1950

Dec. 14.

JANARDAN REDDY AND OTHERS

v.

THE STATE.

[SHRI HARILAL KANIA C.J., SAIYID FAZL ALI, PATANJALI SASTRI, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.]

Constitution of India, Arts. 134, 136, 374(4)—Special leave to appeal—Judgment of Hyderabad High Court passed before 26th Jan. 1950—Application for special leave—Maintainability—Pendency of application for leave to appeal to Judicial Committee of Hyderabad when new constitution came into force, effect of—Scope of Art. 136—"Any court or tribunal in the territory of India"—Interpretation of statutes—Presumption of prospective operation—Right to appeal.

The petitioners, who were convicted and sentenced to death by a special tribunal in the Hyderabad State, preferred appeals to the High Court of Hyderabad which were dismissed, and they applied to the High Court on the 21st Jan., 1950, for leave to appeal to the Judicial Committee of Hyderabad against the judgments of the High Court. On the 26th Jan., 1950, the Constitution of India came into force and under the Constitution, Hyderabad became a part of India, the Judicial Committee of Hyderabad ceased to exist, and all appeals and other proceedings pending before that

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Committee stood transferred to the Supreme Court of India. The applications of the petitioners were amended so as to make them applications under Art. 134 of the Constitution, but they were dismissed on the ground that no such petitions lay under Art. 134 and also on the merits. The petitioners thereupon made an application to the Supreme Court of India under Art. 136 of the Constitution for special leave to appeal:

Held that, inasmuch as Art. 136 confers power on the Supreme Court to grant special leave to appeal only from any judgment, decree, sentence or order passed or made by "any court or tribunal in the territory of India," and the Hyderabad High Court was not a Court in the territory of India when the judgments in question were pronounced the Supreme Court had no jurisdiction to grant special leave.

Art. 136 cannot be so construed as to apply to judgments or orders pronounced before Hyderabad became part of India and to confer a right of appeal inferentially, merely because the petitioners had a right to appeal to the Judicial Committee of Hyderabad when the Constitution came into force and they had been deprived of this right by the abolition of that Committee without making a provision enabling them to appeal to the Supreme Court.

APPELLATE JURISDICTION (Criminal): Criminal Miscellaneous Petitions Nos. 71 to 73 of 1950.

Petitions under Art. 136 of the Constitution praying for special leave to appeal to the Supreme Court from the orders of the High Court of Judicature at Hyderabad dated 12th, 13th and 14th December, 1949, dismissing the appeals preferred by the petitioners against orders of the Special Tribunal of Hyderabad convicting them of murder and sentencing them to death. The material facts and arguments of the counsel appear from the judgment.

D. N. Pritt (*K. B. Asthana, Daniel Latifi, Bhawa Shiv Charan Singh* and *A. S. R. Chari*, with him) for the petitioners.

M. C. Setalvad, Attorney-General for India, and *Raja Ram Iyer* (*G. N. Joshi*, with them) for the respondent.

1950. December 14. The Judgment of the Court was delivered by

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KANIA C.J.—These are three criminal miscellaneous petitions asking for special leave to appeal to the

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Supreme Court under article 136 of the Constitution of India.

All the accused were charged with being members of the Communist Party wedded to the policy of overthrowing the existing Government at Hyderabad by violence and establishing in its place a communist regime. It is alleged that they demanded subscriptions towards their communist organization and some of the villagers who did not meet their demands were abducted on the 21st of September, 1948, and murdered. They were charged with various offences including murder before a special tribunal established under the regulations promulgated by the Military Governor under the authority of H. E. H. the Nizam and convicted and sentenced to death on the 9th, 13th and 14th of August, 1949, by separate judgments. The petitioners appealed from those judgments to the Hyderabad High Court and the High Court, by its judgments dated the 12th, 13th and 14th December, 1949, respectively, dismissed the appeals. The petitioners applied to the High Court for a certificate to appeal to the Judicial Committee of the Hyderabad State on the 21st of January, 1950. It appears that H. E. H. the Nizam issued a *firman* on the 23rd of November, 1949, stating that the proposed Constitution of India was suitable for the government of Hyderabad and he accepted it as the Constitution of the Hyderabad State as one of the States of Part B in the First Schedule. On the 26th of January, 1950, the Constitution of India became applicable to the Union of India and the Part B States. The petitions originally filed for a certificate for leave to appeal to the Judicial Committee of the Privy Council of the Hyderabad State were, by leave of the Court, amended, and made into petitions under article 134 of the Constitution of India. A Division Bench of the High Court at Hyderabad considered the petitions and dismissed them on the ground that no such petitions lay under article 134 and they also declared that on the merits no case was made out for a certificate as asked by the petitioners. The petitioners have now filed their petitions to this Court under

article 136 of the Constitution of India, for special leave to appeal from the judgments of the High Court dated the 12th, 13th and 14th of December, 1949.

