at Bangalore. The proceedings will accordingly be remitted to the said tribunal. The appellant will pay the cost of remand in any event. Costs of the present hearing of the appeal will be costs in the appeal.

We would like to add that Mr. Sanyal has agreed without prejudice that the appellant will pay to the respondents fifteen days basic wage towards their claim for bonus during the relevant years.

Case remanded.

ANANT GOPAL SHEOREY

v.

THE STATE OF BOMBAY

1958

May 22.

(B. P. SINHA, JAFER IMAM and J. L. KAPUR JJ.)

Criminal trial—Amendment in procedure during pendency of trial—If retrospective—Code of Criminal Procedure (V of 1898), s. 342 A—Criminal Procedure Code (Amendment) Act (26 of 1955), s. 116.

A complaint was filed against the appellant on January 13, 1953, and the Special Magistrate trying him commenced the recording of evidence on July 4, 1955. During the trial the Criminal Procedure Code (Amendment) Act (26 of 1955) came into force on January 2, 1956, which introduced s. 342 A in the Code of Criminal Procedure. The appellant made an application to the Magistrate claiming the right to appear as a witness on his own behalf under s. 342 A in disproof of the charges made against him. The Magistrate rejected the application on the ground that s. 342 A could not be applied to pending proceedings which would be according to the procedure laid down in the unamended Code:

Held, that on a plain construction of s. 116 of the amending Act which provided for procedure to be followed in pending cases s. 342 A was clearly applicable in such cases. Under the general law also a change in procedure operates retrospectively.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 178 of 1957.

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Anant Gopal Sheorey v. *The State of Bombay*

Appeal by special leave from the order dated May 28, 1956, of the former Nagpur High Court in Criminal Revision No. 150 of 1956 arising out of the order dated February 2, 1956, of Shri K. L. Pandey, Special Magistrate at Nagpur in Criminal Case No. 1 of 1955.

R. Patnaik, for the appellant.

S. N. Bindra and *R. H. Dhebar*, for the respondent.

1958. May 22. The Judgment of the Court was delivered by

Kapur J.

KAPUR J.—This is an appeal against the judgment and order of the High Court of Nagpur confirming the decision of the Special Magistrate disallowing the application of the appellant to give evidence as a witness under s. 342A of the Criminal Procedure Code.

The Advocate-General of Madhya Pradesh, on January 13, 1953, filed a complaint against the appellant and three others under s. 282 of the Indian Companies Act and ss. 465 and 477A of the Indian Penal Code. The proceedings commenced in 1954 before a Magistrate but on May 18, 1955, they were transferred to a Special Magistrate who commenced the recording of evidence on July 4, 1955. On August 12, 1955, the Criminal Procedure Code (Amendment) Act (26 of 1955) received the assent of the President and came into force on January 2, 1956. In this judgment it will be referred to as the Amending Act and the Code of Criminal Procedure as the Code. On January 14, 1956, the appellant made an application to the Magistrate claiming the right to appear as a witness on his own behalf under s. 342A of the amended Code "in disproof of the charges made against him". His application was dismissed and so was his revision to the High Court of Nagpur which held:

"While it must be conceded that the wording of clause (c) as also the other clauses of section 116 of the amending Act could have been put in simpler and more direct language, its ingenuous circumlocution cannot be allowed to cloak its true meaning or to permit the construction which the applicant seeks to

put upon it. The language used does not justify holding that when the statute says "this Act" it means only "some of the provisions of this Act".
Thus the High Court was of the opinion that the proceedings pending before the Special Magistrate would be according to the procedure laid down in the unamended Code and the appellant could not therefore appear as a witness under s. 342A of the amended Code.

According to the provisions of the unamended Code an accused person could not appear as a witness in his defence although for the purpose of enabling him to explain circumstances appearing in the evidence against him the Court could put such questions as it considered necessary. Section 118 of the Evidence Act deals with persons who are competent to testify as witnesses but in view of s. 342 of the unamended Code no accused person could appear as a witness and therefore s. 118 was inapplicable to such persons. Article 20(3) of the Constitution provides that no person accused of an offence shall be compelled to be a witness against himself and s. 342A was inserted into the Code by s. 61 of the amending Act. It provides:—

S. 342A "Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that

(a) he shall not be called as a witness except on his own request in writing; or

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court to give rise to any presumption against himself or any person charged together with him at the same trial."

Thus the law was amended and the accused person has become a competent witness for the defence but he cannot be compelled to be a witness and cannot be called as a witness except at his own request in writing and his failure to give evidence cannot be

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made the subject matter of comment by the parties or the Court.

The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. See Maxwell on Interpretation of Statutes on p. 225; *The Colonial Sugar Refining Co. Ltd.* v. *Irving* (1). In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective.

