THE
INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL MISCELLANEOUS

Before D. Falshaw and G. L. Chopra, JJ.

G. L. SALWAN,—*Petitioner.*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ Case No. 171-D of 1957.

1959

Nov., 10th

Criminal Law Amendment Ordinance (XXXVIII of 1944)—Object of—Ordinance—Whether violates Articles 14 and 20 (3) of the Constitution.

Held, that the main object of the Criminal Law Amendment Ordinance, 38 of 1944, is clearly to protect Government money and property believed to have been obtained by the persons against whom cases are brought either for embezzling the Government money or property, or being in possession of stolen Government property, or of obtaining Government property by false pretences. The only one of the scheduled offences in which money or property not actually belonging to the Government is hit is the one relating to the offence of bribery, and here the object is to secure money or property improperly obtained by a Government servant as an inducement for showing favour in his official capacity. It cannot possibly be said that these cases do not constitute easily recognisable classifications and the connection between the classification and the object of the Act is clear. The object is to freeze money or property improperly obtained by a Government servant in his official capacity or money or property belonging to the Government regarding which an offence is alleged to have

been committed so that on the conclusion of the case, in the event of the conviction of the accused, the money or property is available for immediate restoration to the Government.

Held, that the Criminal Law Amendment Ordinance, 38 of 1944, is *intra vires* and constitutional. It does not, in any way, contravene the provisions of Article 14 of the Constitution. The Ordinance is still in force and the fact that it has not been much used in the recent times will certainly not make it *ultra vires* as long as its provisions are not unconstitutional. The Ordinance also does not violate the provisions of Article 20 (3) of the Constitution. It cannot be said that the interim attachment of certain property, and a notice under section 4 of the Ordinance calling on a person who may be prosecuted for an offence in relation to the property to show cause why the attachment order should not be made absolute, in any way compel him to be a witness against himself, and even if a person in this position has, for the purpose of securing the release of the property from attachment, to reveal incidentally the whole or part of what his answer to the charge against him will be, the provisions of Article 20 (3) of the Constitution cannot be said to have been violated.

Petition under section 561-A of the Criminal Procedure Code r/w Article 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue appropriate writs, orders and/or directions including writs of Certiorari and Prohibition, quashing the proceedings before the learned District Judge, Delhi and further praying that such other interim or further orders and/or directions be made as may be deemed fit in the circumstances of the case.

N. C. CHATTERJEE, HARDAYAL HARDY AND H. L. ANAND, for Appellants.

VISHWANATH SHASTRI AND JINDRA LAL, for Respondents.

ORDER

Falshaw, J. FALSHAW, J.—This is a petition under article 226 of the Constitution filed by G. L. Salwan which has unfortunately come up for hearing rather

belatedly, since it was admitted by this court on the 10th of April, 1957.

The petitioner challenges the *vires* of the Criminal Law Amendment Ordinance (No. 38) of 1944, under section 4 of which an order was passed by the District Judge of Delhi on the 19th of March, 1957, in connection with a criminal case which is pending against the petitioner and others on the basis of a case registered by the police under secion 120-B, read with sections 420, 409 and 477-A, Indian Penal Code. A charge-sheet was actually filed in connection with the case on the 21st of December, 1956.

Briefly the background of the case is as follows. The petitioner is a displaced businessman evidently of some means from N.W.F.P., where apparently he had founded educational institutions for the public benefit. In Delhi in 1950, he founded a society which was registered under the Act of 1860 for the promotion of education called the "Salwan Education Trust". There seems to be no doubt that a sum exceeding Rs. 5,00,000 has been spent by the Trust on building, equipping and running a Boys' High School, a Girls' High School and a Montessori School in the suburb of Delhi largely populated by refugees and known as Karol Bagh. Some difficulties arose between the trustees and certain members of the staff employed in the schools with the result that Dr. Mehr Chand Mahajan, formerly Chief Justice of India, was appointed to act as arbitrator and he delivered his award in April, 1955, in which he found that although the schools were nominally being run by a trust, the trust was in fact dominated and run virtually by the petitioner alone who had spent more than Rs. 3,00,000 out of his own pocket, the remaining Rs. 2,00,000 having come in the form of Government grants. At the same time it was found that

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the petitioner had built on the school property premises which were used by him for carrying on various businesses.

It seems that the local authorities came to the conclusion that the petitioner had been using the money furnished by the Government in the form of grants for the purposes of the schools for his own private purposes with the result that a criminal case was registered against him after investigation by a Special Branch of the Police and also a civil suit has been filed against him by the Deputy Commissioner of Delhi. The criminal case has now been committed to the court of Sessions for trial.

