Subject to the other provisions of this Code, any offence under any other law shall when any court is mentioned in this behalf in such law, be tried by such court.

(2) When no court is so mentioned, it may be tried by the High Court or subject as aforesaid by any court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.'

5. It is clear that Sub-section (1) of Section 29 is not applicable because no particular court has been mentioned. But under Sub-section (2) we have got two alternatives. One is that it may be tried by the High Court or by any court constituted under the Criminal Procedure Code for such offence as shown to be triable in the second schedule.

6. A notification No. 28899-4538-21 (b) dated 3-9-63 has been issued by the State Government under Section 14 Cri. Procedure Code by which various special Magistrates by name have been appointed for various Districts of the Madhya Pradesh for trial of offences under the Motor Vehicles Act 1939. Section 14 (1) Criminal Procedure Code empowers the State Government to appoint special Magistrate for particular class of cases. If we read Section 14 (1) with Section 29 (2) of the Criminal Procedure Code we find that the Special Magistrates are the Courts duly constituted as required under Section 29 (2). The object of such a notification must necessarily mean that it is only those Magistrates who will try the offences. Section 29 (1) excludes the jurisdiction of any other Magistrate than what is specified in the special enactment. That means if there is a special Court for the purpose, ordinary courts will not hear it. Special court need not be created by the Statute itself. If authority competent to create special court creates a special Court, it is that Court only which should try unless the notification itself keeps the jurisdiction of the ordinary Courts intact.

7. In *Samaila v. Emperor*, 18 Cri LJ 927. (AIR 1917 Lah 138) a question which is almost similar to the one we are now dealing with arose. A notification appointing certain commissioners to try cases of dacoity in particular areas was issued. It was held by the Division Bench on a reference, that the notification ousted the jurisdiction of the ordinary courts. Defence of India Act provided a special tribunal for particular offences. Here the notification validly passed also provides tribunal for particular offences in particular areas. Recourse must be had to that tribunal otherwise the notification will remain a dead law and the authority will be

bypassed. When the notification was issued there must have been some grounds to create special tribunals. Whatever that may be, special Courts will always oust the jurisdiction of ordinary courts unless different intention appears from the notification.

(8) The revision petition is dismissed.

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