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Court : Allahabad

Decided On : Feb-23-1931

Reported in : AIR1932All18; 136Ind.Cas.91

Appellant : Emperor

Respondent : Joti Prasad Gupta

Judgement :

Sen, J.

1. The person concerned in this criminal reference is one Joti Prasad Gupta, an advocate of this Court, practising at Meerut. On 13th April 1930, he made a speech on the Barafkhana Ground at Meerut before an audience consisting of about ten thousand persons in which he urged them to break the salt law. He also sold certain packets of contraband salt said to have been manufactured at Ghaziabad. He was prosecuted under Section 9(a), Salt Act (Act 12 of 1888) and under Section 117, I.P.C., before a Magistrate First Class and was convicted of both the offences. He was sentenced to six months' rigorous imprisonment under the former section and to 18 months' rigorous imprisonment under the latter section. The sentences were directed to run consecutively.

2. Before the Magistrate Joti Prasad Gupta 'took no part in the proceedings.' He refused to say anything in his defence and declined to produce any evidence on his behalf.

3. He preferred no appeal against his conviction or sentence.

4. On 24th September 1930, an application was presented in the Court of the learned Sessions Judge of Meerut by Mr. Baij Nath, President of the Meerut Bar Association in which he urged that Joti Prasad Gupta had been wrongly convicted under Section 117, I.P.C. and that his conviction and sentence under that section ought lo be set aside and should be substituted by a conviction and sentence under Section 9(c), Salt Act. The contention advanced was that where provision had been made in Clause (c), Section 9 for the punishment of abetment of offences under Clauses (a) and (b) of the said section, it would be illegal to convict a person under Section 117, I.P.C. Reliance was placed upon a decision of the Chief Court of Oudh in Mohan Lal Saksena v. Emperor A.I.R. 1980 Oudh 497. In this case, the Chief Court sustained the contention which was put forward, set aside the conviction and sentence under Section 117, I.P.C., and substituted for it a sentence of six months rigorous imprisonment under Section 9(c), Salt Act. In view of the importance of the question at issue, the learned Sessions Judge has referred this case and the connected case to this Court for a clear pronouncement. The case has been argued at great length before us by Dr. Katju in support of the reference and Mr. Dma Shankar Bajpai for the Crown who opposes the reference.

5. Dr. Katju, in support of his contention has relied upon the decision of the Oudh Chief Court in Mohan Lal Saksena v. Emperor A.I.R. 1930 Oudh 497, Ghandi Pershad v. Abdar Bahaman [1895] 22 Cal. 131, Ram Nath v. Emperor : AIR1925 All230 and Emperor v. Abdul Hamid A.I.R. 1923 Pat. 1, and a number of English authorities which have bean considered by Das, J., in the lastmentioned case. He has drawn our attention to Section 11 of the Act and contends that the offence under the Salt Act is one of a very special nature for which a special tribunal has been appointed under the Act and a special procedure provided. Of the cases cited by him, the case of King-Emperor v. Mohan Lal Saltsena and Anr. A.I.R. 1930 Oudh 497 is directly in point and the facts of this case are parallel to the facts of the case now before us. Considerable emphasis has been laid in this case upon the fact that an act in contravention of the Salt law is an offence under the Salt Act, but is not an independent offence under the Penal Code. Similarly, the abetment of offences under Sections 9(a) and (b), Salt Act, is a substantive offence under

Section 9(c) of the said Act and punishment has been provided in the said Act for the abetment of the offences under Sections 9(a) and 9(b). We may note in passing that before the Chief Court, it was

agreed on both sides that the act for the abetment of which these persons were convicted is not a separate offence under the Penal Code, but it is an offence exclusively under the Salt Act, 1382.

6. From this the learned Judges of that-Court concluded that

It is to the former class of cases to which the provisions of Section 26, General Clauses Act apply, but the present case is of the latter class.

7. They further held that the principle of interpretation of statutes in such circumstances is generalia specialibus non derogant. They held therefore that where an act was an offence under a special law and the offence could be punished under that special law, the general law would not apply, and this was the principle laid down in Section 5, I.P.C. In their view, Section 9(c) embraced all abetments coming under the definition of 'abetment' in the Penal Code, no matter how serious the character of the abetment. They observed that, if for the same act a person could be punished under Section 117, I.P.C. and also be punished for the same act under Section 9, Salt Act, this would lead to undesirable and absurd results. They therefore held that where an act was an offence under a special or local law for which punishment had been provided for in the special or local law, but the act in question had not been treated as a separate and independent offence under the Penal Code and no punishment had been separately provided for in that Code, the offence was exclusively punishable under the special or local law and not under the general criminal law.

