1951

STATE v. MAHADEO DHUNNAPPA

Chainani J.

That is exactly the position of Naik in the present case. He had no intention to, and he did not, accept the amount as a bribe or in order to enrich himself. His only object in telling the accused that he would accept their offer of money and help them was to bring them to punishment for attempting to corrupt a public servant. He was, therefore, not a participator in the crime and cannot be regarded an accomplice. Consequently his evidence does not require corroboration.

[The rest of the judgment is not material to the report.]

The application is, therefore, dismissed and the rule is discharged. The accused should surrender to their bail.

Rule discharged.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.

1951 Oct. 1

DAJISAHEB ALIAS LAXMANRAO NARAYANRAO MANE, AND OTHERS (ORIGINAL DEFENDANTS), PETITIONERS *v.* SHANKARRAO VITHALRAO MANE, AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 5), RESPONDENTS.*

Constitution of India, Art. 133 (1)—Civil Procedure Code (Act V of 1908), s. 10—Adaptation of Laws Order 1950, s. 27—Enlargement of Jurisdiction of the Federal Court Act (I of 1948)—Suit filed prior to coming into force of Constitution—Value of Subject-matter of Suit over Rs. 10,000 but below Rs. 20,000—Right of appeal to Supreme Court in respect of such suit.

Art. 133 (*1*) of the Constitution of India is not retrospective in its operation.

A right of appeal is a vested right which cannot be taken away retrospectively unless the Court discerns in the legislation dealing with the right of appeal a clear intendment that such right was intended to be taken away. There is nothing in the language of Art. 133 (*1*) of the Constitution which shows such intendment.

Where in a suit filed before the coming into force of the Constitution a litigant had a right to appeal to the Privy Council under s. 110 of the Code of Civil Procedure, 1908, or to the Federal Court by virtue of the Enlargement of Jurisdiction of the Federal Court Act, 1948, the appeal would lie to the Supreme Court after the Constitution comes into force,

* Civil Application No. 161 of 1950.

notwithstanding the abolition of the Privy Council and the Federal Court. Art. 133 (1) of the Constitution does not deprive the litigant of such a right.

Under Art. 374 (2) and Art. 135 of the Constitution the Supreme Court takes the place of the Privy Council and the Federal Court in certain matters. Under Art. 135 the Supreme Court would have jurisdiction in respect of a matter if in respect of that matter the Federal Court had jurisdiction even if the Supreme Court should have no jurisdiction in respect of such matter either under Art. 133 or 134. In view of s. 27 of the Adaptation of Laws Order, 1950, s. 110 as adapted by the said Order, does not take away the right of a person to appeal in respect of a suit filed before the coming into force of the Constitution.

Held, therefore, an appeal lies to the Supreme Court in respect of a suit filed prior to the coming into force of the Constitution in which the value of the subject-matter of the dispute in the Court of first instance was and still in dispute on appeal is over Rs. 10,000 though under Rs. 20,000.

State of Seraikella v. *Union of India,*[1] distinguished.

Lachmeshwar v. *Keshwar Lal,*[2] *Ramaswami* v. *Ramanathan,*[3] and *Nandlal* v. *Hiralalrao,*[4] referred to.

Shidappa Bhimappa v. *Mallawa,*[5] dissented from.

Civil Application for leave to appeal to the Supreme Court.

On November 28, 1945, one Shankarrao (plaintiff) filed a suit against Dajisaheb and others (defendants) in the Court of the Civil Judge, S. D. at Sholapur, for possession of certain lands. The trial Judge dismissed the suit. On appeal the High Court set aside the decree of the trial Court and allowed the plaintiff's suit on November 8, 1949.

On January 6, 1950, the defendants applied to the High Court for leave to appeal to the Federal Court.

The application was treated as one for leave to appeal to the Supreme Court.

M. G. Chitale, for the petitioner.

Y. V. Chandrachud, for opponent No. 1.

Chagla C. J. This is an application for leave to appeal to the Supreme Court. The trial Court dismissed the plaintiff's suit and this Court in appeal set aside the decree of the trial Court and passed a decree in favour of the

[1] [1951] A. I. R. S. C. 253.
[2] [1941] A. I. R. F. C. 5.
[3] [1951] A. I. R. Mad. 251.
[4] [1950] A. I. R. Nag. 222.
[5] (1950) Civil Application No. 1218 of 1949, decided by Rajadhyaksha and Shah JJ., on February 21, 1950 (Unrep.).

