

APPELLATE CRIMINAL

*Before Falshaw and Kapur, JJ.*GUDDER SINGH AND ANOTHER,—*Convict-Appellants**versus*THE STATE,—*Respondent.*

Code of Criminal Procedure (Act V of 1898)—Section 188—Extra-Provincial Jurisdiction Act (XLVII of 1947—Sections 3 and 6—Offence committed by Indian citizen beyond the limits of India—Jurisdiction of Indian Court to try—International law—Principles of governing territories of one country in the possession of another, stated.

1953

August 12th.

Two villages, Jalloke and Mito Jagir, came into the territory of Pakistan under the Radcliffe Award but were administered by India by an agreement between the Governments of Punjab (India) and Punjab (Pakistan). Lands in these villages had been allotted to Indian citizens and the villagers were supplied arms by the Government of India under the Border Defence Scheme. These villages were made part of Ferozepore Tehsil for purposes of administration. The residents of these villages refused to pay land revenue to the Government and refused to allow *girdawari* of the villages to be done. Officials of the Revenue and Police Departments went to one of the villages to ask the residents to pay land revenue and to allow *girdawari* to be done. The villagers, however, refused and killed one Sub-Inspector of Police and injured some others. Six of them were prosecuted under sections 302, 307 read with 149 and 148 of the Indian Penal Code and two of them were convicted. The question arose whether the courts in Ferozepore District had jurisdiction to try the accused.

Held, that the appellants were British Indian subjects and after the partition they became subjects of the Indian Dominion and the Courts in India had jurisdiction to try the present case according to section 188 of the Code of Criminal Procedure. Moreover the Courts in India had jurisdiction to try the case according to the provisions of the Extra-Provincial Jurisdiction Act (XLVII of 1947) and the notifications issued thereunder.

Held, that one of the principles of international law is that a State in possession must maintain a certain order and safeguard economic conditions in the territory of which it is in possession.

Held also, that if the possession of the territory which acceded to another State remains in the possession of the ceding State the laws which were originally in force would still be in force and can be enforced by the State in possession. The revenue laws of the ceded territory are not affected by the change of territory.

Appeal from the order of Shri Jawala Singh, III Additional Sessions Judge, Ferozepore, dated the 11th March 1953, convicting the appellants.

H. R. SODHI and J. N. SETH, for Appellants.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. This is an appeal by two convicted persons, Guddar Singh and Bainka Singh, sons of Charan Singh, Rai Sikhs, residents of Jalloke, against their conviction under section 302 of the Indian Penal Code and a sentence of death on Guddar Singh and transportation for life passed on Bainka Singh. Guddar Singh was also prosecuted and convicted under section 307 read with section 149 and under section 148 of the Indian Penal Code. Under these two offences he was given a sentence of five and two years' rigorous imprisonment, respectively, but both sentences were to run concurrently. Bainka Singh was similarly convicted for these two offences and was similarly sentenced. Surjan Singh, Harnam Singh, Bhan Singh and Arjan Singh who were tried along with Guddar Singh and Bainka Singh were acquitted by the learned Sessions Judge.

Village *Jalloke* and *Mito Jagir* have under the Radcliffe Award come into the territory of Pakistan but by an agreement between the Financial Commissioners of the Punjab (India) and Punjab (Pakistan) these two villages were administered by India. For administration purposes these two villages have been made parts of Ferozepore Tehsil and it appears that the lands of these villages were allotted to Indian Nationals who either owned land in these villages or had come from Pakistan. The original proprietors of

the land were Mohammedans who had migrated into Pakistan on the partition of the country and the tenants-at-will who were all Rai Sikhs continued to cultivate the lands.

