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held against the appellant on this contention. The learned Judges of the High Court were of the opinion that as the execution and attestation took place at one sitting at the residence of P.W. 1, where the testator and the witnesses had assembled by appointment, they must all of them have been present until the matter was finished, and as the witnesses were not cross-examined on the question of attestation, it could properly be inferred that there was due attestation. It cannot be laid down as a matter of law that because the witnesses did not state in examination-in-chief that they signed the will in the presence of the testator, there was no due attestation. It will depend on the circumstances elicited in evidence whether the attesting witnesses signed in the presence of the testator. This is a pure question of fact depending on appreciation of evidence. The finding of the Court below that the will was duly attested is based on a consideration of all the materials, and must be accepted. Indeed, it is stated in the judgment of the Additional District Judge that "the fact of due execution and attestation of the will was not challenged on behalf of the caveator at the time of the hearing of the suit". This contention of the appellant must also be rejected.

In the result, the decision of the High Court is confirmed, and this appeal is dismissed, but in the circumstances, without costs.

Appeal dismissed.

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December 2

BUDHAN CHOUDHRY AND OTHERS

v.

THE STATE OF BIHAR.

[MEHAR CHAND MAHAJAN C. J., MUKHERJEA, S. R. DAS, VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and VENKATARAMA AYYAR JJ.]

Constitution of India, Article 14—Code of Criminal Procedure (Act V of 1898), section 30—Whether ultra vires *the Constitution—Article 14—Reasonable classification—Not forbidden—Test of permissible classification—Necessary conditions—Constitution—Whether*

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assures unanimity of decisions or immunity from erroneous action of courts or executive agencies of State.

It is well-settled that while Article 14 of the Constitution 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) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and,

(ii) 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 nexus between the basis of classification and the object of the Act under consideration. Further Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

The Constitution does not assure unanimity of decisions or immunity from merely erroneous action, whether by the courts or the executive agencies of a State.

Section 30 of the Code of Criminal Procedure does not infringe the fundamental right guaranteed by Article 14 of the Constitution.

Chiranjit Lal Chowdhuri v. *The Union of India* ([1950] S.C.R. 869), *The State of Bombay* v. *F. N. Balsara* ([1951] S.C.R. 682), *The State of West Bengal* v. *Anwar Ali Sarkar* ([1952] S.C.R. 284), *Kathi Raning Rawat* v. *The State of Saurashtra* ([1952] S.C.R. 435), *Lachmandas Kewalram Ahuja* v. *The State of Bombay* ([1952] S.C.R. 710), *Qasim Razvi* v. *The State of Hyderabad* ([1953] S.C.R. 581), *Habeeb Mohamad* v. *The State of Hyderabad* ([1953] S.C.R. 661), *The State of Punjab* v. *Ajaib Singh* ([1953] S.C.R. 254), *Yick Wo* v. *Peter Hopkins* ([1886] 118 U.S. 356; 29 L. Ed. 220), and *Snowden* v. *Hughes* ([1944] 321 U.S. 1; 88 L. Ed. 497), referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 83 of 1953.

Appeal under article 132(1) of the Constitution of India from the Judgment and Order dated the 25th August 1953 of the High Court of Judicature at Patna in Criminal Appeal No. 410 of 1951.

B. K. Saran and *M. M. Sinha,* for the appellants.

M. C. Setalvad, Attorney-General for India (*R. C. Prasad,* with him) for the respondent.

1954. December 2. The Judgment of the Court was delivered by

DAS J.—This is an appeal from a judgment of the High Court of Judicature at Patna which raises a substantial question of law as to the interpretation of the Constitution of India.

The appeal arises out of a criminal trial held in the district of Hazaribagh in the State of Bihar. The case against the appellants was investigated by the local police and on the 4th June, 1951 a challan was submitted before the Sub-Divisional Magistrate. The Sub-Divisional Magistrate passed the following order in the order-sheet:—

"Let the record be sent to the Dy. Commar., Hazaribagh for transferring it to the file of the Spl. Magistrate for trial".

On the record being placed before the Deputy Commissioner, the latter passed following order:—

"Perused S.D.O's order-sheet. Withdrawn and transferred to the file of Mr. S. F. Azam, Magte. with powers u/s 30, Cr. P. C. for favour of disposal".

