

THE CRIMINAL LAW (AMENDMENT) BILL, 1959

SHRI AMOLAKH CHAND (Uttar Pradesh): Mr. Chairman, before the hon. Law Minister begins his speech I have to make one request. This Bill was introduced day before yesterday and copies were circulated only yesterday. As a matter of fact, I was thinking of giving some amendments. Probably it may not be possible to postpone consideration. But as this Bill was introduced in this House and as Members were in possession of the Bill only yesterday, I do not know what to do. If he agrees, I can move an amendment later on.

MR. CHAIRMAN: Why not now?

SHRI AMOLAKH CHAND: I wanted to move for reference to a Select Committee of this House.

THE MINISTER OF LAW (SHRI A. K. SEN): Sir, I move:

"That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration."

Sir, this is a formal amendment of an Ordinance which was passed in the year 1944 under the Defence of India Act at a time when it transpired that various contractors doing work for the Government of India or the Government of Burma in India had made money illegally at the expense of the Government. That was the allegation and prosecutions were launched against many of these contractors. It transpired that much of the money that was made at the expense of the Government wrongfully was invested in properties or moneys which had to be attached so that by the time the criminal proceedings terminated the Government could have had the benefit of the properties and the moneys which under that Ordinance the court was obliged to declare as having been made unlawfully by the accused if

there was a conviction. At that time, the House will recollect, there was no Supreme Court having criminal appellate jurisdiction over the High Courts and other inferior courts in the country. We had only the Federal Court which had only constitutional jurisdiction. Now, a process of attachment was provided for enabling the Government to attach properties by having the procedure prescribed under the Ordinance and that attachment, it was said, would continue until the termination of the criminal proceedings which had been undertaken and 'termination' was denned as including proceedings-taken in the High Court either by way of revision or appeal. No mention was made of the Supreme Court. As a result the anomaly has arisen now. Supposing there is an appeal against a Judgment of the High Court relating to the prosecutions pending in the Supreme Court, no proceedings would be deemed to be pending because the original Ordinance had not foreseen the setting up of a Supreme Court later. It could not have; and the attachments would vacate automatically and even if the Supreme Court proceedings terminated in favour of the prosecution the properties would be taken away before the termination of the proceedings. Therefore it has been found necessary to amend the Ordinance so as to include within the definition of 'termination' all proceedings taken in the Supreme Court. If hon. Members would turn to clause 2 of the amending Bill and compare it with section 2 of the Ordinance which is printed as an annexure to the Bill, they will find that what we are trying to do is only to amend sub-sections (a) and (b) to include proceedings-pending in the Supreme Court within the purview of proceedings, the termination of which would have the effect of automatically vacating the attachment levied under the provisions of this Ordinance. If I may read clause 2 of the Bill, it says:

"For sub-section (2) of section 2 of the Criminal Law Amendment Ordinance, 1944, the following sub-

section shall be substituted namely :-

'(2) For the purposes of this Ordinance, the date of the termination of criminal proceedings shall be deemed to be—

(a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final orders in such appeal; or

(b) where such proceedings are taken to the High Court and orders are passed thereon and—

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final orders;

(ii) an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate;

(ii) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of 30 days from the date of the order granting the certificate; or

(c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a criminal court in the proceedings."

Sir, it covers all possible cases; where after the judgment of the High Court no application for a certificate for

leave to appeal to the Supreme Court is made, then a date is fixed when the proceedings will be deemed to be terminated; where an application for a certificate for leave to appeal has been made but refused by the High Court, then a date has been fixed so that the aggrieved party may go to the Supreme Court with an application for special leave; where a certificate has been granted by the High Court but no appeal is formally lodged, there also a date has been fixed. So this covers all possible cases which may arise out of the pendency of the proceedings either in future or at present after the termination of the proceedings in the High Court to enable the attachment to be continued even after the termination of the proceedings in the High Court so that no judgment of the Supreme Court may be rendered infructuous by reason of the order of attachment being vacated automatically as a result of the termination of the proceedings in the High Court.

This is the only purpose of the amending Bill. It is really a natural consequence of the setting up of the Supreme Court under our Constitution having criminal and appellate jurisdiction over all the courts in India. Because of the fact that at the time the Ordinance was passed there was no Supreme Court exercising criminal and appellate jurisdiction, it is really a consequential amendment which we ought to have thought of before having regard to the larger jurisdiction conferred on the Supreme Court under our Constitution in regard to criminal matters. Sir, I submit that this motion may be accepted.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration."

SHRI AMOLAKH CHAND: Mr. Chairman, I would have agreed with the hon. Law Minister provided what he said was the only amendment.

[Shri Amolakh Chand.] I find he has not made a reference to clause 1 (2) which says:

"It shall be deemed to have come into force on the 26th day of January, 1950."