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These Rai Sikhs had refused to allow *girdawari* of the villages to be done and also refused to pay land revenue. In the first week of April, 1951, therefore, Tahsildar Harbans Singh and the Revenue Assistant S. Harjot Singh went to Village Jalloke and they asked Bainka Singh and Guddar Singh, who are now convicts, and others to pay the land revenue and allow the *girdawari* to be prepared and if they had any objections they should file them in writing to which the residents of this village including Bainka Singh and Guddar Singh agreed. On the 8th or 9th of April 1951, these persons appeared in the Court of the Revenue Assistant and there when Tahsildar Harbans Singh was present they said that they would put in their objections the following day after consulting their legal adviser and a socialist worker by the name of Hoshiar Singh Arshi. On the following day these persons appeared along with their legal adviser Mr. Hari Nath Varma and agreed to pay land revenue and also agreed that they would not obstruct the preparation of *girdawari* papers. An order was issued to Kundan Singh and Ram Chand, Patwaris of Mito Jagir and Jalloke, to go to these villages and start *girdawari* and send a report to the tahsil. This is Ex. C.B. (p. 23) and is also proved by the statement of Tahsildar Harbans Singh, P.W. 4, at pages 32 and 33. On the 11th of April 1951, Ram Chand, Patwari, in charge of Jalloke, made a report which is Ex. C.C. that the zamindars had obstructed his carrying out *girdawari* work and the matter was referred to the Deputy Commissioner who ordered the realisation of the land revenue and the preparation of the *girdawari* papers with the help of the police. It appears that the Deputy Commissioner had also ordered, as is shown by Ex. C.D. (p. 24), the Superintendent of Police, in realising land revenue and preparation of *girdawari* and to help the allottees to get their *batai*.

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On the 14th of April 1951, Tahsildar Harbans Singh with Mehta Satgur Mauj and R. K. Maini, both Naib-Tahsildars, and Patwaris Ram Chand and Kundan Singh and Gopal Singh, a lessee of Mito Jagir, went to Village Jalloke. They were also accompanied by Sub-Inspector Ajit Singh along with ten constables of the armed police and from Village Mamdot, Sub-Inspector Kehar Singh, Assistant Sub-Inspector Nand Lal and two Foot Constables joined them. Baghicha Singh, Bainka Singh and some others also joined from that village. Both the Naib-Tahsildars and the Patwaris are prosecution witnesses; so are Sub-Inspector Ajit Singh, Constable Kishore Chand and Baghicha Singh and Bainka Singh.

The party arrived in Village Jalloke at about 10 a.m. and they sat down under a *tahli* tree near the village. The Tahsildar summoned Guddar Singh, Bainka Singh and other persons of the village and told them "that it was proper for them to pay the land revenue and let the *girdawari* be completed" (*vide* Harbans Singh Tahsildar, as P.W. 4, p. 33, l.9), but the villagers refused to accept his advice. Thereupon the Tahsildar told them to produce the rifles which the Indian Government had given to these villagers under the Border Defence Scheme. They replied that they would consult the other villagers and would return. After some time some seventy or eighty persons of the village including Bainka Singh and Guddar Singh, appellants, and others who were acquitted by the Sessions Judge, came there armed and amongst them the persons who were tried for murder in the Court of Session were armed with rifles and the others had *lathis*, *chhavis*, etc. They stopped at a distance of about 15 to 20 *karams* from where the Tahsildar and others were.

According to the prosecution, people shouted to Guddar Singh and Bainka Singh and others to kill the revenue and police officials and all the accused and their companions started making noise. Sub-Inspector Kehar Singh tried to pacify them and as he was trying to do this Guddar Singh, accused, fired his rifle which hit the Sub-Inspector

in his chest and he fell down dead. The other people then started firing and according to the Tahsildar, under his orders the police also fired in self-defence. The villagers who had rifles took positions behind a wall which is stated to be about 3½ to 4 feet high and there was exchange of firing between the two parties. Meanwhile the Tahsildar got down from his jeep and the police took their positions behind some trees. After an exchange of fire for about twenty minutes the villagers retreated into the reeds and according to the statement of the Tahsildar and others they set fire to their village in order to prevent the police pursuing them. The prosecution evidence shows that before the police arrived they had taken out their goods and had placed them outside the *jhuggis* and when they retreated and continued firing they removed their women and children along with them. At that time there was wind blowing and the whole village caught fire quite soon. The police went into the village and found two persons injured and we are told that another two persons were killed. I may here add that according to the evidence of Sub-Inspector Ajit Singh who was incharge of the armed reserve, the police fired under the direction of this witness, Sub-Inspector Ajit Singh, P.W.2, and not at random and that they had taken their positions before they had started firing.

