

## R. SUBBARAYAN AND OTHERS

v.

## THE KING EMPEROR.

1944

Febr. 14, 17.

[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), ss. 3 (2), 4—joint trial by Special Judge—Some accused sentenced to seven years and others to less than seven years—Ordinance No. XIX passed before review completed—Proceedings, whether void—“Proceedings”, meaning of—Appeals to High Court under s. 3(2) of Ordinance No. XIX—Validity of proceedings.*

The expression “proceedings” in s. 8 of the Special Criminal Courts Ordinance No. II of 1942, comprises the whole of the proceedings before a Special Judge and where in any such proceedings before a Special Judge any one of several convicted persons tried together is sentenced to death, or to transportation for life, or to imprisonment for a term of seven years or more, a review becomes obligatory under clause (a) of the section, not merely in respect of such convicted person, but in respect of the whole case.

Several persons including A, B, C, D and R were tried jointly under Ordinance No. II of 1942 by a Special Judge on charges of criminal conspiracy to commit various offences and other charges. R was sentenced to rigorous imprisonment for seven years and the others to rigorous imprisonment for less than seven years. Before the review of the proceedings under s. 8 (a) of the said Ordinance was complete, Ordinance No. XIX of 1943 came into force and all the accused including R appealed to the High Court under s. 3 (2) of this Ordinance. R was acquitted, and A, B, C and D, whose appeals were dismissed by the High Court, appealed to the Federal Court:

*Held*, that the case fell within the purview of s. 4 of Ordinance No. XIX of 1943, and accordingly the whole case including the proceedings against A, B, C and D must be deemed to have been transferred to the appropriate court for inquiry and trial in accordance with the provisions of the Criminal Procedure Code, and further proceedings should be taken in accordance with the provisions of that section.

*Piare Dusadh and Others v. The King Emperor*<sup>(1)</sup> applied.

APPEAL from the judgment of the High Court of Judicature at Madras in Criminal Appeals Nos. 416, 417 and 418 of 1943. Case No. LVII of 1943.

Eight persons including the four appellants were charged before a Special Judge under Ordinance No. II

<sup>(1)</sup> [1944] F.C.R. 61.

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of 1942 for having attempted to damage with gellignite a railway bridge near Shiyali in the Madras Presidency. Accused No. 3 was discharged and accused Nos. 4 and 5 were acquitted. Accused No. 1 was sentenced to seven years' rigorous imprisonment and the other accused to various terms ranging from three to five years. The judgment of the Special Judge was pronounced on May 11, 1943. On June 5, 1943, the Special Criminal Courts (Repeal) Ordinance (No. XIX of 1943) was promulgated. Accused Nos. 1, 2, 6, 7 and 8 appealed to the High Court under s. 3 (2) of Ordinance No. XIX. On November 6, 1943, the High Court pronounced judgment acquitting accused No. 1 and confirming the conviction of accused Nos. 2, 6, 7 and 8 and the sentences passed on them. The High Court granted a certificate under s. 205 of the Government of India Act. Accused Nos. 2, 6, 7 and 8 appealed to the Federal Court and prayed also for leave to appeal on the merits.

1944. Febr. 14. *M. S. Venkatarama Aiyar (Ram-ditta Mal with him)* for the appellants stated the facts.

Their Lordships called upon the Advocate-General of Madras to state whether in a case like this, where a sentence of seven years or more is passed on one of the accused, the whole proceedings against all the accused will not be liable to review under s. 8(a) of Ordinance No. II of 1942.

*Sir Alladi Krishnaswami Aiyar, Advocate-General of Madras, (N. Rajagopala Iyengar with him)* for the Crown. In the Province of Madras the view which has been followed is that only the case of those accused who had been sentenced to seven years or more is liable to be reviewed under s. 8(a) of Ordinance No. II.

[ZAFRULLA KHAN, J.—The words used are “the proceedings” and mean the entire proceedings].

Sections 408, 413 and 415-A, Criminal Procedure Code, may be referred to in this connection. The principle applicable to such cases is that once the trial is closed, the case of each of the accused should be treated as a different case. This is the effect of s. 415-A, Criminal Procedure Code.

The judgment in *In re Venkatakrishtnaya* (1) shows that under s. 413 each accused must be deemed to have been tried separately for purposes of appeal even though there was a joint trial. "Case" must be read as meaning "case against each accused".

In *Emperor v. Bholā* (2) the same view was held.

[ZAFRULLA KHAN J.—Section 415-A, Criminal Procedure Code, confers a right on a "person". Section 8 (a) of Ordinance No. II provides that "the proceedings" shall be submitted for review].

*M. S. Venkatarāma Aiyar* was not called upon to reply.

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

*Cur. adv. vult.*

Feb. 17. The judgment of the court was delivered by SPENS C.J. Eight persons, including the four appellants before us, were tried under the provisions of Ordinance No. II of 1942, by the Special Judge for the Presidency town of Madras at Chingleput, on charges of criminal conspiracy to commit various offences and also on charges of substantive offences. The trial resulted in the conviction of the appellants, who were sentenced to rigorous imprisonment ranging from three to five years and of one Ramaratnam who was sentenced to rigorous imprisonment for seven years. The judgment of the Special Judge was pronounced on 11th May, 1943. The proceedings before the Special Judge were by virtue of the sentence passed on Ramaratnam, subject to review under s. 8(a) of the Ordinance. Before the review was completed, Ordinance No. XIX of 1943 came into force. We have held in *Piāre Dusadh and Others v. The King Emperor* (3) that a case like this fell within the purview of s. 4 of that Ordinance, with the result that the proceedings had before the Special Judge must be treated as void and the case must be deemed to be transferred to the appropriate

(1) [1916] I.L.R. 40 Mad. 591.

(3) [1944] F.C.R. 61.

(2) [1917] I.L.R. 39 All. 549.

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court under that section for inquiry and trial in accordance with the provisions of the Criminal Procedure Code.

What actually happened in this case was that the convicted persons preferred appeals under s. 3(2) of Ordinance No. XIX to the Madras High Court, with the result that Ramaratnam was acquitted and the appeals of the others were dismissed. The High Court granted a certificate under s. 205 of the Constitution Act and the case of the appellants is now before us on appeal.

It was urged on behalf of the Crown that s. 8(a) of Ordinance No. II of 1942 was applicable only to the case of Ramaratnam, and that the cases of the appellants were governed not by s. 4 but by s. 3(2) of Ordinance No. XIX, and that we could accordingly entertain their appeals and dispose of them finally. It was contended that though the proceeding before the Special Judge in respect of all the eight accused persons was a single trial, as soon as the convictions were recorded the proceeding with respect to each of them became in law a separate proceeding for the purposes of s. 8(a) of Ordinance No. II, and that a review was obligatory only in respect of the proceeding relating to Ramaratnam, the proceedings relating to the appellants not being subject to review at all. We are unable to accede to this contention. In our judgment, the expression "proceedings" in s. 8 comprises the whole of the proceedings before a Special Judge, so that where in any such proceedings any one of several convicted persons tried together is sentenced to death, or to transportation for life, or to imprisonment for a term of seven years or more, a review becomes obligatory under clause (a) of the section, not merely in respect of such convicted person, but in respect of the whole case.

If the contention advanced on behalf of the Crown were to be accepted, the result in this case would be that with regard to Ramaratnam the proceedings had before the Special Judge and the judgment of the High Court on appeal must be treated as void and his case must be deemed to be pending before the appropriate

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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