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M/s. Tungabhadra Industries Ltd. v. The Commercial Tax Officer, Kurnool

Ayyangar J.

From the contents of this invoice it would be seen that the appellant has charged a price inclusive of the railway freight and would therefore be outside the terms of r. 5(1)(g) which requires that in order to enable a dealer to claim the deduction it should be charged for separately and not included in the price of goods sold. The conditions of the rule not having been complied with, the appellant was not entitled to the deduction in respect of freight.

The result therefore is that the appeal is allowed in part and the order of the High Court in so far as it denied to the appellant the benefit of the deduction in the turnover provided by r. 18(2) of the Turnover and Assessment Rules is set aside.

In view of the appellant having succeeded only in part, there will be no order as to costs in this appeal.

Appeal allowed in part.

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October 18.

THE STATE OF MAHARASHTRA

v.

VISHNU RAMCHANDRA

(M. HIDAYATULLAH and J. C. SHAH, JJ.)

Externment—Order, if can relate to antecedents of convicted offenders—Statute, if prospective or retrospective—Bombay Police Act, 1951 (22 of 1951), ss. 57(1), 142—Indian Penal Code, ss. 114, 380, 411.

On November 16, 1949, the respondent was convicted under ss. 380 and 114 of the Indian Penal Code. On October 15, 1957, the Deputy Commissioner of Police, Bombay, acting under s. 57(1) of the Bombay Police Act passed an order externing him from the limits of Greater Bombay. Later he was prosecuted and convicted under s. 142 of the Bombay Police Act by the Presidency Magistrate for returning to the area from which he was externed. On an application for revision the High Court acquitted the respondent upholding his contention that s. 57 of the Bombay Police Act was not retrospective and was not applicable unless the conviction on which the externment was based took place after the Act came into force. On appeal by the appellant with the special leave of this Court it was

Held, that though statutes must ordinarily be interpreted prospectively unless the language makes them retrospective, either expressly or by necessary implication, and penal statutes creating new offences are always prospective, penal statutes creating disabilities though ordinarily interpreted prospectively are sometimes interpreted retrospectively when the intention is not to punish but to protect the public from undesirable persons whose past conduct is made the basis of future action.

Midland Ry. Co. v. *Pye*, 10 C.B. (N.S.) 179, *Rex* v. *Birthwhistle*, (1889) 58 L.J. (N.S.) M.C. 158, *Queen* v. *Vine*, [1875] 10 Q.B. 195, *Ex parte Pratt*, [1884] 12 Q.B. 334, *Bourke* v. *Nutt*, [1898] 1 Q.B. 725, *Ganesan* v. *A.K. Joscelyne*, A.I.R. 1957 Cal. 33, *Taher Saifuddin* v. *Tyebbhai Moosaji*, A.I.R. 1953 Bom. 183, *The Queen* v. *Inhabitants of St. Mary Whitechapel*, [1848] 12 Q.B. 120 (E): 116 E.R. 811 and *Rex* v. *Austin*, [1913] 1 K.B. 551, considered and applied.

Section 57 of the Bombay Police Act did not create a new offence but was designed to protect the public from the activities of undesirable persons convicted of particular offences and enabled the authorities to take note of their activities in order to put them outside the areas of their activities for preventing any repetition of such activities in the future.

The verb "has been" as used in s. 57 meant "shall have been". Legislation which takes note of a convicted offender's antecedents for restraining him from his acts cannot be said to be applied retrospectively as long as the action taken against him is after the Act comes into force. The Act in question was thus not applied retrospectively but prospectively.

An externment order must be *bona fide* and must relate to a conviction which is sufficiently proximate in time.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 78 of 1959.

Appeal by special leave from the judgment and order dated November 25, 1958, of the former Bombay High Court in Criminal Revision Application No. 1393 of 1958 arising out of the judgment and order dated September 18, 1958, of the Presidency Magistrate II Class, Mazagaon at Bombay in Case No. 1101/P of 1958.

