

Emperor Vs. Rajendrasing Ramsing

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Court : Mumbai

Decided On : Dec-20-1939

Reported in : (1940)42BOMLR356

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Criminal Appeal No. 405 of 1939

Appellant : Emperor

Respondent : Rajendrasing Ramsing

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal by Government against the acquittal of the accused by the Presidency Magistrate, Third Court, Bombay, on a preliminary point.

2. On August 1, 1939, the Chief Presidency Magistrate made an order under Section 144 of the Criminal Procedure Code forbidding people from, moving about in the streets after 10 p.m., and on August 2 the accused was found in a street at 10-45 p.m., and was arrested. On August 7 the learned Chief Presidency Magistrate withdrew his order of August 1, 1939, and the accused was tried on August 11, 1939. The learned Magistrate was of opinion that as the order for breach of which the accused was prosecuted had ceased to be in operation at the time of the trial, the accused must be acquitted. The learned Magistrate relied on a

passage in Maxwell's Interpretation of Statutes which, in the eighth edition, is at page 347. That passage, and the cases cited, show that formerly it was considered in England that where an Act expired or was repealed, it must be regarded as having never existed, except as to matters and transactions past and closed. So where a penal law was broken, the offender could not be punished under it if it had expired before he was convicted, although the prosecution had been begun while the Act was still in force. But as appears from a later passage at page 349, that rule is no longer in operation in England, having been altered by the provisions of Section 38(2) of the Interpretation Act, 1889. The rule in any case does not technically apply to an order made by the Chief Presidency Magistrate; it only applies to statutes. An order made by the Chief Presidency Magistrate under Section 144 of the Criminal Procedure Code cannot operate for more than two months unless Government otherwise directs. When such an order is withdrawn on a particular date, the position is exactly the same as if the original order had been restricted to that date, and in my opinion it is clear that a person can be charged¹ with committing an offence against the order at the time when it was in operation. The fact that he was tried after the order had ceased to be in operation seems to me to be entirely irrelevant.

3. The learned Government Pleader has referred us to Section 7 of the Bombay General Clauses Act, 1904, which embodies the principle that a repealed Bombay Act is not to affect any obligation incurred thereunder before the date of the repeal. The Act has no direct application here for that which was repealed was not a Bombay Act but was an order of the Chief Presidency Magistrate. In my opinion the learned Magistrate was clearly wrong in acquitting the accused and we must remit the case to be tried on merits.

4. We set aside the order of acquittal of the Presidency Magistrate, Third Court, and remit the case to be tried¹ on merits.

Sen, J.

5. I agree.