8. The learned Government Advocate does not agree to the correctness of the dates which appear to have been agreed to or assumed before the Chief Court. The position calls for a detailed and careful examination.

9. Laws regulating the manufacture of salt, appear to have been made at a very early period of the British rule in this country. We emphasize the fact that Act 12 of

1882 did not for the first time declare certain acts done in contravention of that Act or of any rule made thereunder to be offences which were punishable by fine or imprisonment for nonpayment of fine. Similar provisions were made in Sections 4 and 7, Act 14 of 1843 which was applicable to the North Western Provinces of the Presidency of Bengal. Section 4 ran thus:

And it is further enacted that from and after 1st September 1843, the manufacture of alimentary salt throughout the North Western Provinces of the Presidency of Bengal without the express sanction of the Government is prohibited : and that any person engaging in the manufacture of such salt, or preparing or causing to be prepared works for the manufacture of such salt, without such sanction, and all zamiridars or other proprietors of land, or their agents, conniving at such illicit manufacture, shall on conviction by the Magistrate, within the limits of whose district the offence may have occurred, be punished by a fine not exceeding Ks. 500, and on nonpayment of such fine by imprisonment not exceeding six months with or without hard labour, and that all works at which such manufacture was often conducted or which have design for such manufacture shall be destroyed, and any salt which may be manufactured or stored thereat shall be seized and confiscated. Section 7 inter alia provided for the offence of abetment and was expressed in the following words. And it is further enacted that all persons evading or attempting to evade the payment of the duties imposed by this Act and all persons aiding or abetting such attempts or evasions or in any manner acting in contravention of the Act, or of any order made and issued under the provisions thereof and all zamindars and other proprietors of land or their agents, who shall wilfully connive at such attempts or evasions or aid such acts, shall on conviction by the Magistrate within the limits of whose district the offence may have occurred be punished by a fine not exceeding Rs. 500 and on nonpayment thereof by imprisonment not exceeding six months with or without hard labour.

10. The infraction of the Salt law and the abetment of certain offences under the Salt law were therefore offences under Act 14 of 1843 and were punishable with fine or with imprisonment for nonpayment of fine. Under Act 12 of 1882, they continued to be offences, but the sentences provided for the offences are slightly different as would appear from the following text of Section 9 of the Act:

Whoever commits any of the following offences (viz). : (a) does anything in contravention of this Act or of any rule made here-under; (b) evades payment of any duty or charge payable under this Act or any such rule; or (c) attempts to commit or abets within the meaning of the Penal Code, the commission of any of the offences mentioned in Clauses (a) and (b) of this section, shall, for every such offence, be punished with fine which may extend to Rs. 500, or with imprisonment for a term which may extend to six months, or with both.

11. The general criminal law of the land is to be found in Act 45 of 1860, which received the assent of the Governor-General in Council on 6th October 1860. It has been provided in Section 40, I.P.C. that the word 'offence' in Section 117 of the Code denotes a thing punishable under this Code or under a special or local law as hereinafter defined. This provision was not to be found in the Penal Code as originally enacted but was introduced for the first time under Act 27 of 1870. The effect of this section is to make every thing punishable under a special law an offence within the meaning of the amendment was to enlarge the scope of the Penal Code by making offences under special law also offences under the Penal Code. The result therefore was that offences under the Excise Act (Act 12 of 1896), under the Post Office Act (Act 6 of 1898), under the Explosive Substances Act, (Act 6 of 1908) or the Police Act (Act 5 of 1861) or under the Registration Act became also offences under the Penal Code. In these Acts, the abetment of certain offences has been provided for as a substantive offence. We refer to Section 59, Excise Act, to Section 70, Post Office Act, Section 12, Explosives Act, Section 6, Explosive Substances Act, Section 82, Registration Act and Section 36, Police Act. If therefore we read Section 40 in conjunction with the relevant penal sections of the special or local Acts, the following facts will have to be deduced; (1) that all acts or omissions in contravention of special or local Acts which are punishable under the said Acts, fall under the definition of 'offences' in the Penal Code; (2) that all abetments of offences which are offences under the special or local Acts and are punishable under the said Acts, also fall under the definition of 'offences' in the Penal Code.

