

Tajkhan Vs. the State

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Court : Rajasthan

Decided On : Aug-10-1956

Reported in : 1957CriLJ96

Judge : Modi, J.

Acts : [Constitution of India](#) - Article 14; Criminal Law Amendment Act, 1952 - Sections 6; [Indian Penal Code \(IPC\), 1860](#) - Sections 116 and 161

Appeal No. : Criminal Appeal No. 76 of 1955

Appellant : Tajkhan

Respondent : The State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : Hastimal, Adv.

Disposition : Appeal dismissed

Judgement :

Modi, J.

1. This is an appeal by the accused Tajkhan who has been convicted under Section 161 read with Section 116, I. P. C., and sentenced to six months rigorous imprisonment and a fine of Rs. 500/- and in default to two months' further rigorous

imprisonment by the Sessions Judge, Udaipur, acting as a Special Judge.

2. The material facts are these. The appellant is a dealer in wool and cotton, and carries on business in the name of Daudji Mohammadji and has his office at Udaipur. The properties of the firm, according to the appellant, are of two brothers Hussain Ali's and Nazir Ali and the appellant is Hussain Ali's son and has been looking after the entire business.

It is common ground that the appellant was an assessee for purposes of income-tax within the jurisdiction of Mr. Gupta, Income-tax Officer at Udaipur, and his (appellant's) case for assessment came before that officer on 9-1-1952.

P.W. 3 Shri Bhattacharya was his counsel and both had appeared before the Income-tax Officer on 9-1-1952, when certain account-books and other necessary documents had been produced before Shri Gupta. These accounts had been gone into and it appears that the case was fixed for 10-1-1952, for arguments. The prosecution story is that the appellant went to the Income-tax Office at about 9 a.m. on the 10th January and sent a slip to Shri Gupta through Kalu who was a peon in the Income-tax Office.

It may be pointed out that Shri Gupta occupied a house where he had his office in the ground-floor & his residential apartments in the upper one. When Kalu took the appellant's slip to Shri Gupta, the latter sent a reply back that the appellant should see him in the office. Shri Gupta came to his office at about 10 O'clock, and again a second slip was sent by the appellant to him through the peon Kalu. Shri Gupta called the appellant in the office at about 10-30 am or so.

The story for the prosecution, is that the appellant having come into Shri Gupta's office, asked the latter to have pity on him and that he should tax the appellant leniently. According to Shri Gupta, the appellant took off his 'Pagdi' from the head and placed it on Shri Gupta's table. Shri Gupta said that he would deal with the appellant according to law and on the facts and documents brought to his notice, and that he had already explained the entire position to the appellant's counsel Shri Bhattacharya.

Thereafter the appellant again made a prayer for mercy and took out a few currency notes from his pocket (the exact number of which Shri Gupta was not able to see) and presented them to him. This annoyed Shri Gupta and he rang the bell for 'his peon and asked him to keep watch over the appellant. Immediately Shri Gupta telephoned to the Superintendent of Police, Udaipur, but as the latter was not available, he telephoned to the Deputy Inspector General of Police, and told him what had happened.

The Deputy Inspector General of Police then deputed two police officers of whom one was Deputy Superintendent of Police, Shri Razora, and the other was Circle Inspector, Shri Laxmilal, to go and investigate the matter. On the arrival of these officers, Shri Gupta gave the first information report Ex. P-I.

The appellant was then searched and a sum of Rs. 500/- in five currency notes of Rs. 100/- each was found in one of the pockets of his 'Achkan' and some more notes were found in another pocket of his. The accused was eventually tried and convicted by the learned Special Judge as already stated above.

3. The appellant pleaded not guilty. He admitted that he had an assessment case pending before the Income-tax Officer, Shri Gupta and that that case had been taken up on 9-1-1952, when certain papers and documents had been shown to the Income-tax Officer in the presence of Shri Bhattacharya, appellant's counsel.

It is also not disputed that the case was to come up for being further proceeded with on the next day, that is, 10-1-1952. The appellant further admitted that he had sent a slip through the peon to see the Income-tax Officer but his case is that he sent the slip only once and that too after 10 O'clock when the Income-tax Office had opened, and that he had not tried to see the income-tax Officer in his residential quarters at all.

The appellant's further version is that he had never offered any money to Shri Gupta but that there was a certain paper (Ex. D-2) in his pocket, which was a letter received from hi& agent at Badoli saying that the latter had kept no detailed accounts, and that he was trying to take out this paper to show it to Shri Gupta, a few currency notes came out accidentally from his pocket and that this had flared

up Shri Gupta, but as a matter of fact, the appellate had never offered any money to him.

4. The prosecution produced seven witnesses in all and the main witness upon whose testimony the whole case practically hinges is that of Shri Gupta himself.