1951

DAJISAHEB NARAYAN-RAO v. SHANKAR-RAO VITHALRAO

Chagla C. J.

plaintiff. We sent down an issue to the trial Court to determine the value of the subject matter of the suit, both at the time the suit was filed and also at the time of the passing of the decree in appeal, and the finding has been now returned to us. The finding is that the value of the subject matter was between Rs. 11,000 and Rs. 13,000 both at the time of the filing of the suit and also at the time of the passing of the decree in appeal. The finding has not been challenged by Mr. Chandrachud, but his contention is that looking to the provisions of the Constitution the petitioner has no right of appeal to the Supreme Court.

Under art. 133 (*1*) of the Constitution,

"An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(*a*) that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law;",

and the argument that has been advanced by Mr. Chandrachud is that inasmuch as the High Court is not in a position to certify that the value of the subject-matter in dispute is not less than Rs. 20,000, we should not allow the petitioner to appeal to the Supreme Court. It is not disputed that when the suit was filed the petitioner had a right to appeal either to the Privy Council or to the Federal Court. It is also well settled that a right of appeal is not a mere matter of procedure. It is a vested right and that vested right cannot be taken away retrospectively unless the Court discerns in the legislation dealing with the right of appeal a clear intendment that such right was intended to be taken away. Under s. 110 of the Civil Procedure Code the right to appeal to His Majesty in Council arose when the amount or value of the subject-matter of the suit in the Court of first instance was Rs. 10,000 or upwards and the amount or value of the subject-matter in dispute on appeal was also the same. The jurisdiction of the Privy Council came to an end after Independence and the Indian Legislature passed Act I of 1948 called the Enlargement of Jurisdiction of the Federal Court Act, and by that Act the jurisdiction that was vested in the Privy Council was conferred upon the Federal Court to hear all appeals which lay to the Privy Council under s. 110. By that Act also the amount or value

of the subject-matter was the same as the value of the subject-matter under s. 10 of the Civil Procedure Code. And then we have the Constitution which under art. 133 (*1*) raised the amount or value of the subject-matter from Rs 10,000 to Rs. 20,000. Prima facie, if the petitioner had the right to appeal to the highest Court in the land when the suit was filed from which the appeal arises, then there is nothing in the language of art. 133 (*1*) which would lead us to hold that the Constituent Assembly wanted to deprive the litigant of that right. But what is very ingeniously urged before us by Mr. Chandrachud is that the principle of the right of appeal being a vested right only applies when an appeal lies to the same Court. But when a new Court is created by the Constitution and a right of appeal is for the first time granted to that Court, then that principle does not apply. In other words, Mr. Chandrachud's argument is that the Supreme Court was set up as a new Court under the Constitution, its jurisdiction was for the first time defined under the Constitution, and for the first time a litigant was given a right of appeal under art. 133 (*1*). Mr. Chandrachud further says that whatever right of appeal the litigant had was a right of appeal to the Privy Council and the Federal Court. Those two Courts being abolished, that right no longer survives and the litigant is not entitled to say that because he had a right to appeal to a Court which no longer exists he therefore has also a right of appeal to a new Court which has been set up with a different jurisdiction. It may seem at first blush that this is a very attractive argument, but when one considers the different provisions of the Constitution, it seems to us clear that in many respects the Supreme Court was intended to take the place of the Privy Council and the Federal Court. It must not be forgotten that our Constitution makers were not writing on a clean slate. A great deal had already been written on the slate which could not be obliterated, and therefore it is in this context that the various provisions of the Constitution must be construed.

Turning first to art. 374 (*2*), that article provides that all suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of the Constitution shall stand removed to the Supreme Court and the Supreme Court has been given jurisdiction to hear and determine all those matters. Therefore, the effect of the Federal Court

1951

DAJISAHEB NARAYAN-RAO v. SHANKAR-RAO VITHALRAO

Chagla C. J.

ceasing to function and the Supreme Court being set up was not to do away with all matters which were pending before the Federal Court so as to compel the litigant to go afresh to the new Court which had been set up under the Constitution, but to continue as it were the Federal Court in the new Court which was established to the extent of matters pending before the older Court. Then we come to art. 135 and that provides:

"Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law."

The Constituent Assembly realised the fact that it was conferring jurisdiction upon the Supreme Court by arts. 133 and 134. It also felt that there may be matters in respect of which the Federal Court might have had jurisdiction which were not covered by arts. 133 and 134, and in respect of these matters jurisdiction was expressly conferred upon the Supreme Court. Therefore, reading arts. 133 and 134 and 135, the position is that although the Supreme Court may have no jurisdiction under arts. 133 and 134, still if in respect of that matter the Federal Court had jurisdiction, by reason of art. 135 the Supreme Court also would have jurisdiction in respect of that matter. The position is made still more clear when we turn to the Adaptation of Laws Order, 1950. That Order adapts s. 110 of the Civil Procedure Code to bring it into conformity with art. 133 (*1*) and in place of Rs. 10,000 in s. 110 is substituted Rs. 20,000 and the other necessary consequential amendments are made. But what is very significant is that by s. 27 it is provided:

"Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any existing law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law."