12. In this connexion, Section 40, I.P.C. should be read in conjunction with Sections 2 and 5. Section 2 expressly provides that every person shall be liable to

punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof of which he shall be guilty, etc The effect of Section 5 is to qualify the general repeal indicated in Section 2, by expressly declaring that offences defined and provided for by special and local laws continue to be offences and are punishable as such. Section 5 clearly declares that the Penal Code is not intended to repeal, vary, suspend or affect any of the provisions of any special or local law. The one enactment has not the effect of repealing the other. The two co-exist without conflict. In order to leave no doubt on this point, the law on the subject has been declared by the express provision of Section 26, General Clauses Act, which provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall 'be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. It is clear therefore that where an act is punishable under a special law and also under a general statute, the offender could be proceeded with under either or both, but could not be punished twice for the same act or omission which constituted the offence. Where there is nothing in the special Act to exclude the operation of the general criminal law, it cannot be inferred that there was an intention on the part of the legislature to exclude it. We accept the following statement of law in Halsbury's Laws of England (Vol. 27, p. 168):

The general law of the country is cot altered by special legislation made without particular reference to it, though a statute passed for a particular purpose must so far as that purpose extends override general enactments.

13. It was so held by the Madras High Court so far back as [1876] 1 Mad. 55:

The ordinary criminal law is not excluded by Regn. 7 of 1817 or of Act 20 of 1860 (vide Section 20). The permission of the Board of Revenue or of the Committees is required only for the procedure prescribed in the special Acts, and these special provisions cannot be taken out of the Acts and applied as a restriction to the ordinary operation of the criminal law.

14. In The Queen v. Hussan Ali [1873] 5 N.W.P. 49 it was held by Turner, J., that on the same facts the conviction and sentence under Section 27, Cattle Trespass

Act (Act 1 of 1871), and Section 169, I P.C. was illegal. The conviction and sentence under Section 27 were quashed, but the conviction under Section 169 was maintained but the sentence was reduced.

15. In The Queen v. Ramachandrappa [1883] 6 Mad. 249 it was held that the provisions of the Penal Code were not in conflict with those of the special law, and effect might therefore be given to both. It was observed in passing that in ordinary cases where there were no aggravating circumstances the Village Munsif or civil Court would act discreetly in employing the special powers conferred on it under Section 15(6) and Section 16(3), Regn. 4 of 1816, but if a charge was instituted in a criminal Court under the Penal Code, it must be dealt with by that Court. In Kuloda Prasad Mozurndar v. Emperor [1907] 11 C.W.N. 100 a Bench of the Calcutta High Court took much the same, view as was taken in the last mentioned case that ordinarily it was desirable that when an act or omission was made penal by two Acts, one general and the other special, the sentence should be passed under the special Act. The learned Judges referred to the rule quoted by Lord Esher in Lee v. Danger [1892] 2 Q.B. 337 (at p. 348):

If one statute made the doing of an act felonious and a subsequent Act makes it only penal, the latter is considered as the virtual repeal of the former.

16. After quoting this passage they made the following observation relating to this rule:

We are not however disposed now to lay down broadly in this country that in every case a special penal law repeals by implication a previously existing general law relating to an offence of the same nature, and in this case it is not necessary for us to do so. If we were to do so, we might infringe the rule of interpretation in Section 26, General Clauses Act. We are not also disposed to accept Mr. Roy's contention that the penal provisions of the Railways Act are self-contained and the punishment for acts and omissions regarding a railway administration in India must be inflicted under this Act only. The penal provisions in the Act are not obviously exhaustive and there is nothing in the Act itself or any other enactment in force in India which excludes the operation of the general laws in force as to offences which are not punishable under the Act.

