REVISIONAL CRIMINAL

Before Falshaw, J.

RAM NARAIN,—*Petitioner,*

versus

1951

Nov 28

THE CENTRAL BANK OF INDIA, LTD., BOMBAY, THROUGH DEEP CHAND SETH, ITS CHIEF AGENT AT AMRITSAR AND SHREE DHUN FRAMJEE, ITS AGENT AT NEW DELHI,—*Respondent.*

Criminal Revision No. 865 of 1951

Criminal Procedure Code (Act V of 1898)—Section 188—Scope and object of—Person committing an offence in Pakistan before migration to India and becoming citizen of India—Jurisdiction of Indian Courts to try such person—Status of such person before migration—Whether Punjab Government (India) competent to sanction prosecution of such person—Indian Penal Code (Act XLV of 1860), Section 410—Money obtained by sale of stolen property—Whether stolen property.

Held, that until a person actually left Pakistan and came to India he cannot possibly be said to have become a national or a citizen of India. In fact his Indian citizenship did not commence until the constitution came into force, and unless and until he had actually migrated to India, he could not even be regarded a potential or prospective citizen of India. Unless and until such person did come to India he remained a national of Pakistan and so was not covered by the words "Native Indian subject of Her Majesty" in the meaning which they automatically acquired as from the 15th of August 1947.

Held also, that section 188, Criminal Procedure Code, is admittedly the only provision of law under which anybody can be tried in a Court in India for an offence wholly committed and completed outside India. The object of this section is made clear by its two provisos which is that this section is meant to apply to offences committed by Indian nationals in a foreign country over which the Government of India has such a control as to prevent the offender from being tried for the offence, for which he has been tried in India, in the foreign country in which the offence is committed.

Held futher, that the Punjab Government, in February 1950, could not sanction the prosecution of the accused for offences committed in Pakistan in November 1947, as the amendment of section 188, Criminal Procedure Code, has no retrospective effect and the accused was not a British subject dimiciled in India in November 1947, before he left Pakistan to come to India.

Held, that the definition of stolen property in section 410, I. P. C., comprehensive as it is, cannot be said to include money received as a result of selling stolen property.

Petition under section 439 read with section 561-A, Criminal Procedure Code, for revision of the order of Shri Sansar Chand, Additional Sessions Judge, Rohtak at Gurgaon, dated the 2nd August 1951, affirming that of Shri R. N. Chopra, District Magistrate, Gurgaon, dated the 8th May 1951, holding that his Court has jurisdiction to try the accused and directing that the case should be proceeded with in the normal course.

M. L. PURI, S. L. PURI and PREM CHAND, for Petitioner.

TEK CHAND and D. K. KAPUR, for Respondent.

JUDGMENT

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FALSHAW, J. This petition by Ram Narain raises a rather interesting question of jurisdiction. The relevant facts are as follows : Ram Narain was a resident and native of Multan District now in, Punjab, Pakistan, and there he had dealings with the respondent the Central Bank of India Limited, to the local branch of which it is alleged he owed a considerable sum of money at the time of the partition. It is alleged that after the disturbances began in August 1947 and after the employees of the respondent bank at Mailsi in Multan District had ceased to be able to protect the property of the bank, Ram Narain, who had himself somehow managed to stay there and to preserve his life, broke into a godown of the bank on the 6th November 1947 and stole 802 bales of cotton which he had pledged with the bank and which were lying with the bank as security for the money advanced to him. It is not in dispute that later in November 1947, Ram Narain left Pakistan and came to Bombay and ultimately settled in Hodal in the district of Gurgaon. The bank somehow learnt of the alleged theft of the bales of cotton and in February 1950 applied to the Punjab Government under section 188, Criminal Procedure Code, for his prosecution for the alleged offences committed by him in this State. Sanction was accorded on the 12th February 1950, for the prosecution of Ram Narain in India on charges under sections 454 and 380, Indian Penal Code. The case against him was instituted by a complaint

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in April 1950, in the Court of the District Magistrate at Gurgaon, where at the outset Ram Narain intimated his intention of challenging the jurisdiction of the Court on the ground that the offence was committed in Pakistan and that at the time of the offence he was a national of Pakistan and not a national of India. The objection, however, was not pressed to a decision at the outset, since Ram Narain was apparently content at this stage to wait for the prosecution to produce evidence to show that he was a British subject domiciled in India and that section 188, Criminal Procedure Code, had any application. Prosecution evidence was then recorded and charges were framed under sections 454 and 380, Indian Penal Code, regarding his alleged breaking into the bank's godown and stealing 802 bales of cotton. From the charges it is quite clear that no offence or portion of any offence was alleged to have been committed by the accused outside what is now Pakistan. It was at that stage that Ram Narain invited a decision by the Court on the question of its jurisdiction to try him. His objection was rejected by the learned District Magistrate and a revision petition filed by him was also rejected by the learned Additional Sessions Judge.