Therefore, if any right had already been acquired by a party before s. 110 was amended, that right was not taken away by the amendment of s. 110. Now, the right that the petitioner had acquired under s. 110 was to appeal to the Privy Council if the amount or value of the subject-matter in dispute was Rs. 10,000 or more, and that right which was a vested right was expressly not taken away by the provisions

of s. 27 of the Order. Therefore, although after the Constitution came into force, the jurisdiction of the Supreme Court in civil matters is restricted and the power of the High Court to give a certificate under s. 110 has also been modified, these provisions cannot affect the right which a litigant had already acquired prior to the coming into force of the Constitution and which right has been expressly saved. There is another way that this matter can be looked at. It is not disputed that the Federal Court after 1948 could have entertained this appeal, and once this position is admitted, it becomes a matter in respect of which the Federal Court could have exercised jurisdiction. Therefore, although the Supreme Court under art. 133 cannot exercise jurisdiction in respect of this matter, inasmuch as the Federal Court could have exercised jurisdiction by reason of art. 135, the Supreme Court has been given the same jurisdiction as the Federal Court. Therefore, even if we were to exclude the jurisdiction of the Supreme Court under art. 133 (*1*), if once it is conceded that the Federal Court had jurisdiction in respect of this matter, then under art. 135 jurisdiction is conferred upon the Supreme Court which may be different from and wider than the jurisdiction conferred upon the Supreme Court under arts. 133 and 134.

Mr. Chandrachud has relied on a judgment of the Federal Court in *Lachmeshwar* v. *Keshwar Lal.*[1] This decision lays down that until an appeal to the Federal Court has been admitted by the High Court the proceeding must be deemed to be pending before the High Court and it is a proceeding in respect of which the Federal Court cannot exercise jurisdiction. Therefore, so long as we have not admitted this appeal, the Supreme Court will have no jurisdiction to deal with these proceedings. But once we admit this appeal, it will become a matter in respect of which the Federal Court could have exercised jurisdiction, and, as pointed out before, by reason of art. 135 the Supreme Court will be equally entitled to exercise jurisdiction. Reliance is also placed on a judgment of the Supreme Court in *State of Seraikella* v. *Union of India.*[2] In that case the Supreme Court came to the conclusion that notwithstanding the fact that certain proceedings were pending before the Federal Court, the Supreme Court had no jurisdiction to deal with

[1] [1941] A. I. R. F. C. 5.

[2] [1951] A. I. R. S. C. 253.

1951

DAJISAHEB NARAYAN-RAO v. SHANKAR-RAO VITHALRAO

Chagla C. J.

those proceedings because the jurisdiction of the Supreme Court in respect of those matters was expressly barred by the Constitution, and what is relied upon is the observations of Mr. Justice Patanjali Sastri at p. 261, where the learned Judge says that—

> "The Federal Court, in which the suits were pending, and which had exclusive jurisdiction to deal with them, was abolished and a new Court, the Supreme Court of India, was created with original jurisdiction strictly limited to disputes relating to legal rights between States recognised as such under the Constitution,"

and these remarks are pressed into service for the contention that similarly a new Court, is created and jurisdiction is conferred upon it under art. 133 and it is only with regard to matters which fall under art. 133 that the Supreme Court has jurisdiction, and inasmuch as the amount or value of the subject-matter is less than Rs. 20,000, the Supreme Court has no jurisdiction to hear this appeal. It is clear from this judgment that the Supreme Court, in coming to the conclusion that it did, took into consideration two provisions of the Constitution. One was a proviso to art. 131 which expressly barred the jurisdiction of the Supreme Court with regard to the two matters mentioned in that proviso, and it also took into consideration art. 363 which also barred the jurisdiction of the Supreme Court with regard to matters enumerated in that article. Therefore, the view taken by the Supreme Court was that inasmuch as the Constitution had taken away the jurisdiction of the Supreme Court in certain matters, the fact that matters in respect of which jurisdiction had been taken away were pending before the Federal Court did not confer jurisdiction upon the Supreme Court and the mere provision with regard to the removal of the suits under art. 374 (2) could not be read as an article vesting the Supreme Court with a jurisdiction which the Constitution had expressly stated the Supreme Court shall not exercise. This judgment and this argument cannot possibly apply to a construction of art. 133. It is true that art. 133 lays down the jurisdiction of the Supreme Court in matters dealt with by that article. But the Constitution does not provide that the Supreme Court has no jurisdiction to deal with appeals where the amount or value of the subject-matter in dispute is less than Rs. 20,000. On the contrary, it will be perfectly competent to the Supreme Court under art. 136 to give special leave to appeal from any judgment or decree of