5. But before I deal with the evidence led in the case, I consider it desirable to dispose of a constitutional objection relating to jurisdiction based upon Article 14 of the Constitution. According to Section 6, Criminal Law Amendment Act (46 of 1952), 1952, this case was tried by the Sessions Judge acting as Special Judge of the area within which the offence was committed.

The contention is that Section 6 of the said Act is violative of Article 14 of the Constitution inasmuch as the section leaves the appointment of Special Judges for any particular area or areas to the unregulated discretion of the State Government and such unregulated discretion is bound to affect the principle of equal protection of laws enshrined in Article 14 of the Constitution and therefore the entire trial by the Special Judge was void and without jurisdiction.

6. Section 6, Criminal Law Amendment Act runs as follows: --

'6(1), The state Government may, by notification in the Official Gazette appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely: --

(a) an offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code (Act 45) of 1860 or Sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947).

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a). .

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is, or has been, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal procedure, 1898 (Act 5 of 1898)'. .

7. It may be pointed out in this connection that the preamble of this Act says that it was being enacted to provide for a more speedy trial of certain offences. Section 2 of the Act provides for a higher punishment for an offence under Section 165 than was originally prescribed in the Penal Code. Section 3 enacted a new Section 165A and makes the abetment of offences under Section 161 or Section 165 a substantive offence.

Sections 4 and 5 introduce certain amendments in Section 164 and S 337, Criminal P. C. I have already quoted Section 6 above which invests the State Government with the power to appoint Special Judges such as may be necessary and for such area or areas as may be specified by a notification to try certain offences mentioned in the section itself. Then Section 7 provides that notwithstanding anything contained in the Code of Criminal-Procedure or in any other law the offences specified in Sub-section CD of Section 6 shall be triable by Special Judges only.

Section 8 provides for the procedure and powers of Special Judges. This section enacts that a Special Judge may take cognizance of offences without the accused being committed to him for trial and shall follow the procedure prescribed for the trial of warrant cases in the Code of Criminal Procedure.

Sub-section (2) provides that a Special Judge may tender a pardon to any person supposed to have been directly or indirectly concerned in, or privy to, an offence on condition, of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence, and that such pardon will be deemed to have been tendered under Section 338 of the Code.

Sub-section (3) then lays down that except as otherwise provided above, the provisions of the Code of Criminal Procedure shall, so far as not inconsistent with this Act, apply to the proceedings before a Special Judge, and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session trying cases with a jury or without the aid of assessors.

Sub-section (4) authorises the Special Judge to impose a sentence authorised by law on a person convicted of the offence triable under the Act. Section 9 provides

that the High Court will exercise all the powers conferred by Chapters 31 and 32, Criminal P. C. in the matter of appeals and revisions' as if the Court of the Special Judge was the Court of Session.

The last Section 10 provides for transfer of pending cases to the Court of the Special Judge where they may be pending in the Court of any Magistrate at the time of the commencement of the Act. This is a brief resume of the provisions of the Criminal Law Amendment Act.

8. The net result of these provisions, to my mind, clearly is that offences under Sections 161, 165 or 165A, Penal Code, or the offence of criminal misconduct under Sub-section (2) of Section 5, Prevention of Corruption Act, or a conspiracy or an attempt to commit such offences or any abetment thereof have been made exclusively triable by Special Judges, and that such Judges are to be men of superior ability and experience as nobody who is not or has not been a Sessions Judge, or Additional Sessions Judge or an Assistant' Sessions Judge- can be appointed as a Special Judge under the Act, and for the trial of such offences, the procedure prescribed for the trial of warrant cases by a Magistrate has been laid down in the Act.

It is further to be noted that the offences for which this special jurisdiction is created are clearly defined so that there is no question of any discrimination on that score.

The only ground on which the validity of Section 6 is attacked before me is that even though, no discretion has been left to the State Government in the matter of the offences to be tried by the Special Judges and such offences have been particularised, the appointment of the Judges for a particular area or areas has been left to the discretion being entirely unregulated is apt to result in inequality, as the Government may appoint a Special Judge for a particular area in which case a trial for an offence of the categories mentioned in the Act will take place before a Special Judge, but in the case of an area where a Special Judge may not have been so appointed, such a trial will take place before the ordinary magistracy according to the Code of Criminal Procedure.

Learned counsel placed his reliance upon a number of cases in support of his objection, namely, *State of West Bengal v. Anwar An*, AIR 1952 SC 75 (A), *Kathi Raning Rawat v. State of Saurashtra*, AIR 1952 SC 123 (B), *Lachmandas v. State of Bombay*, AIR 1952 SC 235 (C), *State of Punjab v. Ajaib Singh*, AIR 1953 SC 10 (D), *Qasim Razvi v. State of Hyderabad*, AIR 1953 SC 156 (E) and *Habeeb Mohamed v. State of Hyderabad*, AIR 1953 SC 287 (F) and *Bahadur Singh v. Jaswant Raj Mehta*, ILR (1952) 2 Raj 511 : (AIR 1953 Raj 158) (G).

