

Barji and Etc. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-10-1999

Reported in : 1999CriLJ4197; 2000(1)MPLJ390

Judge : Deepak Verma and ;N.K. Jain, JJ.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 36, 36A, 36B, 36C and 36D; [Narcotic Drugs and Psychotropic Substances \(Amendment\) Act, 1988](#); Orissa Sales Tax Act; [General Clauses Act, 1897](#) - Sections 6; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 407

Appeal No. : Crl. Revn. Nos. 437, 543 and 544 of 1998

Appellant : Barji and Etc.

Respondent : State of M.P.

Advocate for Def. : G. Desai, Govt. Adv.

Advocate for Pet/Ap. : C.R. Joshi, Adv.

Judgement :

N.K. Jain, J.

1. Pursuant to the order of Reference, passed on 5-11-95 by learned single Judge (Hon'ble Shri R.D. Vyas, J), these revisions, by the order of Hon'ble Chief Justice,

have been placed before us for resolving the question as extracted in para 4 below.

2. Facts are in narrow compass. The State Government by a notification dated 13th February, 1997, issued under Section 36 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short 'the Act') constituted nine Special Courts in the State at Indore, Ujjain, Gwalior, Rewa, Jabalpur, Bhopal, Raipur, Mandsaur and Sagar for the areas indicated therein. The area indicated for each special Court, included 4 to 5 Sessions Division. The area assigned to the Special Court Ujjain consisted of Sessions Division Ujjain, Dewar, Ratlam and Shajapur, Later on by a subsequent notification dated 2nd April, 1998 the State Government in supersession of the earlier notification dated 13-2-97, constituted 45 special Courts in the State. Thus, providing one special Court for each of the 45 Sessions Divisions. Obviously, like any other special Court, the jurisdiction of Spl. Court, Ujjain was limited to the Sessions Division Ujjain only. However, the cases giving rise to the present revisions, amongst others, were pending in the Ujjain Court on the date when the subsequent notification dated 2-4-98 came into force. The Court, it appears, had already taken cognizance and framed charges in these cases. Admittedly, these cases arose from the area which now falls within the jurisdiction of special Court Ratlam. The accused persons of these cases, therefore, moved applications for transfer of their cases to special Court Ratlam on the ground that by virtue of this second notification, the Court at Ujjain ceased to have jurisdiction to try these cases. The learned special Judge however by the orders impugned, dismissed all the applications. The learned Judge was of the view that the notification dated 2-4-98 had no retrospective effect and the cases in which cognizance had already been taken, shall be continued to be tried by the Ujjain Court. The accused-petitioners thus approached this Court in revision.

3. When these revisions came up before the learned single Judge, he felt bound by a decision dated 14-10-98, passed by another single Judge (Hon'ble Shri S.P. Khare, J.) of this Court at Jabalpur in Misc. Case No. 5591/98, but at the same time entertained doubt as to its correctness. The learned single Judge observed (vide para 6):-

Prima facie I agree with the submission by the learned Advocate. Since I am bound by the single Judge Judgment dated 14-10-98 in the aforesaid Misc. Cr. Case, with which I do not agree prima facie, I would refer the matter to the Division Bench for considering the aforesaid points.

The learned single Judge has posed the controversy in following terms (para 3):-

The controversy arises whether, in the circumstances, the Court at Ujjain having the jurisdiction over the aforesaid four Districts having taken cognisance and frame charges, would still continue to exercise the jurisdiction over the Districts other than Ujjain after supersession of the Notification under which that Court was constituted whereas by subsequent Notification another Court is constituted for different areas and the jurisdiction of Ujjain Court is limited to Ujjain city only.

4. The inbred question is whether on coming into force of second notification dated 2-4-98, the special Courts constituted under the previous notification dated 13-2-97 were divested of the jurisdiction to try the cases already pending before those Courts on and before 2-4-98?

5. We have heard Shri C.R. Joshi, learned counsel for the petitioners and Shri Girish Desai, learned Government Advocate for the respondent-State.

6. Section 36 of the Act, as amended by the: Amendment Act of 1989, provides for constitution of Special Courts and appointment of Special Judges by the State Government with the concurrence of the Chief Justice of the High Court. This Section, insofar as relevant for our purpose reads thus :-

36. Constitution of Special Courts.- (1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts, as may be necessary for such areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Only a Sessions Judge or an Additional Sessions Judge can be appointed a Special Judge. Section 36A confers exclusive jurisdiction to the Special Court constituted for a particular area, to try all offences under the Act, arising from that area. Section 36B provides for appeals and revisions to High Court from the Judgments and orders passed by the Special Courts. Section 36C provides for application of the provisions of the Criminal Procedure Code, 1973 to the proceedings before the Special Court as if the Special Court is a Court of Session. This brings us to Section 36D which may usefully be reproduced at this stage. It reads :-

36D. Transitional Provisions.- (1) Any offence committed under this Act on or after the commencement of the [Narcotic Drugs and Psychotropic Substances \(Amendment\) Act, 1988](#), until a Special Court is constituted under Section 36, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session :

Provided that offences punishable under Sections 26, 27 may be tried summarily.

