

1945  
 Basanta  
 Chandra  
 Ghose  
 v.  
 King  
 Emperor.  
 Spens C. J.

It was finally contended that as the previous order of this Court directed an enquiry into the validity of the detention under the order of the 19th March 1942, the decision of the High Court must be limited to that question and that it was not open to the High Court to base its decision on the subsequent order of the 3rd July 1944. This contention proceeds on a misapprehension of the nature of *habeas corpus* proceedings. The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings cannot be invoked here. If at any time before the Court directs the release of the detenu, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the Court can direct the release of the petitioner.

The appeal fails and is dismissed.

*Appeal dismissed.*

Agent for the Appellant: *Gurudayal Sahay.*

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

Agent for the Province of Bihar: *S. P. Varma.*

---

SURAJ PARKASH *v.* KING EMPEROR.

1945  
 Jan. 15, 19. [SIR PATRICK SPENS C. J., SIR SRINIVASA VARADACHARIAR  
 and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

*Government of India Act, 1935, s. 270—Indian Penal Code—(Act XLV of 1860), ss. 408, 409—Prosecution for criminal misappropriation—Previous sanction of Government, whether necessary—Proceedings instituted without sanction—Sanction obtained subsequently—Validity of proceedings.*

The offence under s. 408 or s. 409 of the Indian Penal Code is not one in respect of which the protection of s. 270 of the Constitution Act can be claimed.

*Hori Ram Singh v. The Crown* [1939] F.C.R. 159 followed.

*Obiter.*—In cases to which s. 270 of the Constitution Act applies, the words of the section require that if proceedings be instituted before sanction under the section is obtained, such proceedings must be treated as wholly void and new proceedings must be instituted after the sanction is obtained.

1945  
Suraj Parkash  
v.  
King  
Emperor.

APPEAL from the High Court of Judicature at Lahore. Criminal Appeal No. XIII of 1944.

The appellant who was a Goods Clerk in the North Western Railway was charged under s. 408 of the Indian Penal Code with having misappropriated some goods booked by one Benarsi Dass. The police challan was put up before the Cantonment Magistrate, Jagadhri, on the 18th March 1943, and the case was posted to the 16th April for evidence. On the 14th April the appellant filed an application before the District Magistrate claiming that under s. 270 of the Government of India Act he could not be prosecuted without the previous consent of the Governor-General. On the 1st July 1943, the District Magistrate held that the appellant could not be prosecuted unless the consent of the Governor-General under s. 270 of the Government of India Act was obtained, and ordered that the proceedings against him should be dropped. The consent of the Governor-General was obtained on the 27th January 1944, and the file of the case was again put up before the Cantonment Magistrate on the 4th March 1944. The appellant again made an application before the District Magistrate contending that, as the consent of the Governor-General was not obtained before the criminal proceedings were started against him, the proceedings were illegal and must be quashed. The District Magistrate held that as the Governor-General had given his consent the Magistrate could take cognisance of the case without a fresh police challan and proceed with it. The High Court of Lahore, on appeal, agreeing with the view of the District Magistrate, held that a fresh challan was not necessary for proceeding with the case. The accused obtained a certificate under s. 205 of the Government of India Act and appealed to the Federal Court:

1945. Jan. 16. *R. C. Soni* for the respondent. There are two preliminary objections to this appeal :

1945  
 Suraj Parkash  
 v.  
 King  
 Emperor.

(i) the appeal was barred by limitation as it was not filed within 30 days of the date of judgment as prescribed by O. XVII, r. 1, Federal Court Rules. The time which was taken up for the hearing of the application for review cannot be excluded as this is a criminal case.

(ii) The order appealed against is not a judgment, decree or a final order within the meaning of s. 205 (1) of the Constitution Act: see *Hori Ram Singh's case*<sup>(1)</sup>.

*Sardar Raghbir Singh* for the appellant. The want of previous consent under s. 270 of the Constitution Act vitiates the entire proceedings. The object of obtaining previous sanction would be completely frustrated if proceedings could be instituted without sanction, and sanction could be applied for subsequently. Even the mere institution of criminal proceedings may affect a man's reputation. The necessity of previous sanction is not a mere formality, but a protection against unnecessary prosecution.

*Sir Brojendra Mitter, Advocate-General of India (H. K. Bose with him) and R. C. Soni* for the respondent. *R. C. Soni*. The offence with which the appellant is charged is not one for which previous sanction under s. 270 of the Constitution Act is necessary: *Hori Ram Singh's case*<sup>(1)</sup>.

*Cur. adv. vult.*

Jan. 19. The judgment of the Court was delivered by

SPENS C. J.—In this appeal it has been submitted that the appeal should be dismissed on the ground that under O. XVII, r. 1, it was presented out of time. It has also been questioned whether the order appealed against is a final order within the meaning of those words in s. 205 (1) of the Government of India Act, 1935. We do not propose to deal with either of those points, for in any event in our judgment the offence under s. 408 or s. 409 of the Indian Penal Code with which the appellant is charged is not one in respect of which the protection of s. 270 of the Government of India Act, 1935, can be claimed. [See *Hori Ram Singh v. The Crown* <sup>(1)</sup>.] The appeal is accordingly dismissed.

We would however take this opportunity of saying that in cases to which s. 270 of the Constitution Act

<sup>(1)</sup> [1939] F.C.R. 159 at p. 184.

applies, the words of the section in our view require that if proceedings be instituted before sanction under the section is obtained, such proceedings are wholly void and new proceedings must be instituted after the sanction is obtained. Unless this view is strictly observed, the protection intended by the section would be liable to become in practice seriously reduced.

1945  
 Suraj Parkash  
 v.  
 King  
 Emperor.  
 Spens C. J.

*Appeal dismissed.*

Agent for the Appellant: *Ranjit Singh Narula.*

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

Agent for the Respondent: *Tarachand Brijmohanlal.*

BASDEO AGARWALLA v. KING EMPEROR.

1945

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

Jan. 16, 19.

*Drugs Control Order, 1943, cls. 9 (a), 13 (d), 16—Contravention of cls. 9 (a) and 13 (d)—Prosecution without previous sanction—Sanction obtained before examination of witnesses—Legality of proceedings—Form of sanction.*

Clause 16 of the Drugs Control Order, 1943, provides that no prosecution for any contravention of the provisions of this Order shall be instituted without the previous sanction of the Provincial Government. A prosecution for contravening cls. 9 (a) and 13 (d) of the Order was instituted without previous sanction, but sanction was obtained before the commencement of the examination of the witnesses and the accused was convicted:—

*Held*, that the prosecution was completely null and void as it was initiated without the requisite sanction; that it was not possible to sever the proceedings prior to the date on which sanction was obtained from those on and after that date; and, as proceedings were not started *ab initio* after sanction was obtained, the whole proceedings were null and void.

*Held* also, that a sanction given by the Provincial Government under clause 16 could not be held to be invalid merely because it was not expressed to be given by the Governor.

APPEAL from the High Court of Judicature at Calcutta. Criminal Appeal No. XVI of 1944. The necessary facts are set out in the judgment.

1945. Jan. 16. *Mahabir Prasad (Samarendra Mukherjee and R. J. Bahadur with him)* for the appellant. Under cl. 16 of the Drugs Control Order previous sanction of the Provincial Government is necessary for instituting prosecutions. The conviction in this case is bad on two