The whole idea is to take us back to 26th January, 1950, and as such I think the Law Minister ought to have explained that point also. Probably he thought his reference to the Supreme Court would cover that because the Supreme Court itself came into existence on the 26th January, 1950. Anyway, I tried to understand the statement of objects and reasons of this Bill. My first objection is when the Law Minister wants to bring any amendment to an Ordinance—as the Finance Minister in the previous debate tried to convince me that we are now independent—we would not like to be reminded of Ordinances and as such I want to change the Ordinance into an Act. Again now what I find is that the hon. Law Minister has come forward with an amendment to an Ordinance. Now, let us actually analyse what this amendment is going to do and what the purpose is. Now, Sir, it says: —

"Certain criminal cases arising out of the claims made by some contractors against the Government of Burma when it was functioning in Simla during the period of the second world war are being inquired into by a special tribunal known as the East Punjab Special Tribunal. The main accused in these cases was convicted by that tribunal. . .".

What I want to impress is that probably it relates to a single case or a single series of cases, the offence regarding which was committed round about the year 1939, and thereafter, and the main accused in these cases was convicted by that tribunal but was acquitted by the High Court on appeal on the ground of misjoinder of charges. The State of Punjab has now obtained leave to appeal to the Supreme Court. Now, Sir, to my mind it appears that it is only to enable the

Punjab State Government to file an appeal before the Supreme Court that the hon. Minister has come forward with this amendment.

SHRI B. K. P. SINHA (Bihar): An appeal has already been filed.

SHRI AMOLAKH CHAND: Mr. B. K. P. Sinha says that an appeal has been filed. Probably he has filed an appeal in the Supreme Court. Now, Sir, what I was submitting is that as far as the 20th August, 1959, is concerned, the position before the House is that the State of Punjab has now obtained leave to appeal to the Supreme Court. If the appeal had been filed, probably I thought that the Law Minister would have said something about that or the Statement of Objects and Reasons would have mentioned that. It might be from the personal knowledge of my hon. friend, Shri Sinha, who practises in the Supreme Court that he says that an appeal has been filed. Now, if the appeal has been filed, I would again submit that it would be a case for this hon. House to judge whether we should allow such an amendment or not.

Now, Sir, what is going to be the effect of this amendment? As it is, the main object of the Ordinance being to prevent the disposal of attached properties pending final disposal of the criminal proceedings, the hon. Minister has not told the House as to what is the offence committed in this case, what is the property involved, whether it is Rs. 1,000 worth of property or Rs. 10 lakhs worth of property or crores of rupees worth of property or anything of that sort. What we are being asked to do is to enable the Punjab Government to file an appeal to the Supreme Court—pending the decision of the Supreme Court in cases where proceedings may be taken to that Court. Now, Sir, my objection, as I said, is that we do not know what the case is, what the offence was when it was committed, by whom it was committed, and then whether it is necessary to continue the proceed-

ings and keep the attachment. If you see the Ordinance of 1944—I have tried to go through it—it appears to me to be something extraordinary, and I would like to read some of the headings from that Ordinance. Now, Sir, a similar mistake as is usually done was committed in that Ordinance also and the Ordinance was again amended by the Repealing and Amending Act, 1945. In those days of emergency, as in the case of Ordinances which we are also legislating sometimes, in that very ordinance we find that they forgot to include as to from which date it was going to take effect. So, in 1945, by the Repealing and Amending Act of 1945, they have included there in subclause (3): "It shall come into force at once." Now, Sir, if you look into the Ordinance of 1944, it relates a wonderful story. It was an Ordinance to prevent the disposal or concealment of property procured by means of certain offences, which are mentioned in the Schedule, offences in connection with which property is liable to be attached. The law on the subject is this. Supposing anybody commits an offence under section 406, 420, 411 or 414. The law as it stands today, not as amended by this for particular cases, is that if any property is purchased out of stolen property or converted, it can be attached by a court of law, in a criminal court. But here probably after the war or during the war, there were people who were defrauding the Government. If you will permit me, Sir, I will read only one definition of an offence. It will give an idea as to how serious the matter was then:—

"An offence punishable under section 406 or section 409 of the Indian Penal Code, where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a Provincial Government or a department of any such Government or a local authority or a person

acting on behalf of any such Government or department or authority."

Now, what I was going to submit is that the offences which are mentioned in the Schedule, about which we do not know at all as to what the position is, the idea was that under this Ordinance all the properties that might have been purchased out of that money which might have been acquired by cheating His Majesty's Government or the Government of India or any Provincial Government may be attacked and checked . . .

[At this stage the Prime Minister entered.]

I think the Prime Minister would like to intervene and I may continue later on.

MR. CHAIRMAN: Yes.

STATEMENT BY PRIME MINISTER RE: REPORTED RESIGNATION OF THE ARMY CHIEF OF STAFF

MR. CHAIRMAN: Mr. Prime Minister, would you like to make a statement here?

THE PRIME MINISTER AND MINISTER OF EXTERNAL AFFAIRS (SHRI JAWAHARLAL NEHRU): If the House so wishes. I am sorry, Sir, that I was not here yesterday in this House when this question of the reported resignation of the Chief of Staff of the Army was raised. As the House knows, I had to go to Palam to meet the President of Pakistan. I can well understand, the concern of this House, as well as of others, about this news that was published yesterday morning. That was particularly in the circumstances existing today a serious matter. But an element of sensationalism has been given in the newspapers and much has been said in them that is not true. I shall endeavour to give an account of the facts as they came to my knowledge. I have been interested in the Defence Ministry throughout my period of office. For brief periods I have held the Defence portfolio. Even otherwise I have kept in