The appellants were then tried by Mr. S. F. Azam, Magistrate of the first class exercising powers under section 30 of the Code of Criminal Procedure on charges under sections 366 and 143 of the Indian Penal Code and each of them was convicted under both the sections and sentenced to rigorous imprisonment for five years under section 366, Indian Penal Code, no separate sentence having been passed under section 143.

The appellants preferred an appeal to the High Court of Judicature at Patna. The appeal was heard by a Bench consisting of S. K. Das and C. P. Sinha, JJ. There was a difference of opinion between the two learned Judges as to the constitutionality of section 30 of the Code of Criminal Procedure. S. K. Das, J., took the view that the impugned section did not bring about any discrimination or inequality between persons similarly circumstanced and consequently did not offend the equal protection clause of the Constitution, while C. P. Sinha, J., was of the opinion that

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the section was hit by article 14. The appeal was thereupon placed before Reuben, C.J., who in agreement with S. K. Das, J., held that section 30 did not violate the inhibition of article 14. The learned Chief Justice upheld the conviction but reduced the sentence. On application by the appellants the High Court granted them a certificate under article 132(1) and the present appeal has been filed accordingly.

The learned Advocate appearing in support of the appeal contends before us, as was done before the High Court, that there had been an infraction of the fundamental rights guaranteed to the appellants under article 14 of the Constitution of India. The complaint is that the appellants had been tried by a section 30 Magistrate and not by a Court of Session. A section 30 Magistrate is enjoined by that section to try the case brought before him as a Magistrate and accordingly in cases like the present case he will follow the warrant procedure which is different from the procedure followed by a Court of Session. The substance of the grievance is that a trial before the Sessions Judge is much more advantageous to the accused person in that he gets the benefit of the commitment proceedings before a Magistrate and then a trial before the Sessions Judge with the aid of the jury or assessors. It has not been seriously questioned before us that in spite of the risk of imposition of a punishment heavier than what a section 30 Magistrate can inflict, a trial by a Sessions Judge is of greater advantage to the accused than a trial before a Magistrate under the warrant procedure. We have, therefore, to see whether this appearent discrimination offends against the equal protection clause of our Constitution.

The provisions of article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Chiranjit Lal Chowdhuri* v. *The Union of India*(1), *The State of Bombay* v. *F. N. Balsara*(2), *The State of West Bengal* v. *Anwar Ali Sarkar*(3), *Kathi Raning Rawat* v. *The State of Sau-*

(1) [1950] S.C.R. 869. (2) [1951] S.C.R. 682.
(3) [1958] S.C.R. 284.

rashtra(1), *Lachmandas Kewalram Ahuja* v. *The State of Bombay*(2) and *Qasim Razvi* v. *The State of Hyderabad*(3) and *Habeeb Mohamad* v. *The State of Hyderabad*(4). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. 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 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 this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has, therefore to be tested in the light of the principles so laid down in the decisions of this Court.

There are no less than four modes of trial prescribed by the Code of Criminal Procedure, namely, (i) trial of sessions cases, (ii) trial of warrant cases, (iii) summary trials and (iv) trials before a High Court and a Court of Session and the procedure in each of these trials is different. Section 28 of the Code of Criminal Procedure which is to be found in Chapter III which deals with "Powers of Courts" reads as follows :—

"28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried—

(1) [1952] S.C.R. 435.
(2) [1952] S.C.R. 710.
(3) [1953] S.C.R. 581.
(4) [1953] S.C.R. 661.

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(a) by the High Court, or

(b) by the Court of Session, or

(c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable".

Section 30, as it now stands, provides :—

"30. In Assam, Madhya Pradesh, Punjab, Oudh, Madhya Bharat, Hyderabad, Mysore, Patiala and East Punjab States Union and Rajasthan, in all Part C States and in those parts of the other States in which there are Deputy Commissioners or Assistant Commissioners the State Government may, notwithstanding anything contained in section 28 or section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death".

Section 34 puts a limit to the power of punishment of a section 30 Magistrate in terms following:—

"34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years".

