

The State Vs. Krishna Murari

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Court : Allahabad

Decided On : Nov-26-1954

Reported in : AIR1955All397; 1955CriLJ1025

Judge : Kidwai and ;H.S. Chaturvedi, JJ.

Acts : Uttar Pradesh Control of Supplies (Temporary Powers) Act, 1947 - Sections 1(4); Uttar Pradesh Cement Control Order, 1948; [Government of India Act, 1935](#) - Sections 59 and 59(1); Uttar Pradesh Control of Supplies Continuation Ordinance, 1948; Uttar Pradesh Laws (Expiration) Act, 1950 - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 40 and 79

Appeal No. : Criminal Appeal No. 114 of 1953

Appellant : The State

Respondent : Krishna Murari

Advocate for Def. : S.L. Suri, Adv.

Advocate for Pet/Ap. : R.B. Bisria, Addl. Govt. Adv.

Judgement :

Kidwai, J.

1. Krishna Murari Lal was suspected in black-marketing in cement. Accordingly on 17-9-1952, sub-Inspector Masoom Hussain of the enforcement squad, sent one Mohammad Hanif with two notes signed by Circle Inspector Mehtab Singh, one for five rupees and one for two rupees to purchase a bag of cement. Mohammad Hanif accordingly purchased one bag of cement for Rs. 6/8/-, paid with the signed notes and received eight annas back. When the bag was being loaded on to a ricksha, the Sub-Inspector along with the Circle Inspector who had followed came out of concealment. They took over the cement and the eight anna bit from Mohammad Hanif and questioned the accused. The accused admitted having made the sale and produced the two notes signed by the Circle Inspector. He was released on bail and a complaint was filed against him on the same day under paras. 4 and 6 of U. P. Cement Control Order read with Section 6, U. P. Control of Supplies (Temporary Powers) Act of 1947.

2. The case proceeded immediately. After the sub-Inspector had been examined (he was not cross-examined) the accused pleaded guilty and was convicted by the learned Magistrate who sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs. 200/-.

3. The accused appealed and the learned Sessions Judge of Lucknow allowed his appeal holding on the authority of a decision of a Full Bench reported in -- 'Ram Kishan v. The State' : AIR1951 All181 , that the U. P. Cement Control Order had no legal sanction behind it and was a nullity.

4. The U. P. Control of Supplies (Temporary Powers) Act 2 of 1947 received the assent of the Governor General on 28-2-1947. Section 1(4) of the Act provided that it should cease to have effect on the expiration of one year beginning with 1-10-1946 'or if the Provincial Government by notified order so directs, of two years beginning from that date.'

5. On 26-9-1947, the Government notified an order directing that the Act should continue to remain in force till 30-9-1948.

6. On 27-9-1948 the U. P. Cement Control Order, 1948, was promulgated under the powers conferred by Act 2 of 1947 as extended by the notification. By para. 4

of the Order the sale or storage of cement (which is defined in para 2(c) as 'PORTLAND CEMENT') except in accordance with a licence granted under this Order was forbidden. It was under this provision that Krishna Murari Lal was prosecuted. The 'question whether he committed an offence depends upon the question whether the U. P. Control of Supplies (Temporary Powers) Act 2 of 1947 was validly extended by the Government Notification.

7. As has already been stated, it has been held in : AIR1951 All181 , that the conferment of power on the Government to extend the life of a statute was delegation of legislative power and was bad and that consequently Act 2 of 1947 was not in force when the Uttar Pradesh Cement Control Order, 1948 was promulgated. In this view the order was of no legal effect. Since then, however, a Full Bench of this Court, consisting of five learned Judges, has held in Misc. Appln. Nos. 141 and 181 of 1950, *Morarilal v. State*, decided on 12-10-54 (since reported in : AIR1953 All48) of which the learned Advocate-General has supplied us a certified copy that the law laid down in the earlier Full Bench decision is no longer good law. It has held that similar words used in Section 1(5), U. P. (Temporary) Accommodation Requisition Act 25 of 1947 did not amount to delegation by the Legislature of its powers and a notification extending the life of the Act was valid.

8. It was also contended, that in any case, Act 2 of 1947 enables the 'Provincial Government' to extend the life of the Act while in 'fact the notified order was issued by the Governor and is consequently bad. Section 59(1), Government of India Act, which was then in force, provides that all executive actions of the Government of a Province must be done in the name of the Governor. The issue of a notification in the name of the Governor does not, therefore, indicate that it is not the action of the Provincial Government. This objection to the validity of the notified order extending the life of Act 2 of 1947 cannot be upheld. It must be held that the U. P. Cement Control Order, 1948, was validly promulgated and must have legal effect given to it.

9. It has next to be determined whether Act 2 of 1947 was still in force on 17-9-1952 when the offence is said to have been committed.