17. We are entirely in accord with the view set out above.

18. Our attention was called to the legal maxim referred to in the judgment of the Chief Court and to a number of English authorities which have been dealt with in the judgment of Das, J., in Emperor v. Abdul Hamid A.I.R. 1932 Pat. 1. We may mention at once that we consider that very, different conditions prevail in the two countries. Here, in this country, where we have got definite statutes, we have to follow the same. The rules of the Common law of England or the legal maxims embodying certain judicial principles however wholesome they may be, cannot be engrafted upon the Penal Code. In order to consider whether or not the offences, referred to in Section 9, Salt Act, are, upon I the fulfilment of certain conditions, offences under Section 117, I.P.C., we have to consider Section 9, Salt Act and read the same in conjunction with Sections 2, 5, 40 and 117, I.P.C.

19. Considerable emphasis has been laid upon the fact that acts or omissions which amount to a criminal offence-under the Salt Act have not been incorporated into the body of the Penal Code as separate or distinct offences. We agree that I it is so, but we are clearly of opinion I that this makes no difference. It would I have made the Penal Code extremely I cumbrous if the offences under the various special and local Acts were included 1 as separate offences under the Penal Code and punishments separately provided form them in the said Code. To avoid repetition, provisions have been made in S the Penal Code with reference to offence generally and distinct punishment has' been provided for them in Sections 109 to 117, I.P.C.

20. Where abetments of offences under the special or local Act satisfy the conditions of Sections 109 to 117, all the ingredients constituting an offence are complete, and there does not appear to be any reason why a person against whom all the ingredients of these offences are present should not be convicted under those sections. It would, of course, be improper if for the same act a person were to be convicted twice, i.e., once under the special law and again under the Penal Code. But it is perfectly clear that, although in view of Section 26, General Clauses Act, he

21. Act 12 of 1882 is not a self-contained Act. The offences enumerated therein are not exhaustive. The number of offences under the Salt Act becomes enlarged having reference to the provision of Section 40 read with Sections 2 and 5 of the Code which we have already referred to. The offences mentioned in Section 9, Act 12 of 1882, were not new offences. They were offenses under the Salt Act of 1843. When the Penal Code was amended in 1870, the ambit of Section 117 became enlarged so as to include within its scope the offences under Section 9, Salt Act. The result was that where an offence under Section 9(a) by the public generally or by a number of persons exceeding ten was abetted, it satisfied all the conditions of 'n offence tinder S, 117, I.P.C.

22. Dr. Katju has relied upon the judgment of Das, J., in Emperor v. Abdul Hamid A.I.R. 1923 Pat. 1 in which that learned Judge, ruled that no person could be convicted under Section 141, I.P.C., for an offence in contravention of Sections 30 and 39(a), Police Act (Act 5 of 186l). We may mention here that the view of Das, J. was not shared by his two colleagues on the Bench. The learned Judge was of opinion that the offence in question was a new offence and not an offence under the general law. He relied upon a number of English authorities including a passage from Hawkins' Pleas of the Grown, Book 2, p. 25, Section 4, which ran as follows:

Also where a statute makes a new offence which was in no way prohibited by the Common law, and appoints a peculiar manner of proceeding against the offender as by commitment or action of debt or information, etc., without mentioning an indictment, it seems to be settled to this day that it would not m aitam an indictment, because mentioning the other methods of proceeding seem impliedly to exclude that of indictment.

23. Reliance was also placed upon the judgment of Lord Herschell, L.C. in Institute of Patent Agents v. Joseph Lockwood [1894] A.C. 347 at p. 361. Following that decision, Das, J., observed as follows:

Here also for the first time a new offence has been created. But for the enactment treating that offence, the respondent has done nothing of which anybody would have a legal right to complain either civilly or criminally. The legislature having

created that new offence has prescribed the punishment for it, namely, a penalty of Rs. 200. If, as the Lord Chancellor pointed out, the mode of procedure and the amount of penalty are often regarded by the legislature as of the utmost importance when they are creating new offence, can it be doubted for a single moment that the proper procedure was to proceed under the Act and not by indictment under the general law? In my opinion the respondent could not be convicted under the Penal Code for an offence committed under the Police Act.

24. It is to be observed that Section 26, General Clauses Act, was not brought to the notice of the learned Judge.

It is further to be added that the Salt Act (Act 12 of 1882) does not provide for a distinct procedure for trial of offences under that Act.