Two questions arise for consideration. The first is, whether any application under article 136, under the circumstances of the case, can be made to the Supreme Court, and, the second is, whether on a consideration of the facts, if it has jurisdiction to entertain the petitions, the Court should grant special leave. The first question depends on the construction of the relevant articles in the Constitution of India. Under article 374 (4), on and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B to the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State ceased, and all appeals and other proceedings pending before the said authority at such commencement stand transferred to and have to be disposed of by the Supreme Court. This sub-clause thus abolishes the jurisdiction of the Privy Council of the Hyderabad State and after the Constitution of India came into force that body and its jurisdiction altogether ceased. On the facts before us, it is clear that as no proceeding or appeal in respect of these judgments of the Hyderabad High Court was pending before the Hyderabad Privy Council before its abolition, nothing got transferred to the Supreme Court by operation of this sub-clause.

It was argued on behalf of the petitioners that on the 25th January, 1950, they had a right to move the High Court at Hyderabad for a certificate granting them leave to appeal to the Privy Council of the Hyderabad State. In fact such petitions were pending on that day. It was therefore argued that a right to appeal which existed on the 25th of January, 1950, cannot be impliedly taken away by the Constitution of India being made applicable to the State of Hyderabad. It was pointed out that in respect of convictions all persons who had rights of appeal, or

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who had time to file their applications for a certificate, as also persons whose petitions were pending before the Hyderabad High Court asking for such certificates and which had not been disposed of because of the congestion of work in the High Court would lose their right to appeal to the higher court if article 136 is not construed so as to give a right of appeal to the Supreme Court of India. It was pointed out by the Attorney-General, appearing on behalf of the State, that if a wide construction is given to article 136 it will not only permit persons who are stated to be under such hardship to apply for leave under article 136 but several other rights will be created. Such rights will arise not only in criminal cases but in civil cases also and they can be exercised without any limitation as to the period within which the application has to be made, with the result that old judgments may also be called into question. Moreover, on the wider construction of article 136, judgments which had become final in those States in which there existed no court like the Privy Council to whom appeals could lie from the judgments of their High Courts, will be subject to appeal though no such appeal lay before. It was therefore argued that on the ground of convenience the balance if at all, is against the argument advanced by the petitioners. It was strenuously urged that this is a wrong approach to the question altogether. Articles of the Constitution have to be construed according to their plain natural meaning and cases of hardship should not be brought to bear on the natural construction. Hard cases should not be permitted to make bad law. In our opinion, this argument of the Attorney-General is sound. The question of hardship cannot be and should not be allowed to affect the true meaning of the words used in the Constitution. It is therefore proper to approach the articles irrespective of considerations of hardship.

In order to decide whether on the facts of this case, the Supreme Court has jurisdiction to grant special leave, it is necessary only to consider articles 133, 134, 135 and 136 of the Constitution of India. Article 133, in substance, retains the old provisions of the Civil

Procedure Code in respect of appeals to the Privy Council from High Courts in civil matters. Under article 134, it is provided that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court.....(then follow three contingencies under which such appeals can lie). In article 133 also the words " in the territory of India " are used. Article 135 provides for matters to which the provisions of articles 133 or 134 do not apply. It is there provided that 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 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. This article was included in the Constitution to enable the Supreme Court to exercise jurisdiction in cases which were not covered by articles 133 and 134, in respect of matters where the Federal Court had jurisdiction to entertain appeals etc. from the High Courts under the previously existing law. This is obviously a provision to vest in the Supreme Court the jurisdiction enjoyed by the Federal Court, under the Abolition of Privy Council Jurisdiction Act, 1949. It may be mentioned that the jurisdiction of the Privy Council to entertain appeals from High Courts, except those which were already pending before it on the 10th October 1949, was taken away by this Act. Provision had therefore to be made in respect of appeals which were already pending or which were not covered by the provisions of articles 133 and 134. Article 136 of the Constitution of India is in these terms:—

" 136. (1) "Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India."

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(2).....".

The expression "territory of India" is defined in article 1 in these terms :—

"1. The territory of India shall comprise

(a) the territories of the States (meaning the States mentioned in Parts A, B and C of the First Schedule),

(b) the territories specified in Part D of the First Schedule, (*viz.*, The Andaman and Nicobar Islands) and

(c) such other territories as may be acquired."