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Eighty-three empty cartridge cases which were fired by the police were recovered from the spot and four empty cartridges which are stated to have been fired by the villagers were recovered near the wall and both these were taken possession of. The first information report was made by Tahsildar Harbans Singh. It was dictated to the Patwari and was handed over to Assistant Sub-Inspector Nand Lal who was present with the party. It was then recorded in the Police Station Mamdot at 1-30 p.m. The occurrence is stated to be of 12 noon.

Twenty-seven persons were arrested including the six who were sent up for trial to the Court of Sessions by about the 14th of May 1951, and an

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incomplete challan was filed in Court on the 25th of June 1951. On the 9th June the accused raised the question of the jurisdiction of the Court and the arguments were heard on the 21st June and the case adjourned for orders to the 28th June. It appears that on the 28th June again arguments were heard and on the 2nd July the Committing Magistrate made a reference to the Secretary, Ministry of Home Affairs, at New Delhi under section 6 of the Extra-Provincial Jurisdiction Act (Act XLVII of 1947). On the 26th of February 1952, the Ministry of External Affairs issued a notification No. S.R.O. 369 which gave retrospective effect as from the first day of April 1951, and applied all laws in force in the districts of Amritsar, Ferozepore and Gurdaspur to all border areas of those districts and in the schedule it is stated:—

“Ferozepur border areas:

“All areas not within the district of Ferozepore which lie to the south-east of the left bank of the River Sutlej and to the north-west of the district.”

This notification provided:—

“NOW, THEREFORE, in exercise of the powers conferred by section 4 of the Foreign Jurisdiction Act, 1947 (XLVII of 1947), and of all other powers enabling it in that behalf, the Central Government is pleased to provide as follows for the administration of justice and the collection of revenue in the said areas:—

1. All laws for the time being in force in the Amritsar, Ferozepur and Gurdaspur Districts of Punjab, shall be, and shall, as from the first day of April 1951, be deemed to have been, in force, respectively, in the Amritsar border areas, Ferozepur border areas, and Gurdaspur border areas as specified in the Schedule to this Order:

Provided that in the laws so applied any reference to India or a State shall be construed as a reference to, or as including a reference to, the said areas:

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Provided further that for the purpose of facilitating the application of the said laws, any court having jurisdiction in, or in relation to, the said areas may construe the provisions thereof with such alterations not affecting the substance as may be necessary or proper in the circumstances.

2. The Central Government and the Government of Punjab, and all officers and authorities subordinate to either Government of the time being exercising executive authority within the said districts of Punjab shall, respectively, exercise the like authority within the said areas.
3. All courts having for the time being jurisdiction in, or in relation to, the said districts of Punjab, shall, respectively, have the like jurisdiction in, or in relation to, the said areas."

On the 21st of March 1952, the Committing Magistrate ordered the proceedings to go on in his Court. This notification was again challenged by the defence and the arguments were heard on the 23rd of April 1952. The accused filed an application for bail in the High Court on the 8th September 1951, but this was dismissed by me *in limine* on the 11th September 1951. It appears that another application for bail was made in about the month of January which was admitted and the intimation of that was sent to the trial Court on the 8th March 1952, and the records were subsequently sent for. But this application for bail was also dismissed, this time by Bhandari, J.,

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The case was fixed before the Committing Magistrate on the 13th May 1952, when Surjan Singh, accused, fell ill and was absent and the case was adjourned to the 28th of May. Then Harnam Singh, accused, got mumps and the case had to be adjourned to the 9th June 1952, and as the Magistrate was absent on leave the case was fixed for the 18th June. No witnesses were available on the next date of hearing and the case was adjourned to the 3rd July. As the police did not produce all the witnesses various adjournments had to be given. There were 45 witnesses for the prosecution and it was not till the 9th of September 1952, that a complete challan was put in. This is a lamentable state of affairs and delay has been caused in the trial of a very important case due to inattention on the part of the various authorities concerned and this is an argument which has successfully been used by the convict-appellant for not giving the death sentence.