Prima facie it would appear that since the two separate dominions were created by the India Independence Act, 1947, as from the 15th of August of that year, and the whole of the offences committed by the accused were completed at Mailsi, the case arising out of the offences would ordinarily be triable only in the district of Multan. On behalf of the bank, however, reliance is placed on the provisions of section 4 of the Indian Penal Code and section 188 of the Criminal Procedure Code, both as they stood in 1947 and as since amended. The relevant portion of section 4 of the Penal Code before amendment read—

> "The provisions of this Code apply also to any offence committed by :—
>
> (1) Any native Indian subject of Her Majesty in any place without and beyond British India."

Since 1950 the wording is :—

"(1) Any citizen of India in any place without and beyond India."

Section 188, Criminal Procedure Code, formerly read—

"When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India .... he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found."

The present wording is—

"When a British subject domiciled in India commits an offence at any place without and beyond all the limits of the Provinces .....he may be dealt with in respect of such offence as if it had been committed at any place within the Provinces at which he may be found."

There does not seem to be any doubt on the evidence produced that Ram Narain never intended to remain in Pakistan for any length of time, and that in fact he wound up his business there as quickly as he could and came to India later in November 1947 and settled at Hodal. There equally does not seem to be any doubt that since the Constitution came into force he has become a citizen of India under article 6 (b) (i) of the Constitution. The question is, however, what was his status before he came to India in the later part of November 1947 and still remained in the Multan District of the West Punjab where he and his ancestors had lived. The Courts below have taken the view that in no sense of the word did he acquire any Pakistan nationality, and that he remained at the material period a "Native Indian subject of Her Majesty" within the meaning of section 4 of the Penal Code and section 188 of the Criminal Procedure Code.

In my opinion it is quite clear that until he actually left Pakistan and came to India he cannot possibly be said to have become a national or a citizen of

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India. In fact his Indian citizenship did not commence until the Constitution came into force, and unless and until he had actually migrated to India he could not even be regarded a potential or prospective citizen of India.

In deciding the question in issue it is necessary to examine the scope and objects of section 188, Criminal Procedure Code, which is admittedly the only provision of law under which anybody can be tried in a Court in India for an offence wholly committed and completed outside India. To my mind the object of the section is made clear by the two provisos, which read—

> "Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be enquired into in British India (the Provinces since the amendment of 1948) unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that in his opinion, the charge ought to be inquired into in British India (the Provinces); and, where there is no Political Agent, the sanction of the Local Government (Provincial Government) shall be required:
>
> Provided also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India (the Provinces) shall be a bar to further proceedings against him under the Indian Extradition Act, 1903, in respect of the same offence in any territory beyond the limits of British India (the Provinces)."

Although both according to the old and the new wording of the earlier parts of the section it could possibly be read as applying to offences committed in foreign countries, when the section is read as a whole,

it seems to me clearly, except for the portion referring to offences committed in Indian ships or aircrafts, to have been intended only to be applied to offences committed in those parts of India which were included in the States as opposed to British India, and the object was to prevent anybody who had been tried in British India for an offence committed in a State from being tried again in that State for the same offence, and it was for this reason that in order to try a person in British India for an offence committed in a State the certificate of the Political Agent or in his absence the Provincial Government, was a necessary pre-requisite. This is further made clear in the second proviso which specifically provides that proceedings in a Court in British India shall be a bar to further proceedings against the accused in respect of the same offence in any territory beyond the limits of British India. Now if the offence is committed in a foreign country over which the Government of India has no control, it is quite clear that the second proviso could have no effect, since it would not be at all binding on the foreign Government, which could still prosecute the offender for the offence committed within its territory, if it could lay hands on him, and ignore the proceedings in the Court in India. In the present case I do not think that any decision by the Government of Punjab (Pakistan), or the local authorities in Multan District, to institute proceedings against Ram Narain in respect of the present alleged offences could possibly be, or would be likely to be, influenced in any way by the fact that the present case has been instituted against him in a Court in this State.

Another aspect of the matter is that it appears to me to be very doubtful whether in February 1950, the Punjab Government could under section 188, Criminal Procedure Code, as it then stood after the amendment in 1948, validly sanction prosecution of the accused for offences committed in Pakistan in November 1947, before the amendment. I do not consider that the wording of the amended section 188 can be treated as being of retrospective application, and although at the time of the sanction in February