any Court or tribunal in the territory of India irrespective of the amount or value of the subject-matter. Therefore, whereas in the matter before the Supreme Court there was a complete absence of jurisdiction in the Supreme Court to deal with a particular matter, there is no such absence of jurisdiction in the Supreme Court to deal with appeals, the amount or value of the subject-matter in which is less than Rs. 20,000. Our attention has also been drawn to the judgments of two High Courts in *Ramaswami* v. *Ramanathan*[1] and in *Nandlal* v. *Hiralalrao*,[2] where the same view has been taken as to the right of appeal to the Supreme Court.

We have thought it necessary to consider this matter in some detail because our attention was drawn to the fact that there was some conflict in this Court as to the correct interpretation of art. 133 (*1*) of the Constitution. A division bench of this Court had taken the view that art. 133 (*1*) was retrospective in its operation. We should have been most reluctant to take a different view from the view taken by that bench, but we find on perusing the judgment that the matter was not argued before the learned Judges at all and the learned Judges did not have the advantage which we have had of listening to a very careful and well thought out argument advanced before us by Mr. Chandrachud. We, therefore, thought that it would be best to set the doubt at rest as far as this Court is concerned and to hold that in all matters where there was a right of appeal under s. 110 of the Civil Procedure Code, that right continues in respect of all suits filed prior to the coming into force of the Constitution. The division bench judgment to which I have made reference is the judgment of Mr. Justice Rajadhyaksha and Mr. Justice Shah in *Siddappa Bhimappa* v. *Mallawa*.[3] But both myself and my brother Gajendragadkar and other division benches have consistently taken the view that leave to appeal should be granted to the Supreme Court in circumstances similar to the one which we have before us, and even Mr. Justice Shah who was a party to this judgment has taken a contrary view when sitting with Mr. Justice Bavdekar.

[1] [1951] A. I. R. Mad. 251. [2] [1951] A. I. R. Nag. 222.

[3] (1950) Civil Application No. 1218 of 1949 decided by Rajadhyaksha and Shah JJ., on February 21, 1950, (unrep.).

1951

DAJISAHEB NARAYAN-RAO v. SHANKAR-RAO VITHALRAO

Chagla C. J.

We, therefore, make the rule absolute and grant leave to the petitioner to appeal to the Supreme Court under s. 110 of the Civil Procedure Code. Costs to be costs in the appeal to the Supreme Court.

Rule made absolute.

K. B. S.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

PARASHURAM LALJISHET GUJAR *v.* THE STATE OF BOMBAY.*

1951 *Oct.* 5

Bombay Money-lenders Act (Bom. XXXI of 1947), ss. 5, 10, 25, 34—Bombay Money-lenders (Amendment) Act (Bom. LVII of 1949), s. 4—Accused carrying on money-lending business in year 1948—Business done without license and by charging excess interest—Accused whether commits offences under s. 34.

Section 5 of the Bombay Money-lenders Act, 1946, is a bar against doing any money-lending business without a license, and if that provision is contravened, s. 34 of the Act becomes applicable, and the person doing money-lending business without a license commits an offence for which he can be punished under the latter section.

Before sub-s. (3) was added to s. 25 of the Act by the Bombay Money-lenders (Amendment) Act, 1949, it was open to a money-lender to charge a rate of interest exceeding the maximum rate of interest fixed by the Provincial Government, and in doing so he would not have committed any offence. He would only have run the risk of his not being able to recover such interest because no Court could have given him relief on the basis of an agreement which provided for a rate of interest exceeding the maximum rate.

CRIMINAL REVISION APPLICATION from the order of conviction and sentence passed by T. S. Bhole, Resident Magistrate, First Class, Mahad, confirmed on appeal by N. D. Karkhanis, Sessions Judge, Kolaba, at Alibag.

Parashuram Jaljishet Gujar (accused) who was a trader at Mahad advanced loans to several persons between January 6, 1948, and October 24, 1948. Earlier on November 17, 1947, the Bombay Money-lenders Act, 1946, had come into force and thereupon on May 5, 1948, the accused applied for a license under the Act but he had not obtained it during the relevant period. The accused also charged interest at

* Criminal Revision Application No. 770 of 1951.