It will be noticed that section 28 begins with the clause "subject to the other provisions of this Code". This means that the section and the second schedule referred to therein are controlled by the other provisions of the Code including the provisions of section 30. Further, the text of section 30 itself quite clearly says that its provisions will operate "notwithstanding anything contained in section 28 or section 29". Therefore, the provisions of section 28 and the second schedule must give way to the provisions of section 30. It is not, however, claimed by the learned Attorney-General that section 30 abrogates or overrides altogether the provisions of section 28 and the second schedule in the sense that in the specified territories Magistrates empowered under section 30 become the only tribunal competent to try all offences not punishable with death to the exclusion of all other Courts mentioned in the 8th column of the second schedule.

If that had been the position, then there could be no question of discrimination, for, in that situation, section 30 Magistrate's Court would be the only Court in which all offences not punishable with death would become triable. As already stated, this extreme claim is not made by the learned Attorney-General. The effect of the State Government investing the District Magistrate or any Magistrate of the first class with power under section 30 is to bring into being an additional court in which all offences not punishable with death become triable. In other words, the effect of the exercise of authority by the State Government under section 30 is, as it were, to add in the 8th column of the second schedule the Magistrate so empowered as a Court before whom all offences not punishable with death will also be triable. The question is whether this result brings about any inequality before the law and militates against the guarantee of article 14.

Section 30, however, empowers the State Government in certain areas to invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death. There is an obvious classification on which this section is based, namely, that such power may be conferred on specified Magistrates in certain localities only and in respect of some offences only, namely, all offences other than those punishable with death. The Legislature understands and correctly appreciates the needs of its own people which may vary from place to place. As already observed, a classification may be based on geographical or territorial considerations. An instance of such territorial classification is to be found in the Abducted Persons (Recovery and Restoration) Act, 1949 which came up for discussion before this Court and was upheld as valid in *The State of Punjab* v. *Ajaib Singh*(1). S. K. Das, J., and the learned Chief Justice have in their respective judgments referred to certain circumstances, e.g. the distance between the place of occurrence and the headquarters where

(1) [1953] S.C.R. 254.

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the Court of Session functions at considerable intervals, the inconvenience of bringing up witnesses from the interior, the difficulty of finding in the backward or out of the way places sufficient number of suitable persons to act as jurors or assessors, all of which make this classification quite a reasonable one. In this sense, the section itself does not bring about any discrimination whatever. The section only authorises the State Government to invest certain Magistrates with power to try all offences not punishable with death and this authority the State can exercise only in the specified places. If the State invests any Magistrate with powers under section 30 anybody who commits any offence not punishable with death and triable by a Court of Session under section 28 read with the second schedule is also liable to be tried by the section 30 Magistrate. The risk of such liability falls alike upon all persons committing such an offence. Therefore, there is no discrimination in the section itself.

The learned counsel for the appellants, however, contends, on the strength of the decision of the Supreme Court of America in *Yick Wo* v. *Peter Hopkins*(1) that "though a law be fair on its face and impartial in operation, yet, if it is administered by public authority with an evil eye and an unequal hand so as practically to make illegal discrimination between persons in similar circumstances materially to their rights, the denial of equal justice is still within the prohibition of the Constitution". The contention is that although the section itself may not be discriminatory, it may lend itself to abuse bringing about a discrimination between persons accused of offences of the same kind, for the police may send up a person accused of an offence under section 366 to a section 30 Magistrate and the police may send another person accused of an offence under the same section to a Magistrate who can commit the accused to the Court of Session. It is necessary to examine this contention with close scrutiny.

When a case under section 366, Indian Penal

(1) [1886] 118 U.S. 356; 29 L. Ed. 220.