R. H. Dhebar, for the appellant.

The respondent did not appear.

1960. October 18. The Judgment of the Court was delivered by

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HIDAYATULLAH J.—This is an appeal by the State of Bombay, with the special leave of this Court, against the order of acquittal by the High Court of Bombay of the respondent, Vishnu Ramchandra, who was prosecuted under s. 142 of the Bombay Police Act and sentenced to six months' rigorous imprisonment by the Presidency Magistrate, 2nd Court, Mazagaon, Bombay.

On November 16, 1949, Vishnu Ramchandra was convicted under ss. 380 and 114 of the Indian Penal Code, and sentenced to one month's rigorous imprisonment. On October 15, 1957, the Deputy Commissioner of Police, Bombay, acting under s. 57(a) of the Bombay Police Act (22 of 1951), passed an order against Vishnu Ramchandra which was to operate for one year, externing him from the limits of Greater Bombay. At that time, a prosecution under s. 411 of the Indian Penal Code was pending against Vishnu Ramchandra, and he was not immediately externed, to enable him to attend the case. This prosecution came to an end on July 10, 1958, and resulted in his acquittal. Immediately afterwards, a constable took him outside the limits of Greater Bombay, and left him there. The prosecution case was that he returned to Greater Bombay, and was arrested at Pydhonie on August 24, 1958. He was prosecuted under s. 142 of the Bombay Police Act. His plea that he was forcibly brought back to Pydhonie and arrested was not accepted by the Presidency Magistrate, and he was convicted.

He filed a revision application, which was heard by a learned single Judge of the High Court of Bombay. Three contentions were raised before the High Court. The first was that the Deputy Commissioner of Police had not applied his mind to the facts of the case before making the order of externment. The second was that s. 57 of the Bombay Police Act was prospective, and could not be made applicable, unless the conviction on which the action of externment was based, took place after the coming into force of that Act. The third was that the belief entertained by the Deputy Commissioner that Vishnu Ramchandra was

likely to engage himself in the commission of an offence similar to that for which he was prosecuted was based on the prosecution which was then pending, and that that ground disappeared after his acquittal. The High Court did not consider the first and the third grounds, because it held that the second ground was good.

Section 57 of the Bombay Police Act reads as follows:

"*Removal of persons convicted of certain offences.*—

If a person has been convicted—

(a) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code (XLV of 1860), or

(b) twice of an offence under section 9 or 23 of the Bombay Beggars Act, 1945 (Bom. XXIII of 1945,) or under the Bombay Prevention of Prostitution Act, 1923 (Bom. XI of 1923), or

(c) thrice of an offence within a period of three years under section 4 or 12A of the Bombay Prevention of Gambling Act, 1887 (Bom. IV of 1887), or under the Bombay Prohibition Act, 1949 (Bom. XXV of 1949) the Commissioner, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction, by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself".

In reaching his conclusion, the learned single Judge observed that the legislature had used the present participle "has been" and not the past participle in the opening portion of the section, and that this indicated that the section was intended to be used only where a person was convicted subsequent to the coming into force of the Act. He further observed that being a penal section, it had to be interpreted prospectively. He repelled an argument of the Assistant

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Government Pleader that s. 57 merely re-enacted the provisions of s. 27 of the City of Bombay Police Act, 1902, and that a liability incurred under the older Act was preserved by s. 167 of the Bombay Police Act of 1951. Observing further that the Deputy Commissioner of Police at the time of the passing of the order could not be said to have entertained a belief about the activities of Vishnu Ramchandra based upon his conviction in the year 1949, he held that the order of externment must be regarded as invalid for that reason and also on the ground that the conviction was not after the coming into force of the Act.

At the hearing before us, the respondent was not represented. We have heard Mr. Dhebar in support of the appeal, and, in our opinion, the High Court was not right in the view it had taken of s. 57 of the Act. The question whether an enactment is meant to operate prospectively or retrospectively has to be decided in accordance with well-settled principles. The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. The reason why penal statutes are so construed was stated by Erle, C. J., in *Midland Rly. Co.* v. *Pye* (1) in the following words:

"Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment".