25. Section 11, Salt Act, does not provide for or prescribe any rules of procedure. It provides that the case cannot be instituted except on the complaint of a particular officer and also prescribes a period of limitation for such complaint. It also provides that offences under the Act were triable by a Magistrate exercising powers not lees than those of Magistrate of the second class. She procedure to be followed for trial of cases under the Act is the Code of Criminal Procedure. We have already noticed that the offences under Act 12 of 1882 were not new offences nor could the offences under the Act be restricted to those enumerated in Section 9 of the Act. The case of Abdul Hamid was decided by Mullick and Coottes, JJ., on different lines. They were of opinion that Abdul Hamid could not be convicted under Section 141, I.P.C. because there was no evidence that he was aware that any breach of the notification had been committed. The Patna case was considered by a Bench of the Bombay High Court in Bhal Chandra, Trimbak v. Emperor A.I.R. 1929 Bom. 433. We are in accord with the view expressed by the learned Judges at pp. 439 and 443.

26. Dr. Katju also referred to Ram Nath v. Emperor : AIR1925 All230 . Babu Ram Nath, who was a practising mukhtar at Agra was convicted by a First Class Magistrate under Section 465, I.P.C., read with Section 114 of be same Code and sentenced to undergo one year's simple imprisonment. The offence alleged against him was that he abetted the false personation of a voter named Hari

Shankar. It was contended on his behalf that his conviction under Section 465, I.P.C. was illegal and that he should have been convicted under Section 171(F) of the same Code. Effect was given to this contention and it was ruled that where there were two provisions, one specific and the other general, the specific provision ought to be applied in preference to the general one. The learned Judge observed:

If this view be correct, the offence committed must be treated as one under Section 171(F), I.P.C., in preference to Section 465.

27. No reasons have been given for this view and no authorities cited. The case moreover is distinguishable, because the offence did not fall under the two enactments. Chandi Prasad v. Abdul Bahman [1895] 22 Cal. 131 appears to have been a special case. The learned Judges were of opinion that the Municipal Act was intended to be complete in itself fs regards offences committed against the Municipal Commissioners and there was no indication in the Act to make a delinquent also liable to punishment under the Penal Code. In the present case, we have got to consider whether there is anything in the special Act, viz., Act 12 of 1882, to exclude the operation of the general criminal law as contained in the Penal Code. Such an intention cannot be presumed. The intention can be inferred either from express words of the text or by necessary implication. It could never have been the intention of the legislature to repeal offences providing for heavier punishments merely by reason of the fact that a minor penalty had been provided for in this special Act. If we hold otherwise, the result would be that many offenders must escape punishment under the Penal Code, because a minor penalty for those offences had been provided by special enactment. Offences of abetment under the Penal Code are of various character and punishments have been provided for which vary in degree according to the nature and character of the crime. These various forms of abetment have not been provided for either in the Salt Act or any other special or local enactments. They fall as we have shown under the general law.

28. In Segu Baliah v. Ramasamiah [1917] 18 Cr.L.J. 992 the same set of acts constituted an offence under Section 43, Provisional, Act (Act 3 of 1907) and also

under Sections 421 and 424, I.P.C. It was argued that Section 43: virtually repealed Sections 421 and 424,I.P.C. It was held in this case that where a special enactment dealt with an offence; similar to an offence dealt with by a general enactment, it did not follow that the provisions of the general enactment, had been repealed to that extent. The-Calcutta case of Chandi Prasad was cited but was not followed. It is pointed out that Section 26, General Clauses Act, was nob. brought to the notice of the learned Judges. There appears to be very good reason for it, because S 26 did not apply to a case where the offences charged were, not under two separate enactments, but were two separate offences under the same enactment.

29. Upon a consideration of the texts of the various statutes before us and the authorities dealing with the same, we unhesitatingly come to the conclusion that a person guilty of abetment of an offence under Section 9(a), Salt Act, may-be convicted and sentenced under Section 117, I.P.C. where it is proved that the act amounted to an abetment of the commission of an offend^ by the public generally or by any number or class of persons exceeding ten. We hold therefore that Joti Prasad Gupta has been properly convicted and sentenced under Section 117, I.P.C.

30. Dr. Katju has urged a plea for the reduction of sentence. This point is not; covered by the reference Joti Prasad Gupta has preferred no application to> this Court for reduction of sentence. Theplea for reduction has not been urged by Dr. Katju on instructions received from Joti Prasad Gupta. We consider that the offence committed by him was of at serious character. In view of all the circumstances we refuse to interfere with the sentence.

31. The result is that we reject the reference.

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