In the present petition we are concerned with the action of the Government taken under the impugned Ordinance (No. 38) of 1944. The preamble to this Ordinance reads :—

> "Whereas an emergency has arisen which makes it necessary to provide for preventing the disposal or concealment of money or other property procured by means of certain offences punishable under the Indian Penal Code."

The offences in question are set out in the Schedule annexed to the Act and they include offences under section 161 or 165 of the Indian Penal Code, and offences under sections 406 or 409, 411 or 414, and 417 or 420, Indian Penal Code, where the money or property in question which has been embezzled, stolen or obtained by false pretence is Government money or property. The object of the Ordinance is to secure the return to the Government of the money or property in question on the conclusion of the case if it results in the conviction of the accused.

The main sections are the third and fourth. Section 3 reads :—

"(1) Where the Provincial Government has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the Provincial Government may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on his business, for the attachment under this Ordinance of the money or other property which the Provincial Government believes the said person to have procured by means of the offence, or if such money or other property cannot for any reason be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, (Act V of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Crown.

(3) An application under sub-section (1) shall be accompanied by one or more affidavits stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or the value of the other property believed to have

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been procured by means of the offence: the application shall also furnish—

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person ;

(b) the names and addresses of any other person believed to have, or to be likely to claim any interest or title in the property of the said person."

Section 4 reads :—

"(1) Upon the receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of opinion that there exist no *prima facie* grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an *ad interim* order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit :

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order.

examine the person or persons making the affidavits accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue notices, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having, or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section, calling upon each such person to appear on the same date as that specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any other person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time

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before an order is passed under sub-section (1), or sub-section (3), as the case may be, of section 5."

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Section 5 provides for the disposal of objections to the attachment and for the passing of an order by the District Judge either making the *ad interim* order of attachment absolute or varying it or withdrawing it. Section 6 provides for the attachment of property in the hands of *mala fide* transferees. Section 8 provides for security and also attachment. Section 9 provides for the administration of attached property. Section 10 provides for the duration of attachment. Section 11 provides for appeals to the High Court by any person aggrieved by orders passed under the preceding sections. Sections 12 and 13 provide for evaluation by Criminal Courts of properties secured by scheduled offences and for the disposal of attached properties on the termination of criminal proceedings.

In the present case the Government filed an application under sections 3, 4, 5 and 9 of the Ordinance which was supported by affidavits of Inspector Somji Mal, one of the Investigating Officers, and Mr. Mandlekar, Under-Secretary to the Government of India in the Ministry of Home Affairs. The property sought to be attached in the application was set out in the schedule annexed thereto, of which no copy appears to have been filed along with the present petition, but it is stated that it is the whole of the trust property and the private property of the petitioner, and in the application it was prayed that a receiver should be appointed under section 9(2) of the Ordinance.

On this application the learned District Judge passed an order on the 19th of March, 1957, to the effect that he was satisfied that an *ad interim* order

under section 4 was necessary and he accordingly passed an *ad interim* order to the effect that the property mentioned in the Schedule be attached. A notice was ordered to be issued along with copies of the application and affidavits to the petitioner and others concerned, the 10th of April, 1957, being fixed for their appearance to show cause why the order should not be made absolute. The question for the appointment of a receiver was also to be considered on the 23rd March, 1957. The present petition was filed in his Court on the 9th of April and admitted on the 10th when the only interim relief granted to the petitioner by the learned Judges who admitted the petition was the stay of proceedings for the appointment of a receiver.

The present petition is based on the allegation that the Ordinance under which these proceedings have been taken contravenes the provisions of article 14 of the Constitution which reads:—

> "the State shall not deny to any person equality before the law or the equal protection of the laws."

and article 20(3) which reads :—

> "No person accused of any offence shall be compelled to be a witness against himself."

The contention regarding article 14 is that the Ordinance is discriminatory in that all persons charged with the scheduled offences ought to be treated in the same way. In this connection reliance was principally placed, as might be expected, on the well known case, *The State of West Bengal* v. *Anwar Ali Sarkar* (1), in which by a majority the West Bengal Special Courts Act (X of 1950),

(1) 1952 S.C.R. 284

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was held to be *ultra vires* on the grounds that the procedure laid down by the Act for the trial by the Special Courts varied substantially from that laid down for the trial of offences generally by the Code of Criminal Procedure and the Act did not classify, or lay down any basis for classification, of the cases which may be directed to be tried by the Special Court, but left it to the uncontrolled discretion of the State Government to direct any case which it liked to be tried by the Special Court. It has, however, been made clear by a number of subsequent decisions of the Supreme Court that every Act which provides special methods of procedure in certain classes of cases is not necessarily *ultra vires*. In the same volume, for instance, in the case of *Kathi Raning Rawat* v. *The State of Saurashtra* (1), it was held that the Saurashtra State Public Safety Measures Ordinance, 1948, which empowered the State Government to direct offences or classes of offences or classes of cases to be tried by the Special Courts, did not contravene the provisions of article 14 and was not *ultra vires* or void.