I do not consider it necessary to deal with the cases mentioned above in detail, and consider it sufficient to state that it may be taken to be well settled at this date that the principle enshrined in Article 14 does not and cannot mean that the same rules of law shall be applicable to all persons within the State, but all that it enjoins is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed and that all legislative differentiation is not necessarily discriminatory and that the legislature has a wide power of classification in making laws operating differently as regards different groups of persons in order to give effect of its policies.

In other words, it is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation and requires that the classification must be founded on some intelligible differentia and that such differentia must have some rational relation to the object sought to be achieved by the impugned legislation.

Thus, *Dass, J.* as he then was in *Kathi Raning Rawat v. State of Saurashtra* (B), observed that the Legislature had left it to the State Govt. to classify offences or classes of offences or classes of cases for the purpose of the Saurashtra State Public Safety Measures Ordinance (No. 66) of 1949, for the State Government was in a better position to judge the needs and exigencies of the State and the Court would not lightly interfere with the decision of the State Government. The learned Judge further observed that

'If at any time the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of its power if it is purposeful or in excess of its powers even if it is done

in good faith, and in either case the resulting discrimination will encounter the challenge of the Constitution and the Court will strike down not the law which is good but the abuse or mis-use or the constitutional administration of the law creating or resulting in unconstitutional discrimination.'

9. Now so far as the Criminal Law Amendment Act is concerned, Section 6 thereof itself classifies which it is intended to reach, and, therefore, it is not open to any attack on the ground of want of classification by the Legislature of the kind or classes of offences to be entrusted to the special Court as in the Saurashtra case.

The ground of attack in the case before me, however, is that the State Government may appoint a Special Judge in a particular area, and it may not appoint such a Judge in another area so that the trial of an accused for any of the offences specified in the Act in an area for which a Special Judge has been appointed will be by a Special Judge and in another area for which no such Judge may have been appointed will have to be by a Magistrate and that this will lead to discrimination between persons accused of the same offences but living in different areas, and for no good or intelligible reason.

10. I have carefully examined this argument and am of opinion that it is founded on a misconception of the effect of the provisions of the Criminal Law Amendment Act.

A careful analysis of the provisions of the Act made above clearly shows that after the commencement of the Act, offences specified in Section 6 thereof have been made exclusively triable by a Special Judge throughout this State, and this must be so notwithstanding anything contained in the Criminal Procedure Code or for that matter in any other law bearing on the subject.

In other words, the prosecution of all persons accused of the offences mentioned in the Act has been made exclusively triable by a special class of Judges, namely, the Special Judges. The contention of learned counsel for the appellant that such offences in one part of this State could be tried by Special Judges and in another part thereof by the ordinary magistracy is clearly opposed to Section 7 of the Act and is entirely incorrect.

11. It is in this setting that the true meaning of Section 6 falls to be determined. I have already quoted the language of this section in extenso above. All that Section 6 in this context means, to my mind, is that the precise number of the Special Judges to be appointed in any area or the allocation of particular areas to particular Special Judges has been left for the determination of and will be determined by the State Government in its discretion.

I desire to emphasize that the discretion vested by Section 6 in the State Government is merely with regard to the number to be appointed of the Special Judges in any particular area or as to the area to be placed under such a Judge and does not extend to the appointment or non-appointment of such a Judge, in any area.

Having regard to Section 7 and the exclusive jurisdiction created by it I am definitely of the view that it is not at the option of the State Government whether to appoint a Special Judge or not for a given area for the trial of offences specified in the Act; such a Judge must be appointed to try the offences classified under the Act because the trial of such offences by any other Court would henceforward be entirely illegal and opposed to the provisions of the Act.

It is scarcely necessary to point out, however, that the precise number of such Judges to be appointed and the allocation of certain specific areas to them is scarcely a matter for legislative classification and is clearly a matter of sheer administrative arrangement or convenience and must inevitably and properly be left to the executive government for determination.

What is important to bear in mind is that whatever the number of the Special Judges and the areas allotted to each one of them, all persons accused of the offences specified in Section 6 are triable and must be tried by the same class of Judges and according to the same procedure, that is, the one laid down in the Act.

In this view of the matter the contention of learned counsel for the petitioner that Section 6 of the Act is discriminatory and void being opposed to Article 14 of the Constitution is clearly based on a misreading of that section and on a misconception as to its true import, and I hereby reject it.

