

The State Vs. Nadu Badyakar

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Court : Kolkata

Decided On : Jul-05-1962

Reported in : AIR1963Cal562,1963CriLJ498,67CWN494

Judge : S.K. Sen and ;Amaresh Roy, JJ.

Acts : [Constitution of India](#) - Articles 14 and 19; ;Bengal Criminal Law (Industrial Areas) Amendment Act, 1942 - Section 3

Appeal No. : Ref. under Section 432 (1), Cri.P.C. No. 1 of 1960

Appellant : The State

Respondent : Nadu Badyakar

Advocate for Pet/Ap. : Anil Kumar Sen, Adv.

Judgement :

Sen, J.

1. This reference under Section 432(1) of the Code of Criminal Procedure has been made by Sri P. C. Banerjee, Magistrate, Raigunj, for deciding whether Section 3 of the Bengal Criminal Law (Industrial Areas) Amendment Act, 1942 (Bengal Act IV of 1942), particularly the second clause of Sub-clause (c) of Section 3 of the Act, offends against Article 14 and Article 19(1)(d) of the [Constitution of India](#).

2. Section 3 of the Bengal Criminal Law (Industrial Areas) Amendment Act, 1942, runs as follows :

'Any person found between sunset and sunrise

(a) armed with any dangerous or offensive instrument whatsoever with any intent to commit any criminal act;

(b) disguised in any manner with intent to commit any criminal act;

(c) in any dwelling house or other building whatsoever, without being able satisfactorily to account for his presence therein; or

any person previously convicted of theft found between sunset and sunrise on board any vessel or boat or lying or loitering in any bazar, street, yard, thoroughfare or other place who shall not give any satisfactory account of himself; or

any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person) any implement of house-breaking;

may be taken into custody by any police officer without a warrant and shall be liable on summary conviction before a Magistrate to imprisonment, for a term which may extend to three months.'

3. The learned Magistrate has expressed the opinion that the second clause of Sub-clause (c) offends against Articles 14 and 19(1)(d) because it imposes a disability on a person with previous conviction for theft while another person not previously convicted is not subjected to this disability. The disability consists in being liable to be taken into custody and sentenced to imprisonment on a summary conviction when such a person is found between sunset and sunrise on board any vessel or boat or lying or loitering in any bazar, street, yard, thoroughfare or any other place, provided he is unable to give satisfactory account of himself. The very fact that the clause applies to a person with previous conviction of theft introduces a reasonable classification. Article 14 of the Constitution no doubt guarantees the right of equality before the law but numerous

decisions of the Supreme Court have laid down that this Article does not take away the right of the legislature to introduce a reasonable classification based on intelligible differentia. Accordingly, the special law introduced for persons having a previous conviction for theft and therefore reasonably believed to be prone to commit theft must be considered a piece of legislation which is not hit by Article 14. It may be mentioned that Section 75 of the Indian Penal Code also is a piece of legislation introducing a special disability on persons with a previous conviction for theft or any other offence under Chapter XVII of the Indian Penal Code, viz., liability to suffer enhanced punishment; and Section 565 of the Code of Criminal Procedure similarly imposes the disability on such persons of being liable to police surveillance for a period that may be prescribed by the Magistrate. It cannot be suggested that these pieces of legislation, viz., Section 75 of the Indian Penal Code or Section 565 of the Code of Criminal Procedure are discriminatory and therefore hit by Article 14, because they are based on a reasonable classification. Similarly, the second clause of sub-clause (c) must be held to be based on reasonable classification. Not only this clause applies to a person with previous conviction for theft, but if such a person is found loitering in any bazar, street, thoroughfare or other place, he must be given an opportunity to give an account of himself; that is he must be given an opportunity to explain why he was present or loitering at the particular place. It cannot therefore be said that the clause is in any way unreasonable or that it offends Article 14 of the Constitution.

4. As regards Article 19 of the Constitution, that Article cannot be invoked when we are considering the validity under the Constitution of any piece of penal legislation. In this connection, reference may be made to the decision *Ramsingh v. State of Delhi*, : [1951]2SCR451 the following observation is made:

'If there is a legislation directly attempting to control a citizen's freedom of speech or expression or his right to assemble peaceably and without arms etc., the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If however the legislation is not directly in respect of any of these subjects but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of application of Article 19 does not arise.'

5. So far as the other clauses of Section 3 of the Bengal Criminal Law (Industrial Areas) Amendment Act of 1942 are concerned, each one of them must be held to be based on a reasonable classification. For instance, Clause (a) applies only to a person who is found armed with any dangerous or offensive instrument with intent to commit a criminal act between sunset and sunrise. In respect of this clause the basis of the reasonable classification is being armed with a dangerous or offensive weapon by night and displaying the intent to commit a criminal act. Clause (b) similarly requires that the person concerned should be disguised and should display some intent to commit the criminal act. The first half of Clause (c) applies to a person who is found between sunset and sunrise in a dwelling house or other building without being able to account for his presence. All these clauses and sub-clauses therefore apply to definite classes of cases and they are justified on the hypothesis of reasonable classification and they do not therefore offend against Article 14 of the Constitution.

6. Accordingly, we decide that Section 3 of the Bengal Criminal Law (Industrial Areas) Amendment Act 1942 does not offend against Article 14 or any other Article of the Constitution and is therefore perfectly valid.

7. The learned Magistrate will now proceed to the trial of the case before him.

Amaresh Roy, J.

8. I agree.

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