

court under s. 4 of Ordinance No. XIX, while the cases of the appellants must be disposed of finally by us. They were all tried together on charges of criminal conspiracy, and one of the contentions raised in the grounds of appeal on behalf of the appellants is that as the result of the acquittal of Ramaratnam by the High Court and the discharge or acquittal of three of the original eight accused by the Special Judge, vital links in the chain of the conspiracy have been knocked out, so that the charge of conspiracy against the appellants must fail on that ground alone. It is obvious that that contention could not be finally disposed of by us so long as the matter of the guilt of Ramaratnam was still the subject of judicial determination. We mention this merely to reinforce our view that "proceedings" in s. 8 of Ordinance No. II must be construed as meaning the whole case and not merely the case or cases of the convict or convicts sentenced to seven years' imprisonment or a severer punishment.

The result is that the appeal is allowed and it is declared that in place of the order of the High Court confirming the convictions, there shall be substituted an order directing further proceedings in the case to be taken in accordance with the provisions of s. 4 of Ordinance No. XIX of 1943.

*Appeal allowed.*

Agent for the Appellants: *Naunit Lal.*

Agent for the Respondent: *Ganpat Rai.*

Agent for the Governor-General in Council:  
*K. Y. Bhandarkar.*

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DEVKISHINDAS *v.* THE KING EMPEROR.

[SIR PATRICK SPENS C. J., SIR SRINIVASA VARADACHARIAR  
and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

*Special Criminal Courts Ordinance (II of 1942), s. 8—Special Criminal Courts (Repeal) Ordinance (XIX of 1943)—Joint trial by Special Judge—Some accused sentenced to imprisonment for less than seven years and others to seven years or more—Review, scope of—Ordinance No. XIX passed before completion of review—Proceedings against*

9—1 S. C. India/58 (Parts II & III—Feb. & March)

1944  
*R. Subbarayan  
and Others  
v.  
King  
Emperor.  
Spens C. J.*

1944  
Feb. 14, 17.

1944  
 Devkishindas  
 v.  
 King  
 Emperor.

*accused sentenced to less than seven years, whether void—Appeal—Validity of proceedings.*

At a trial held by a Special Judge under Ordinance No. II of 1942 the appellant D and five others were convicted of criminal conspiracy to commit offences under ss. 4 and 5 of the Explosive Substances Act, and three of them not including D were convicted also of other substantive offences. D and two others were sentenced to rigorous imprisonment for five years each and the three remaining persons were sentenced to various terms of imprisonment amounting in all to nine years each. The judgment of the Special Judge was pronounced on May 27, 1943, and the case was submitted for review under s. 8 of Ordinance No. II, on May 29, 1943. Ordinance No. XIX of 1943 was promulgated on June 5, 1943, before the review could be completed, and the convicted persons preferred appeals to the Chief Court under s. 3(2) of this Ordinance. The appeals were dismissed. D appealed to the Federal Court:

*Held*, following *R. Subbarayan and Others v. The King Emperor* <sup>(1)</sup>, that the proceedings had before the Special Judge must be treated as void and the case must be deemed to have been transferred to the appropriate court under s. 4 of Ordinance No. XIX of 1943 for inquiry and trial.

APPEAL from the Chief Court of Sind. Case No. LIX of 1943.

This was an appeal from a judgment of the Chief Court of Sind (Sir Godfrey Davis C.J., Lobo and O'Sullivan JJ.) in Criminal Appeal No. 198 of 1943 confirming a judgment of the Special Judge, Karachi, convicting the appellant, Devkishindas, of an offence under s. 120 B of the Indian Penal Code read with ss. 4 and 5 of the Explosive Substances Act and Rules 38 and 39 of the Defence of India Rules, and s. 411 of the Indian Penal Code.

The facts material for the purposes of this report are stated in the headnote.

1944. Feb. 14. *Manghanmal Bhojraj* (*Ramditta Mal* with him) for the appellant. The case is similar to that of *R. Subbarayan and Others v. The King Emperor* (1) and is covered both by s. 8(a) and s. 8(b). The whole proceedings must be deemed to have been pending at the time Ordinance No. XIX came into force and so void under s. 4 of that Ordinance.

*Hassanally Agha, Advocate-General for Sind* and *D. J. Lalwani* (*Raghubir Singh* with them) appeared for the Crown.

(1) [1944] F.C.R. 161.

*Lalwani.* The case does not fall within either cl. (a) or cl. (b) of s. 8. As regards cl. (b) there was no difficult question of fact or law in the case. The Special Judge's order does not show that there was any difficult question.

[VARADACHARIAR J.—The Special Judge is not bound to state any reasons. The judgment itself shows the difficulty].

The proceedings are liable to review only in respect of those accused on whom sentences for seven years or more have been passed. With regard to the other accused the case was not 'pending'. Under s. 374, Criminal Procedure Code, in the case of a joint trial, only the case of those who are sentenced to death is submitted for confirmation. Section 123, Criminal Procedure Code, also shows that where the legislature wants to give a right to the co-accused also, it expressly says so. Again, the words used in s. 3 of Ordinance No. XIX are "subject to the succeeding provisions of *this section*". Section 3 is not subject to s. 4. The sentences which have become final remain valid.

[ZAFRULLA KHAN J.—In cases which are compulsorily reviewable and in cases which have been submitted for review the sentences become final only after the review is over].

*Manghanmal Bhojraj* in reply. The case is entirely covered by the ruling of this Court in *Piare Dusadh and Others v. The King Emperor* <sup>(1)</sup>.

*Sir Brojendra Mitter*, Advocate-General of India, (*H. K. Bose* with him) for the Governor-General in Council.

*Cur. adv. vult.*

Feb. 17. The judgment of the court was delivered by SPENS C. J. The appellant and five others were convicted at a trial held under the provisions of Ordinance No. II of 1942, by the Special Judge, Karachi, on charges of criminal conspiracy to commit various offences; three of them, not including the appellant, being also convicted on charges of substantive offences,

<sup>(1)</sup> [1944] F.C.R. 1.

1944  
*Deukishindas*  
v.  
*King*  
*Emperor.*  
—  
*Ex pns C. J.*

and were sentenced to five years' rigorous imprisonment each in the case of the appellant and two others, and to nine years' rigorous imprisonment each in the case of the remaining three. The judgment of the Special Judge was pronounced on the 27th May, 1943, and he submitted the case for review under s. 8 of the Ordinance on the 29th May, 1943. Ordinance No. XIX of 1943 was promulgated before the review could be completed. The convicts preferred appeals under s. 3 (.2) of that Ordinance to the Chief Court of Sind. The appeals were dismissed on the 9th September, 1943. The appellant alone has come up to us on appeal on a certificate under s. 205 of the Constitution Act granted by the Chief Court. This case is similar to *R. Subbarayan and Others v. The King Emperor*<sup>(1)</sup>: (Case No. LVII of 1943) in which we have just delivered judgment. Following our decision in that case, the proceedings had in this case before the Special Judge, Karachi, must be treated as void and the case must be deemed to be transferred to the appropriate court under s. 4 of Ordinance No. XIX of 1943, for inquiry and trial in accordance with the provisions of the Criminal Procedure Code.

The appeal is allowed and it is declared that in place of the order of the Chief Court confirming the conviction there shall be substituted an order directing further proceedings to be taken in accordance with the provisions of s. 4 of Ordinance No. XIX of 1943.

*Appeal allowed.*

Agent for the Appellant: *Naunit Lal.*

Agent for the Respondent: *Ganpat Rai.*

Agent for the Governor-General in Council: *K. Y. Bhandarkar.*

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(1) [1944] F.C.R. 161.