The amending Act contains provisions in regard to the procedure to be applied to pending cases in s. 116 which is as follows:—

S. 116 "Notwithstanding that all or any of the provisions of this Act have come into force in any State—

(a) the provisions of section 14 or section 30 or section 145 or section 146 of the principal Act as amended by this Act shall not apply to or affect, any trial or other proceeding which, on the date of such commencement, is pending before any Magistrate and every such trial or other proceeding shall be continued and disposed of as if this Act had not been passed;

(b) the provisions of section 406 or section 408 or section 409 of the principal Act as amended by this Act shall not apply to, or affect, any appeal which, on the date of such commencement, is pending before the District Magistrate or any Magistrate of the First class empowered by the State Government to hear such appeal, and every such appeal shall, notwithstanding the repeal of the first proviso to section 406 or of section 407 of the principal Act, be heard and disposed of as if this Act had not been passed;

(1) (1905) A.C. 369, 372.

(c) the provisions of clause (w) of section 4 or section 207A or section 251A or section 260 of the principal Act as amended by this Act shall not apply to, or affect, any inquiry or trial before a Magistrate in which the Magistrate has begun to record evidence prior to the date of such commencement and which is pending on that date, and every such inquiry or trial shall be continued and disposed of as if this Act had not been passed;

(d) the provisions of Chapter XXIII of the principal Act as amended by this Act shall not apply to, or affect, any trial before a Court of Sessions either by jury or with the aid of assessors in which the Court of Sessions has begun to record evidence prior to the date of such commencement and which is pending on that date, and every such trial shall be continued and disposed of as if this Act had not been passed;

but save as aforesaid, the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pending in any Criminal Court on the date of such commencement."

It was contended on behalf of the respondent that the following words in clause (c) of s. 116 of the amending Act "and every such enquiry or trial shall be continued and disposed of as if this Act had not been passed" mean that no provision of the Act would be applicable to pending trials and particular stress was laid on the words "as if this Act had not been passed". If that is the interpretation to be put then it would be in conflict with the last portion of the section i. e. "Save as aforesaid the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pending in any Criminal Court on the date of such commencement." The language used in this portion of the section in regard to the proceedings which are instituted after the commencement of the amended Code is identical with that dealing with proceedings pending in a Criminal Court on the date of its commencement. Therefore if this Act applies to all proceedings which commenced

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after the Act came into force they would equally apply to proceedings which had already commenced except those provisions which have been expressly excluded. If the whole section is construed in the manner contended for by the respondent then there will be a conflict between the words used in the various clauses and words used in the main s. 116 and it is one of the principles of interpretation that the words should be construed in such a manner as to avoid a conflict. Thus construed the words of cl. (c) and the words of the rest of the s. 116 would mean this that the provisions of ss. 4 (w), 207A, 251A or 260 of the Code as amended shall not apply or affect any enquiry or trial before a Magistrate where the recording of evidence has started prior to the date of the commencement of the amending Act and every such enquiry should be continued and disposed of as if these sections had not been enacted. Except as to this and except as to the provisions mentioned in sub-cls. (a), (b) and (d) the other provisions of the amended Code would be applicable to such proceedings which is also in accordance with the general principles applicable to amendments in procedural law.

By s. 34 of the amending Act, s. 251 of the Code was substituted by two sections i. e. 251 and 251A. Section 251 lays down the procedure in warrant cases. It provides :—

S. 251 "In the trial of warrant cases by Magistrates, the Magistrate shall,—

(a) in any case instituted on a police report, follow the procedure specified in section 215A ; and

(b) in any other case, follow the procedure specified in the other provisions of this Chapter."

Sub-clause (a) deals with cases instituted on a police report and sub-cl. (b) with other cases. To the former s. 251A is applicable and to other cases procedure specified in other provisions in Chapter 21 is made applicable. Section 342A is in Chapter 24 and there is nothing in the amending Act or the amended Code which makes the provision of s. 342A inapplicable to criminal proceedings which are pending before a Magistrate and in which the recording of evidence has commenced.

In our opinion on the plain construction of the words used in s. 116 of the amending Act, s. 342A is available to the appellant. The High Court, it appears, was misled into construing the words in clause (c) of s. 116 i. e. "as if this Act had not been passed". The High Court was therefore in error and the appellant is entitled, in our view, as a competent witness for the defence to testify in disproof of the charges made against him or any other person charged together with him at the same trial.

We would, therefore, allow this appeal, set aside the order of the courts below and hold that the application made by the appellant to appear as a witness was well-founded and should have been allowed.

Appeal allowed.

THE ASSOCIATED CEMENT COMPANIES LTD., DWARKA CEMENT WORKS, DWARKA

v.

ITS WORKMEN & ANOTHER

(S. R. DAS C. J., N. H. BHAGWATI, S. K. DAS, P. B. GAJENDRAGADKAR and K. N. WANCHOO JJ.)

Industrial Dispute—Bonus—Available surplus—Determination of—Full Bench formula—Basis—Applicability—Revision if required —Prior Charges—Mode of calculation—Gross profits, ascertainment of—Rehabilitation charges, how determined—Gratuity fund, whether can be claimed as prior charge—Distribution of surplus—Overtime payment, if can be taken into consideration in awarding bonus.

For the year 1953-54, the employers paid bonus to the workmen equal to three months' wages, but the workmen demanded bonus equivalent to seven months and six months basic wages with dearness allowance. The employers contended that after making deductions for the prior charges from the gross profits in accordance with the formula evolved by the Full Bench of the Labour Appellate Tribunal in *Mill Owners Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh*, (1950) L.L.J. 1247, there was no available surplus left and consequently the