10. On 25-9-1948 the life of the U. P. Control of Supplies (Temporary Powers) Act 1947 was extended 'until the withdrawal, repeal or expiry of this Ordinance' -- vide Clause 2, Ordinance 8 of 1948. Thereafter the U. P. Control of Supplies (Continuance of Powers) Act 43 of 1948 was passed and, having received the assent of the Governor-General on 14-12-1948, it was published in the U. P. Gazette the next day. By it Act 2 of 1947 was continued until 30-9-1950 and Ordinance 8 of 1948 was repealed. No objection has been taken to the validity of this Ordinance and Act; the only contention has been that, since Act 2 of 1947 has expired on 30-9-1947 it was not in existence and could not be continued at the time of the enforcement of Ordinance 8 and Act 43 of 1948. It has already been held that Act 2 of 1947 was validly extended till 30-9-1948 and was in force when Ordinance 8 of 1948 came into effect. Accordingly the effect of that Ordinance and of Act 43 of 1948 was to continue it till 30-9-1950.

11. The next step was the enactment of Act 30 (the U. P. Control of Supplies (Continuance of Powers) Act) of 1950. The official reports of the proceedings of the Legislature show that the bill was passed by the Legislative Assembly on 18-9-1950 and by the Legislative Council on 27-9-1950. It did not, however, receive the assent of the President till 25-10-1950 and it was published in the Gazette on the 26th (sic) October, 1950. By its own terms it did not have retrospective effect and would, therefore, not continue an Act which has already lapsed and to which the provisions of Section 6, U. P. General Clauses Act had become applicable in the same manner as if it had been repealed by an U. P. Act.

12. In order to meet such a situation the U. P. Legislature had already passed Act 28 (The U. P. Laws (Expiration) Act) of 1950 which had received the assent of the President on 12-9-1950 and had been published in the U. P. Gazette on 23-9-1950. Section 3 of this Act reads as follows:

'Where any bill may have been or shall be introduced in this present or any future session of the State Legislature for the continuance of any Act which would expire in such Sessions, and such Act shall have expired before the Bill for continuing the same shall have received the assent of the President or Governor, as may be necessary, such continuing Act shall be deemed and taken to have effect from the

date of the expiration of the Act intended to be continued, as fully and effectually, to all intents and purposes as if such continuing Act had actually passed before the expiration of such Act, except it shall be otherwise especially provided in such continuing Act; provided nevertheless that nothing herein contained shall extend or be construed to extend, to affect any person or persons with any punishment, penalty, or forfeiture whatsoever, by reason of anything done or omitted to be done, by any such person or persons contrary to the provisions of the Act so continued, between the expiration of the same and the date at which the Act continuing the same may have received or shall receive the assent.'

13. The official reports of the proceedings of the Legislature show that the U. P. Legislature was in Session on 30-9-1950 on which date Act 2 of 1947 as extended was to expire. It is also shown that the Bill which subsequently became Act 30 of 1950 was introduced into -- and indeed passed by -- the Legislature in that Session. By reason, therefore of Section 3 of Act 28 of 1950, even though the Bill (which became Act 30 of 1950) did not receive the assent of the President till 25-10-1950, it shall be deemed and taken to have effect from the date of the expiration of| the Act intended to be continued.

14. There is nothing in the Constitution which prevents Legislature from giving retrospective operation to statutes whether by means of some provisions of the Statute itself or by means of another statute. The only limitation is that no one can be punished for a crime, which was not a crime at the date at which it was committed. This is specially guarded against by Section 3 quoted above itself. There can thus be no legal challenge to the validity of Act 28 of 1950 and, by reason of that Act, Act 30 of 1950, shall be deemed to have taken effect from 30-9-1950. Thus, in law, there was no gap between the date of expiration of Act 2 of 1947 (as extended from time to time) and the date of the enforcement of the Extending Act 30 of 1950. The result is that when Krishna Murari Lal sold cement without a licence, he infringed the prohibition contained in the U. P. Cement Control Order and was liable to be punished under Section 6, U. P. Control of Supplies (Temporary, Powers) Act.

15. It was next contended that, in any case, no offence was committed because Krishna Murari Lal was misled not only by the first Full Bench decision of this Court but also by subsequent decisions of this Court in -- 'Krishan Lal v. The State', Criminal Revn. No. 1581 of 1953 (C), and -- 'Kunji Lal v. The State', No. 1474 of 1951 (D), the first of which was decided by a Division Bench as late as the 9th March 1953 and related to the same order. The Indian Penal Code does not exempt an act done under a mistake of law from the operation of the penal law but, it is obvious that if a person accepts the decision of a Full Bench of the High Court in the state (from which no appeal has been preferred to the Supreme Court) as a guide to his conduct, he commits nothing more than a technical offence if that view is later not accepted as laying down the correct law. In this case, therefore, at the worst Krishna Murari Lal was guilty of a technical criminal offence.

16. The result is that we allow the appeal filed by the State and set aside the order of acquittal passed by the Sessions Judge. We convict Krishna Murari Lal under the Cement Control Order of 1948 read with Section 6, U. P. Control of Supplies (Temporary Powers) Act of 1947 but we consider that he is entitled to be released after admonition under Section 3 of the First Offenders' Probation Act of 1938 and we direct accordingly.

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