The accused were committed for trial on the 30th September 1952, and were not tried till the 2nd March 1953, and of the six persons who were committed to the Court of Session four were acquitted and Guddar Singh and Bainka Singh were convicted for various offences one being under section 302 read with section 149, Indian Penal Code, and Guddar Singh was sentenced to death and Bainka Singh to transportation for life.

In this Court the appeal was filed on the 2nd April 1953. I am informed the papers were sent to Government printers in May but the printed paper books were not delivered to the office till 5th August 1953, and so the case was delayed in this Court because of this.

The question of jurisdiction has again been raised by counsel for the appellants. Mr. Sodhi submitted that the offence, if any, was committed in April, 1951. At that time the Indian Union had

no jurisdiction to enforce its laws and, therefore, if servants of the Indian Union went to enforce the payment of land revenue they were doing something which was illegal and the villagers of Jalloke had a right to oppose a forcible exaction of land revenue from them. This argument is put forward as a defence, the submission being that if on the date when this murder is alleged to have been committed the Government had no right to get any revenue from them and attempt was made to forcibly realise it even if death was caused by the villagers in preventing this illegal realisation the offence is not one of murder. The appellants were British Indian subjects and after the partition they became subjects of the Indian Dominion and according to section 188, Criminal Procedure Code, when a British subject domiciled in India commits any offence at any place without and beyond the limits of the Provinces the Courts in India have jurisdiction to try such offence as if it had been committed within the Provinces of India. Therefore, even before any notification was issued under Act XLVII of 1947, the Courts in India had jurisdiction to try the present case.

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It is true that Jalloke had fallen into Pakistan territory but the inhabitants of Jalloke had accepted Indian nationality and the protection of the Indian Union. They had been given rifles under the Border Defence Scheme and it cannot be said that they would not be amenable to the jurisdiction of Indian Courts for offences in the territory of Jalloke. I may also say that at no stage was it ever submitted that the accused persons were not citizens of India.

Under section 3 of the Extra-Provincial Jurisdiction Act, 1947, it is provided that the Central Government is lawfully authorized to exercise extra-provincial jurisdiction in such manner as it thinks fit. Under section 4 the Central Government has the power to make orders and section 5 validates any acts done in pursuance of such extra-provincial jurisdiction but apart from this the territory in which the Village Jalloke is situate had

Guddar Singh remained by agreement between India and Pakis-
 and another tan within the administrative jurisdiction of India,
 v. and one of the principles of international law is
 The State that a State in possession must maintain a certain
 ——— order in the territory of which it is in possession;
 Kapur, J. see Oppenheim's International Law, Volume I,
 p. 514.

If the possession of territory which acceded to another State remains in the possession of the ceding State, the laws which were originally in force would still be in force and can be enforced by the State in possession. At page 396 of Hyde's International Law, Volume I, it is stated:—

“After the conclusion of a treaty or cession and pending the actual transfer of possession to the grantee the grantor is doubtless permitted to exercise authority necessary to maintain order and safeguard economic conditions within the territory concerned.”

and at page 399 it is stated that the revenue laws of the ceded territory are not affected by the change of territory. Thus whether the principle of agreement between the two States applies or the territory remained in the possession of India although by Radcliffe Award it had fallen into the Dominion of Pakistan, according to the statement of law in Hyde the authority to maintain order and safeguard economic conditions was vested in India. In whichever way we may look at it, whether the territory had become Pakistan territory and by consent of the parties it remained in possession of India or after the cession of the territory to Pakistan it remained in possession of India the right of India as a State to maintain order and safeguard economic conditions remained in that State unimpaired.

And even if the territory has been absorbed by India the position in International Law is:

“There is also a genuine succession with regard to the fiscal property and fiscal funds of the extinct State. They both

accrue to the absorbing State *ipso facto* by the absorption of the extinct State." and another

Oppenheim's International Law, Vol. I, p. 154.

In my view, therefore, there was no substance in the question of jurisdiction and the learned Magistrate unnecessarily delayed it and it is unfortunate that even the provisions of section 188 of the Code of Criminal Procedure, were not brought to his notice. If they had been, there would not have been that amount of delay in regard to the commitment proceedings.

FALSHAW, J.—I agree.

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