Code, which is a case triable by a Court of Session under the second schedule, is put up before a section 30 Magistrate, the section 30 Magistrate is not necessarily bound to try the case himself. Section 34 limits the power of the section 30 Magistrate in the matter of punishment. If the section 30 Magistrate after recording the evidence and before framing a charge feels that in the facts and circumstances of the case the maximum sentence which he can inflict will not meet the ends of justice he may, instead of disposing of the case himself, act under section 347 and commit the accused to the Court of Session. Here, whether the accused person shall be tried by the section 30 Magistrate or by the Court of Session is decided not by the executive but is decided according to the discretion judicially exercised by the section 30 Magistrate himself. Take the case of another person accused of an offence under section 366 which is sent up by the police to a Magistrate who is not empowered under section 30. Such Magistrate after perusing the challan and other relevant papers may, if he thinks that the ends of justice will be met if the case is tried by a section 30 Magistrate, submit the case to the District Magistrate with his own recommendations for such action as the latter may think fit to take under section 528 of the Code of Criminal Procedure. That is what was done in the instant case. On the other hand, he may take evidence under section 208 and after the evidence has been taken, make up his mind judicially whether he should proceed under section 209 or section 210. He may consider that in the facts and circumstances of the case disclosed in the evidence the ends of justice require that the accused person should be committed to the Court of Session and in that event he will proceed to frame a charge and follow the provisions of sections 210 to 213. If, however, the Magistrate is satisfied on the facts of the case that the ends of justice will be sufficiently met if the accused is tried by a section 30 Magistrate having jurisdiction in the matter, the Magistrate may report to the District Magistrate and the latter may, in his discretion, withdraw the case under section 528 of the

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Code of Criminal Procedure to himself and may enquire into or try such case himself or refer it for enquiry or trial to any other Magistrate competent to try the same. In such a case there is exercise of judicial discretion at two stages, namely, under section 209 by the Magistrate before whom the accused was sent up for enquiry and also by the District Magistrate acting under section 528 of the Code of Criminal Procedure. It is thus clear that the ultimate decision as to whether a person charged under section 366 should be tried by the Court of Session or by a section 30 Magistrate does not depend merely on the whim or idiosyncracies of the police or the executive Government but depends ultimately on the proper exercise of judicial discretion by the Magistrate concerned. It is suggested that discrimination may be brought about either by the Legislature or the Executive or even the Judiciary and the inhibition of article 14 extends to all actions of the State denying equal protection of the laws whether it be the action of anyone of the three limbs of the State. It has, however, to be remembered that, in the language of Frankfurter, J., in *Snowden* v. *Hughes*(1), "the Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State". The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. (See per Stone, C.J., in *Snowden* v. *Hughes* (*supra*). It may be mentioned at once that in the present case there is no suggestion whatever that there has been at any stage any intentional or purposeful discrimination as against the appellants by the Sub-Divisional Magistrate or the District Magistrate or the section 30 Magistrate who actually tried the accused. Further, the discretion of judicial officers is not arbitrary and the law provides for revision by

(1) (1944) 321 U.S. 1; 88 L. Ed. 497.

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superior Courts of orders passed by the Subordinate Courts. In such circumstances, there is hardly any ground for apprehending any capricious discrimination by judicial tribunals.

On the facts and circumstances of this case we find ourselves in agreement with S. K. Das, J., and Reuben, C.J., and hold that no case of infringement of fundamental right under Article 14 has been made out. In the circumstances, we dismiss this appeal.

Appeal dismissed.

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December 3

BHATARAJU NAGESHWARA RAO

v.

THE HON'BLE JUDGES OF THE MADRAS HIGH COURT AND OTHERS.

[MUKHERJEA, S. R. DAS and VIVIAN BOSE JJ.]

Procedure—Supreme Court—Suspension of Advocate by High Court—Appeal to Supreme Court—Respondents to be impleaded in such appeal—Indian Bar Councils Act (XXXVIII of 1926), s. 12.

It is wrong and inappropriate to implead the Judges of the High Court as respondents in an appeal preferred to the Supreme Court by an Advocate against whom an order of suspension was passed by the High Court under s. 12 of the Indian Bar Councils Act, 1926. In such appeal the proper respondents are the complainant if any, the Bar Council or Secretary thereof and the Advocate-General of the State concerned.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 146 of 1954.

Appeal by Special Leave from the Judgment and Order dated the 17th day of December, 1952, of the High Court of Judicature at Madras in Referred Case No. 45 of 1952 arising out of the Report dated the 27th day of March, 1951, of the Court of District Judge, Krishna in C.M.P. No. 123 of 1951.

S. P. Sinha, (*K. R. Chaudhary* and *Sardar Bahadur,* with him), for the appellant.

R. Ganapathy Iyer and *P. G. Gokhale,* for respondent No. 1.