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1950, Ram Narain may have been covered by the words "British subject domiciled in India" he was certainly not a British subject domiciled in India in November 1947 before he had left Pakistan to come to India. It also appears to me to be very doubtful whether sanction by the Provincial Government could be given in February 1950, for Ram Narain's prosecution here on the assumption that the 1947 wording was applicable in his case, namely "a Native Indian subject of Her Majesty". Even, however, assuming for the sake of argument that sanction in 1950 could be given on the basis of the wording of the section in 1947, I still do not consider that the words could be applied to Ram Narain. It can no doubt be argued that in one sense the words "Native Indian subject of Her Majesty" continued to apply after the 15th of August 1947 to every resident of a Province whether in India or Pakistan, but in my opinion there is no doubt that after the 15th of August 1947, an entirely new and unparalleled state of affairs came into existence, and although the words of section 4 of the Indian Penal Code and section 188 of the Criminal Procedure Code remained unchanged in both India and Pakistan until suitable amendments could be devised and enacted, nevertheless as from the 15th of August the words "Native subject of Her Majesty" became applicable in the territory now constituting India only to residents of Provinces within the boundaries of India, and in Pakistan to residents of Provinces within the boundaries of Pakistan. The main basis of the Lower Courts' decision that the words of section 188, Criminal Procedure Code, were applicable to Ram Narain appears to have been a presumption that no Hindu or Sikh could possibly remain in Pakistan and that every such person must have been bent upon making his way to India as quickly as possible, and that merely by forming an intention to come to India he became an Indian subject and was never even for a moment a subject of Pakistan. In my opinion such a presumption cannot be justified. There is no doubt that as far as the Punjab is concerned the vast majority of Hindus

and Sikhs who escaped destruction have come to India, but even in the Punjab the exodus has not been complete, and in Sind and East Bengal there are still considerable numbers of non-Muslims who no doubt by now have become full citizens of Pakistan. In my opinion the only possible way by which a resident of the territories which became Pakistan could become an Indian subject was by actually coming to India, and unless and until any such person did come to India he remained a national of Pakistan and so was not covered by the words " Native Indian subject of Her Majesty " in the meaning which they automatically acquired as from the 15th of August 1947. I am, therefore, of the opinion that the decision of the lower Courts on this point was wrong and that Ram Narain could not be tried in any Court in this State for offences committed at Mailsi in November 1947, even with the sanction of the Provincial Government under section 188, Criminal Procedure Code.

The learned counsel for the respondent Bank, however, has raised an entirely new point and has put forward section 179, Criminal Procedure Code, as a ground for allowing the trial to take place here. Some evidence has apparently been produced in the case to show that Ram Narain either brought with him when he came to India from Pakistan, or subsequently had transferred to him, a considerable sum of money, the whole or part of which is alleged by the Bank to have been the proceeds of the sale of the bales of cotton with the theft of which Ram Narain has been charged. The provisions of section 179, Criminal Procedure Code, are to the effect that when a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. It would in fact seem that section 181 (3) would be a more appropriate basis for the argument advanced

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by the learned counsel, the words of this subsection being—

> "(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen."

The suggestion is that Ram Narain can at any rate be tried at Gurgaon for the possession or retention by him at Hodal of the sale-proceeds of the stolen cotton, which themselves constitute stolen property. It does not seem to me that this point arises out of the petition now pending before me, the only point involved in which was whether Ram Narain could be tried at Gurgaon on charges under sections 454 and 380, Indian Penal Code, regarding offences committed in Pakistan, and it may be mentioned that although the charges under these sections were framed as long ago as the 18th of May 1951, the respondent Bank does not seem to have attempted to raise the question of the possession of stolen property until now, when the question of jurisdiction under section 188, Criminal Procedure Code, had been raised and seemed likely to be decided against the respondent. In the circumstances it might have been better for the Bank to have raised this point in the Court of the trial Magistrate and suggested the framing of a charge under section 411, Indian Penal Code. However, since the point has been raised before me I shall proceed to deal with it.

"Stolen property" is defined in section 410, Indian Penal Code, as follows :—

> "Property, the possession where of has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect

of which criminal breach of trust has been committed, is designated as 'stolen property' whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property."

It does not seem to me that this definition, comprehensive as it is, can be said to include money received as the result of selling stolen property, nor has the learned counsel for the respondent Bank cited any decision in which it has been so held. On the other hand, Plowden and Smyth, JJ., in *The Empress* v. *Subha Chand* (1), held that property into or for which stolen property has been converted or exchanged is not stolen property according to the definition given in the Indian Penal Code, and there are also two English decisions on the point—*Chapple's case* (2), in which it was held that money obtained by sale of property stolen was not stolen property, and *Walkley's case* (3), in which it was even held that currency notes of smaller denomination obtained in exchange of stolen currency notes of higher denomination were not stolen property. Hence I do not consider that the Court at Gurgaon can be given jurisdiction independently of section 188, Criminal Procedure Code, to try Ram Narain for an offence under section 411, Indian Penal Code.

I accordingly accept the revision petition and, holding that the trial of Ram Narain is without jurisdiction, set aside the charges framed against him and quash the proceedings.

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(1) 39 P. R. (Criminal) 1881.
(2) (1840) 9 C. & P. 355.
(3) (1829) 4 C. & P. 133.