(2) Nothing in Sub-section (1) shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a Court of Session under the said Sub-section (1) and the same shall be heard and disposed of by the Court of Session.

7. A reading of the aforesaid provisions, makes it clear that although Section 36A confers exclusive jurisdiction on a Special Court to try all the offences under the Act arising from the area, for which the Court is constituted, the cases pending in Sessions Court on the date of constitution of the Special Court and of which the cognizance had already taken by such other Court, shall remain unaffected and continued to be tried by that Court.

8. Although Sub-section (2) of Section 36D refers to the cases pending in a Court of Session on and before the date of constitution of a Special Court, the underlying principle remains the same and would obviously apply to the cases pending in a Special Court before constitution of another Special Court for the same area.

9. ShriJoshi, learned counsel for the petitioners has laid much emphasis on the word 'supersession' used in the notification dated 2-4-98. According to him by this notification not only the earlier notification dated 13-2-97 was totally obliterated, the jurisdiction of the Special Court constituted under the previous notification in respect of the area which now fell outside its jurisdiction was also taken away even in respect to the pending cases arising out of that areas, we are however unable to accede to the contention.

10. The Notification in question is obviously issued by the State Government under the delegated powers conferred by Section 36 of the Act. Generally speaking, such power may be conferred to make subordinate legislation in the shape of a Rule, a Bye-law or a Notification, which have retrospective operation. However, in the absence of an express or necessarily implied power to that effect, subordinate legislation be it a Rule, a bye-law or a Notification, cannot have retrospective operation (See Principles of Statutory Interpretation by Justice G.P. Singh, 6th Edition, 1996, Chap. 12, Sy. 6). In the instant case Section 36 of the Act does not seem to have given any such power either expressly or by necessary implication to the State Government to issue a notification having retrospective operation. The notification dated 2-4-98 also does not give even slightest indication of being retrospective in operation.

11. The Supreme Court in State of Orissa. v. Titaghur Paper Mills Co. Ltd. AIR 1985 SC 1293, while construing the similar word 'supersession' used in a Orissa Government Notification, issued under the Orissa Sales Tax Act, held :

The word 'supersession' in the Orissa Govt. Notification SRO Nos. 900/71 and 901/77 dated Dec. 29, 1977, is used in the same sense as the words 'repeal and replacement' and, therefore, does not have the effect of wiping out the tax liability under the previous notifications, All that was done by using the words 'in supersession of all previous notifications' in the Notification dated Dec. 29, 1977, was to repeal and replace previous notifications and not to wipe out any liability incurred under the previous notifications.

12. The word 'supersession' used in the M.P. Govt. notification dated 2-4-98 has to be construed similarly, that is to say, it will not have the effect of wiping down the

acts done or action taken under the previous notification dated 13-2-97. Section 6 of the previous notification dated 13-2-97. Section 6 of the [General Clauses Act, 1897](#) also lays down the same rule of construction.

13. The order dated 14-10-98 passed by brother Khare, J. does not as such lay down any proposition of law on the point. By the said order, certain pending cases were ordered to be transferred from one Special Court to another on the ground of convenience. Obviously, the order was passed in exercise of the power of High Court to transfer cases under Section 407, Cr.P.C.

14. It is pertinent to mention here that the High Court through a memorandum dated 9th July, 1998 has clarified that the only cases in which cognizance has not been taken by the Special Court on or before the date of issuance of notification dated 2-4-98 shall be transferred to the newly constituted Special Courts. This memorandum, we find, is in tune with the legal position already stated herein before.

15. We, thus, conclude that the notification No. 1-6-89/XXI- B(1) dated 2-4-98 shall not affect the special cases pending on 2-4-98 and in which cognizance had already been taken by the Special Courts already constituted under the previous Notification dated 13-2-97. Such cases shall be continued to be tried by the Courts in which they are pending on that date. The cases in which cognizance has not been taken shall alone stand transferred to the Special Courts constituted under the subsequent notification dated 2-4-98 for the respective areas.

16. The question as to when cognizance is understood to have been taken, is fairly well settled by a catena of decisions of Hon'ble the Supreme Court as also of this Court. The latest decision on the point was made by this Court in Criminal Revision No. 2472/97 on 14-7-97 and it was held that the Sessions Court trying offences under the NDPS Act can be said to have taken cognizance thereof only when it has applied its mind for the purpose of framing of charge. In the instant cases also the Special Court Ujjain has framed charges and it can be thus said that the Court has taken cognizance of the offence in all these cases.

17. We thus answer the reference as aforesaid and direct that these revisions be now placed before the learned single Judge for further orders.

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