

Narendra Gopal Das Vs. the State

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Court : Kolkata

Decided On : Mar-14-1951

Reported in : AIR1951Cal505

Judge : Das Gupta and ;P.N. Mookerjee, JJ.

Acts : West Bengal Security Act, 1950 - Sections 11(3) and 40; ;West Bengal Security Act, 1948; ;West Bengal Security Ordinance, 1949 - Section 1(3); ;Criminal Law (Amendment) Act, 1908 - Sections 16 and 17(1); ;[General Clauses Act, 1897](#) - Section 6; ;[Constitution of India](#) - Articles 13, 13(1) and 20(1)

Appeal No. : Cri. Revn. Petn. No. 831 of 1950

Appellant : Narendra Gopal Das

Respondent : The State

Advocate for Def. : Profulla Commar Banerjee, Adv.

Advocate for Pet/Ap. : J.M. Banerjee and ;Amiya Chandra Mukherjee, Adv.

Judgement :

ORDER

1. In this rule the petnr. has challenged his conviction & sentence Under Section 17(I), Criminal Law Amendment Act, 1908, & S. 11 (3), West Bengal Security Act, 1950,

2. The petnr. was originally charged also Under Section 143, Penal Code, & Section 17 (2), Criminal Law Amendment Act. Under Section 17 (2), Cr. L. A. Act the petnr. was acquitted but Under Section 143, Penal Code, he was convicted by the trying Mag. The trying Mag. sentenced the petnr. to six months R. I. on each of the counts Under Section 17 (1), Cr.L.A. Act, Section 143, Penal Code, & Section 11 (3), W. B. S. A. the sentences being ordered to run consecutively. On appeal however, the petnr. was acquitted so far as the alleged offence Section 143, Penal Code, was concerned & the sentence Under Section 17 (1), Cr. L. A. Act was also reduced to two months R. I. There remains now this conviction & sentence Under Section 17 (1), Criminal Law Amendment Act, 1908 & Section 11 (3), West Bengal Security Act, 1950, as passed in appeal by the Addl. Ses. J. & it is against this conviction & sentence that the present Rule is directed.

3. The relevant charges against the petnr. so far as the present Rule is concerned were in these terms :

'(1) That you, on or about 12-6-1949 at Dhumabhita in P.S. Gajole being a member of the Communist Party which had been declared by the West Bengal Government as unlawful took part in a meeting of such unlawful assocn. & thereby committed an offence punishable Under Section 17 (1).... Criminal Law Amendment Act, 1908... . ' & (2) 'That you, on or about 12 6-1949 at Dhumabhita in Parail village P.S. Gajole have done a subversive act by endangering the safety & stability of the Province & thereby committed an offence punishable Under Section 11 (3), West Bengal Security Act 1950.'

4. Mr. Banerjee appearing on behalf of the petnr. has contended that the conviction Under Section 11(3) West Bengal Security Act, 1950, is bad in as much as on the date when the alleged offence is said to have been committed, namely, 12-6-1949, there was no Act or Ordinance under which the act complained against could have been held to be an offence.

5. The West Bengal Security Act, 1948, came into force on 13-3-1948, & its life was limited by the terms of Section I (4) of the Act to a period of one year. It, there, expired on 12-3-1949, there having been no extension under the proviso to the said Section I(4) of the act. Thereafter, the West Bengal Security Ordinance of

1949 was enacted only on 8-7-1949, & although there is in this Ordinance a provision in Section 1 (3) to the following effect, namely, that 'It shall be deemed to have come into force immediately on the expiry of the West Bengal Security Act, 1948' this Ordinance could not in law support the conviction for any alleged offence or act said to have been committed on 12-6-1949, by reason of Article 20(l) of the Constitution. Consequently, the conviction of the petnr. Under Section 11 (a), W. B. S. A. is illegal, notwithstanding Section 40 of the said Act. 6. Mr. Banerjee has also contended that this Ordinance of 1949 & the West Bengal Security Act of 1950, so far as they purport to make acts done in the intervening period, namely, the period between 12-3-1949 & 8-7-1949, offences under the law, are ultra vires by reason of Article 13(1) of the Constitution.

7. In our opinion, the submissions of Mr. Banerjee mentioned, above have considerable force & we agree with him that the alleged acts in the present case which were said to have been committed on 12-6-1949, could not be made an offence either under Security Act, 1950, or under the Ordinance of 1949 so that any conviction under such Act is bad in law.

8. We, accordingly, hold that the conviction of the petnr. Under Section 11 (3), West Bengal Security Act, 1950, is illegal & must be set aside.

9. As to the petnr's conviction Under Section 17 (l), Criminal Law Amendment Act, it was argued that as Section 16, Criminal Law Amendment Act, has been held by this Ct. to be void Under Section 13 of the Constitution, the petnr. cannot be convicted Under Section 17 (l) of the Act for taking part in a meeting of the Communist party which was declared an unlawful assocn, Under Section 16 of the Act.

10. This argument cannot succeed in the pre-sent case, as the prosecution was for acts committed before the Constitution came into force. We find, however, that the evidence that was adduced in the case was entirely insufficient to establish the charge Under Section 17 (l), Criminal Law Amendment Act. It was alleged in the charge that the petnr. was a member of the Communist Party & took part in a meeting of the Party. There is no reliable evidence however, to shew either that the petnr. was a member of the Communist party or that the meeting was a

communist party meeting. The order of conviction Under Section 17 (I), Criminal Law Amendment Act, cannot therefore be allowed to stand.

11. We accordingly, make this rule absolute & set aside the order of conviction & sentence passed upon the petnr. & direct that he be released forthwith. The petnr. who is on bail, must be discharged from his bail bond at once.

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