The question for consideration is whether on the facts of the present case the Supreme Court can grant special leave to appeal from a judgment, sentence or order which was passed and made by the Hyderabad High Court before 26th January, 1950. The important fact to be borne in mind is that the Hyderabad courts were not courts within the territory of India when they pronounced their judgments on the 12th, 13th and 14th of December, 1949. It is argued on behalf of the petitioners that a narrow construction will take away the valuable rights of appeal which had existed in persons in the position of petitioners when the Constitution of India was directed by H. E. H. the Nizam by his *firman* to be applicable to the Hyderabad State on the 26th of January, 1950, it should be held that as no substantive right was provided in the Constitution separately, the words of article 136 were wide enough to give such right to the petitioners. On the other hand, it was then argued by the learned Attorney-General that every legislation is primarily prospective and not retrospective. A right of appeal has to be given specifically by a statute and it is not merely a procedural right. If therefore there exists no right of appeal under the Constitution such right cannot be inferentially held to come into being on the application of the Constitution to the Hyderabad State. For this, reliance was placed on the decision of the Privy Council in *Delhi Cloth and General Mills Ltd.* v. *Income Tax Commissioner, Delhi & Another*(1) and *The Colonial Sugar Refining Co. Ltd.* v. *Irving*(2).

(1) 54 I.A. 421. (2) [1905] A.C. 369.

In our opinion, the contention of the Attorney-general on this point is correct. There appears no reason why in the present case the normal mode of interpreting a legislation as prospective only should be departed from. It was contended by Mr. Pritt that the interpretation sought to be put by the State on article 136 will require the insertion of the word "hereafter" in the clause, for which there was no justification. We are unable to accept this contention because, *prima facie,* every legislation is prospective and even without the use of the word "hereafter" the language of article 136 conveys the same meaning. It should be noticed in this case that before the 26th January, 1950, the Government of H. E. H. the Nizam was an independent State in the sense that no court in India or the Judicial Committee of the Privy Council in London had any jurisdiction over the decisions of the Hyderabad State Courts. To give the Supreme Court of India jurisdiction over the decisions of courts of such a state, one requires specific provisions or provisions which necessarily confer jurisdiction to deal, on appeal, with the decisions of such courts. It is common ground that there is no express provision of that kind. There appear to us also no such necessary circumstances which on reasonable construction should be treated as impliedly giving such right of appeal. Indeed the words "territory of India" lead to a contrary conclusion. Under the words used in article 136 the courts which passed judgments or sentence must be courts within the territory of India. The territory of the Government of H.E.H. the Nizam was never the territory of India before the 26th of January, 1950, and therefore the judgment and sentence passed by the High Court of H.E.H. the Nizam on the 12th, 13th and 14th December, 1949, cannot be considered as judgments and sentence "passed by a court within the territory of India". On that short ground alone it seems that the petitioners' contention must fail.

It was argued by Mr. Pritt on behalf of the petitioners that if such construction were put, the territory of the Province of Bombay also may be excluded from

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the operation of article 136. The answer however is that a right to file an appeal from the judgments of the High Court at Bombay in both civil and criminal matters existed under the Civil Procedure Code, Criminal Procedure Code and the Letters Patent of the High Court before the 26th of January, 1950. Such right of appeal to the Judicial Committee of the Privy Council, which previously existed, was transferred to the Federal Court by the appropriate legislation and eventually by article 135 to the Supreme Court. Therefore by the interpretation, which we think is the proper interpretation of article 136 of the Constitution of India, the right of appeal from the judgment of the Bombay High Court is not taken away. It is true that having regard to the words used in article 136 which can bear a wider meaning a right to apply for leave to appeal to the Supreme Court is given in respect of decisions not only of High Courts but of other tribunals also. That larger right, if it did not exist before the 26th January, 1950, can be legitimately construed as newly conferred by article 136 and such construction does not give rise to any anomaly. In our opinion, therefore as the judgments were pronounced and sentences passed in all these matters before us by the High Court of Hyderabad, which was in the territory of H.E.H. the Nizam and which territory was not the territory of India before the 26th of January, 1950, and as those judgments were passed before the Constitution came into force they do not fall within the class of judgments against which special leave to appeal to the Supreme Court can be asked for under article 136. It is obvious that such judgments are not covered under article 135 of the Constitution of India.

In our opinion this Court has therefore no jurisdiction to entertain these petitions for special leave to appeal against such judgments of the High Court of Hyderabad under Article 136 of the Constitution. Cases like those of the petitioners are thus not covered by articles 134, 135 or 136 and therefore the Supreme Court in the present state of the legislation is unable to

render any assistance to them. An omission to provide for such relief in the Constitution cannot be remedied by the Supreme Court and assumption of jurisdiction which is not warranted by the clear words of articles 134, 135 or 136 will be tantamount to making legislation by the Supreme Court which it is never its function to do.

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The petitions, under the circumstances, are rejected.

Petitions dismissed.

Agent for the petitioners : *I. N. Shroff.*
Agent for the respondent : *P. A. Mehta.*