12. I may also refer in this connection to the notification dated 26-8-1952, issued by the State Government regarding the appointment of Special Judges under the Criminal Law Amendment Act. It reads as follows--:

'The Government of Rajasthan is pleased to appoint all Sessions Judges and Additional Sessions Judge in Rajasthan by virtue of their office to be special judges within their respective jurisdiction for the purposes of the said Act.'

It is obvious that the notification is perfectly general and indicates the manner in which the State Government has utilized its power to appoint Special Judges under the authority conferred upon it by the Act. It may be said without the slightest hesitation that the power to appoint Special Judges has been exercised in a perfectly lawful and impersonal manner and is in complete consonance with the meaning put by me on Section 6 and which it must bear in the setting in which it appears.

13. Having regard to the discussion made above, I have come to a firm conclusion that there is no substance in the contention that Section 6, Criminal Law Amendment Act is discriminatory and offends against Article 14 of the Constitution, and, consequently, I overrule this contention.

It follows as a necessary consequence that the Special Judge was perfectly within his jurisdiction to try the accused for the offences with which he was charged and what is more, no other person save a Special Judge appointed under the Criminal Law Amendment Act would have had or have jurisdiction to try him for such offences.

14. In this view of the matter, I do not consider it necessary to pronounce any opinion on the contention of the learned Deputy Government Advocate (which if I may say incidentally was alone pressed for my consideration on this phase of the case) that no question for discrimination arose in the case before me inasmuch as the procedure prescribed for the trial of offences specified under the Act was exactly the same as the procedure according to which these offences should have been tried before the Criminal Law Amendment Act came into force, and further the net effect of the revised procedure was only that the legislature wanted the trial

of such offences to be entrusted to men of superior caliber such as Sessions Judges, or Additional Sessions Judges or Assistant Sessions Judges instead of the Magistrates.

It was contended that nobody can have any legitimate grievance on the ground of discrimination or otherwise to such arrangements contemplated under the Act. All I need say in this connection is that this argument is not well founded in so far as it assumes that it was open under the Act ' to the State Government to appoint Special Judges in any area or not for the trial of offences classified under the Act. So far as the rest of the contention raised on behalf of the State goes, I consider it unnecessary to examine it as already stated.

(His Lordship then considered the merits of the case and after discussing the evidence concluded as follows:)

15. Having regard to the facts and circumstances mentioned above, I concur in the opinion of the learned trial Judge that the offence with which the accused is charged stands proved beyond all reasonable doubt.

16. It was next argued by learned counsel for the appellant that in order to constitute an offence under Section 161 I. P. C. there should be not only an offer of money on the part of the accused but that there must be proof that such money was offered as a motive or reward for one of the objects mentioned in Section 161 and that the latter requirement, in any case, has not been established against the appellant.

There is no substance in this contention either because the motive or the reward for which the money was being offered by the appellant to the Income-tax officer has been clearly brought out in the sworn testimony of the complainant Shri Gupta. It admits of no doubt or dispute that an income-tax case of the appellant was pending before Shri Gupta.

Certain papers had been produced before Shri Gupta on 9-1-1952, and the case was to be argued on behalf of the appellant on the next following date, i.e., 10-1-1952. The appellant when he came into the presence of Shri Gupta in the latter's

room entreated Shri Gupta to have pity on him and that Shri Gupta should tax him lightly. He told the appellant that he (appellant) be assessed on the merits of his case.

Thereupon the appellant made a second appeal for leniency and at the same time took out some currency notes from his pocket and presented them to him. This is proof positive that the object of the appellant was to secure a lenient assessment of income-tax in return for the bribe which he was offering to Shri Gupta. I have no hesitation in saying that the ingredients of Section 161 read with Section 116 I. P. C. are amply fulfilled in this case so far as the offence was not completed by reason of the refusal of the offered bribe.

17. It was in the last resort argued on behalf of the appellant that the sentence inflicted on the appellant by the Special Judge was too harsh and that a sentence of fine should meet the ends of justice.

There seems to me to be no doubt that offences of bribery or abetment of bribery rarely come to light and further that where such an offence is proved beyond all reasonable doubt, the perpetrators thereof must be visited with deterrent punishment. Nor am I of opinion that the bribe given is entitled to any lenient consideration in a case like the present.

This was not a case where a person was offering bribe because he was pressed to do so, but instead this is a case of a person who was out to corrupt a public officer in the discharge of his official duties to gain his own selfish ends.

The maximum sentence awardable in this case, according to law was nine months' imprisonment, and the learned Special Judge has passed a sentence of six months rigorous imprisonment only and this cannot be said to be unduly severe. Under the circumstances, I see no real justification for interfering with the sentence.

18. The result is that this appeal fails and is hereby dismissed. As the appellant is out on bail, the District Magistrate will take necessary steps to arrest the appellant and send him to jail to serve out the unexpired portion of the sentence awarded to

him.

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