The whole position in this matter has been reviewed in *Ram Krishna Dalmia and others* v. *Mr. Justice Tendolkar* (2). In this case the judgment of the Court was delivered by S. R. Das, C.J., who has summed up the position as follows:—

> "It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible

(1) 1952 S.C.R. 435
(2) A.I.R. 1958 S.C. 538

differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of Supreme Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The decisions further establish :

(a) that a law may be constitutional even though it relates to a single individual, if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself ;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to

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problems made manifest by experience and that its discriminations are based on adequate grounds ;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest ;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court

when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

As I have said when describing the provisions of the impugned Ordinance its main object is clearly to protect Government money and property believed to have been obtained by the persons against whom cases are brought either for embezzling the Government money or property, or being in possession of stolen Government property, or of obtaining Government property by false pretences. The only one of the scheduled offences in which money or property not actually belonging to the Government is hit is the one relating to the offence of bribery, and here the object is to secure money or property improperly obtained by a Government servant as an inducement for showing favour in his official capacity. It cannot in my opinion possibly be said that these cases do not constitute easily recognisable classifications and the connection between the classification and the object of the Act is clear. The object is to freeze money or property improperly obtained by a Government servant in his official capacity or money or property belonging to the Government regarding which an offence is alleged to have been committed so that on the conclusion of the case, in the event of the conviction of the accused, the money or property is available for immediate restoration to the Government.

In the circumstances I am of the opinion that the impugned Ordinance does not in any way contravene the provisions of article 14, and in fact the real grievance of the petitioner appears to me to be that an Ordinance which had apparently lapsed into desuetude has suddenly been brought out of

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the armoury for use in his case. The Ordinance was promulgated while the war was still on and I must confess that I do not recall any case in the last twelve years or so in which these provisions have been utilised. There is, however, no dispute that the Ordinance still remains in force and the fact that it has not been much used in the recent times will certainly not make it *ultra vires* as long as its provisions are not unconstitutional.

The other ground of attack was that the Ordinance violated the provisions of article 20(3) which have already been reproduced above. On this point I find it hard to understand how being called upon under section 4 of the Ordinance to show cause why the *ad interim* order of attachment should not be made absolute can be said in any way to compel a person accused of an offence to be a witness against himself. The argument of Mr. Chatterji for the petitioner was that in order to show cause against the order of attachment, the petitioner was virtually being compelled to reveal at a premature stage the details of what was to be his defence in the criminal case against him. Even, however, if this is the effect I do not consider that it amounts to compelling the petitioner to be a witness against himself, since presumably his answer to the notice must be that he is innocent of the charges levelled against him, and I cannot see any objection to his getting on record as early as possible his reasons for saying so. Even, however, if the petitioner in the present case were guilty and did not wish to reveal the lines on which defence was going to be conducted I still consider that it would be possible for him to make out some case for the release of at least a substantial part of the attached property which *prima facie* appears to be much more valuable than the amount of money which he is alleged to have wrongfully obtained from the Government and misused.

The argument, however, has not been based so much on the facts of this particular case as on general principles, and in my opinion it cannot be said that the interim attachment of certain property, and a notice calling on a person who may be prosecuted for an offence in relation to the property to show cause why the attachment order should not be made absolute, in any way compel him to be a witness against himself, and even if a person in this position has for the purpose of securing the release of the property from attachment to reveal incidentally the whole or part of what his answer to the charge against him will be, I still do not consider that the provisions of article 20(3) of the Constitution are violated. The result is that I would dismiss the petition but leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

MST. VIRAN BAI,—*Appellant.*

versus

JAISA RAM AND OTHERS,—*Respondents.*

Regular Second Appeal No. 150-P of 1954.

1959

Nov., 12th

Administration of Evacuee Property Act (XXXI of 1950)—Section 10—Allotment made by Custodian under—Whether can be challenged in a civil court—S. 46 (d)—Jurisdiction of the Civil or revenue court—How far barred—Suit for declaration that plaintiff, and not defendants, is entitled to allotment of land falling to the share of the deceased in lieu of land left by him in Pakistan as his heir—Whether competent—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 9—Whether bars such a suit Scope of—Whether covers the case of agricultural land.