This principle has now been recognised by our Constitution and established as a Constitutional restriction on legislative power.

(1) 10 C.B. (N.S.) 179, 191.

There are, however, statutes which create no new punishment, but authorise some action based on past conduct. To such statutes, if expressed in language showing retrospective operation, the principle is not applied. As Lord Coleridge, C. J., observed during the course of arguments in *Rex* v. *Birthwhistle* (1):

"Scores of Acts are retrospective, and may without express words be taken to be retrospective, since they are passed to supply a cure to an existing evil." Indeed, in that case which arose under the Married Women (Maintenance in Case of Desertion) Act, 1886, the Act was held retrospective without express words. It was said:

"It was intended to cure an existing evil and to afford to married women a remedy for desertion, whether such desertion took place before the passing of the Act or not."

Another principle which also applies is that an Act designed to protect the public against acts of a harmful character may be construed retrospectively, if the language admits such an interpretation, even though it may equally have a prospective meaning. In *Queen* v. *Vine* (2), which dealt with the disqualification of persons selling spirits by retail if convicted of felony, the Act was applied retrospectively to persons who were convicted before the Act came into operation. Cockburn, C. J., observed:—

"If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes—that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public houses in which spirits are retailed being kept by persons of doubtful character...On looking at the Act, the words used seem

(1) (1889) 58 L.J. (N.S.) M.C. 158. (2) [1875] 10 Q.B. 195.

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to import the intention to protect the public against persons convicted in the past as well as in future; the words are in effect equivalent to 'every convicted felon'."

In the same case, Archibald, J., expressed himself forcefully when he observed :—

"I quite agree, if it were simply a penal enactment, that we ought not to give it a retrospective operation; but it is an enactment with regard to public and social order, and infliction of penalties is merely collateral."

Similarly, in *Ex Parte Pratt* (1), which dealt with the words "a debtor commits an act of bankruptcy" to enable the Court to make a receiving order, Cotton, L. J., gave the words a retrospective operation, observing :—

"I think that no reliance can be placed on the words 'commits' as showing that only acts of bankruptcy committed after the Act came into operation are intended."

In the same case, the observations of Bowen, L. J., were :—

"I think that the more the Act is studied the more it will be found that it is framed in a very peculiar way. I do not mean to say that it is inartistically framed. I think it is framed on the idea that a bankruptcy code is being constructed, and when the present tense is used, it is used, not in relation to time, but as the present tense of logic."

Fry, L. J., added :—

"I entirely agree with Bowen, L. J., as to the meaning of the present tense in the section; it is used, I think, to express a hypothesis, without regard to time."

In *Bourke* v. *Nutt* (2), Lord Esher, M. R., speaking of these observations of Bowen and Fry, LL. J., observed :—

"...the case seems to show that when the present tense is used in this statute (s. 32 of the Bankruptcy Act, 1883) the time to be considered is the time at

(1) [1884] 12 Q.B. 334. (2) [1894] 1 Q.B. 725.

which the Court has to act, and not the time at which the condition of things on which it has to act came into existence."

Applying the above principles, Lord Esher, M. R., held that the section was not retrospective but prospective, because the important time was that at which it had to be considered whether the person was disqualified and it related to a time after the passing of the Act. He, however, added that "even if it could be said that it is retrospective, its enactments are solely for the public benefit, and the rule that restricts the operation of a penal retrospective statute does not apply, because this statute is not penal."

These principles, though not unanimously expressed, have been accepted in later cases both in England and in India. In *Ganesan* v. *A. K. Joscelyne* (1), Chakravarti, C. J., observed, Sarkar, J. (as he then was), concurring:—

"I may state, however, that in spite of the ordinary and I might almost say cardinal rule of construction that statutes, particularly statutes creating liabilities, ought not to be so construed as to given them a retrospective operation unless there is a clear provision to that effect or a necessary intendment implied in the provisions, there is another principle on which Courts have sometimes acted. It has been held that where the object of an Act is not to inflict punishment on anyone but to protect the public from undesirable persons, bearing the stigma of a conviction or misconduct on their character, the ordinary rule of construction need not be strictly applied."

In *Taher Saifuddin* v. *Tyebbhai Moosaji* (2), the same principles were applied by Chagla, C. J. and Bhagwati, J. (as he then was), and reference was made also to *The Queen* v. *Inhabitants of St. Mary Whitechapel* (3) where Lord Denman, C. J., in his judgment observed:—

"...it was said that the operation of the statute was confined to persons who had become widows after

(1) A.I R. 1957 Cal. 33, 38. (2) A.I.R. 1953 Bom. 183, 186, 187.
(3) [1848] 12 Q.B. 120 (B) : 116 E.R. 811.

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the Act passed, and that the presumption against a retrospective statute being intended supported this construction; but we have before shown that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing."

Now, s. 57 of the Bombay Police Act, 1951, does not create a new offence nor makes punishable that which was not an offence. It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The section only enables the authorities to take note of their convictions and to put them outside the area of their activities, so that the public may be protected against a repetition of such activities. As observed by Phillimore, J., in *Rex* v. *Austin* (1),

"No man has such a vested right in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history."

An offender who has been punished may be restrained in his acts and conduct by some legislation, which takes note of his antecedents; but so long as the action taken against him is after the Act comes into force, the statute cannot be said to be applied retrospectively. The Act in question was thus not applied retrospectively but prospectively.

It remains only to consider if the language of the section bars an action based on past actions before the Act was passed. The verb "has been" is in the present perfect tense, and may mean either "shall have been" or "shall be". Looking, however, to the scheme of the enactment as a whole and particularly the other portions of it, it is manifest that the former meaning is intended. The verb "has been" describes past actions, and, to borrow the language of Fry, L.J., in *Ex Parte Pratt* (2), "is used to express a hypothesis, without regard to time".

An externment order, however, to satisfy the

(1) [1913] 1 K.B. 551, 556. (2) [1884] 12 Q.B. 334.

requirements of s. 57 of the Bombay Police Act, must be made *bona fide*, taking into account a conviction which is sufficiently proximate in time. Since no absolute rule can be laid down, each case must depend on its own facts.

In the result, we set aside the acquittal, and remit the case to the High Court for disposal on the other points urged before it and in the light of observations made here by us.

Appeal allowed.

PANNALAL NANDLAL BHANDARI

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, BOMBAY.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—General notice—Non-resident liability to submit return—Period of Limitation—Indian Income Tax Act, 1922 (XI of 1922), s. 22(1) & (2), s. 34(1)(a) & (b).

The appellant, a non-resident for the purposes of the Indian Income-tax Act, did not submit returns of certain dividend income accruing to him within the taxable territory. The Income-tax Officer served upon him notices under s. 34 read with s. 22(2) of the Act for assessment of tax in respect of those years. The notices in question were issued within eight years from the end of the years of assessment and were within the period prescribed by s. 34(1)(a). The appellant contended that notices for assessment were governed by cl. (1)(b) of s. 34 and not by cl. (1)(a), even though the appellant had not made a return of his income for the years in question as a general notice under s. 22(1) did not give rise to a liability to submit a return and his inaction did not amount to omission or failure to submit a return as he was a non-resident, and the assessment proceedings were barred by limitation.

Held, that the expression "every person" in s. 22(1) of the Indian Income-tax Act, 1922, includes all persons who are liable to pay tax and non-residents are not exempted from liability to submit a return pursuant to the general notice thereunder.

Once a notice is given by publication in the prescribed manner under s. 22(1), every person whether resident or non-resident whose income exceeds the maximum amount exempt from tax is obliged to submit a return and if he does not do so,