

B. Bansgopal Vs. Emperor

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Court : Allahabad

Decided On : Jul-20-1933

Reported in : AIR1933All669; 145Ind.Cas.680

Appellant : B. Bansgopal

Respondent : Emperor

Judgement :

Sulaiman, C.J.

1. This revision has been referred to a Full Bench by a 'Division Bench because it was considered that it involved 'an important question of law requiring an authoritative pronouncement. It appears that after the promulgation of Ordinance No. 2 of 1932, called the Emergency Powers Ordinance, by the Governor-General, the same was extended to the United Provinces, and the Local Government extended its provisions to the districts of these provinces, including Fatehpur, on 9th January 1932, and the power under Section 4 of the Ordinance, was delegated by the Local Government to the District Magistrate of Fatehpur sometime before 12th January 1932.

2. On 12th January 1932 the District Magistrate of Fatehpur issued a notice, called an order, to the applicant, Babu Bansgopal, under Section 4, United Provinces Emergency Powers Ordinance No. 2 of 1932, prohibiting- him from making any speech or instigating in any way non-payment of rents or attending any meeting

and procession, and to abstain from all acts conducing to lead to any kind of disturbance or breach of public peace in Fatehpur District and not to go outside the confines of the Municipality without previous permission. This notice or order was served on the applicant on 13th January 1932. On this very date, namely, 12th January 1932, the Criminal Law Amendment Act, 1908, was extended to the United Provinces. This was followed by an order of the Local Government dated 15th January 1932 declaring the District Congress Committee of Fatehpur, among other bodies, to be an unlawful association within the meaning of the Criminal Law Amendment Act, 1908.

3. One Madan Mohan was arrested at a public meeting, which was being held at Bindki in the district of Fatehpur on 21st January 1932, and a document, Ex. D, is said to have been recovered from his person., This purported to bear the signature of the accused, Bansgopal, and was addressed to a person named Sheo Shankar but bore no date. In consequence of the discovery of this document the accused, B. Bansgopal, was arrested and ultimately prosecuted. The case before the Magistrate came up about March. 1932 and was going on when Ordinance No. 2 of 1932 expired on 3rd July 1932. Before the expiry of this Ordinance Ordinance No. 10 of 1932 came into force on 30th June 1932.

4. After recording the evidence for the prosecution the Magistrate framed two charges against the accused: one under Section 17 of Ordinance 10 of 1932 read with Section 21 of Ordinance 2 of 1932, and Section 80(2) of Ordinance 10 of 1932, charging him that in spite of having been ordered to abstain from all acts conducing to lead to any kind of disturbance or breach of public peace, he committed such an act by sending the letter, Ex. D, in which he encouraged disobedience of orders of lawful authority etc. The second charge is that the accused assisted in the management of an unlawful association, namely, the 'District Congress Committee of Fatehpur' and encouraged disobedience of orders of lawful authority, etc.. by writing the letter, Ex. D, and committed an offence under Section 17. Sub-section (2), Criminal Law Amendment: Act, 1908. The accused was called upon to enter upon his defence after the framing of the charge, but before leading any evidence in defence he went up in revision to the Sessions Judge who declined to interfere. He then came up to this Court and

applied for a stay of the criminal proceedings. The revision was admitted and the proceedings were stayed and have remained stayed for all this time.

5. Two main points are urged in this revision before us. The first is that no charge could be framed under Ordinance 2 of 1932 after the said. Ordinance had expired, and the second is that there is no legal evidence on 'the record to show that the District Congress Committee of Fatehpur existed on the material dates and that accordingly no charge could be framed. There was another point taken that Section 80(2)(c) of Ordinance 10 of 1932, was ultra vires of the Governor-General of India inasmuch as in effect it extended the period of six months during which the previous Ordinance could have remained in force, but this ground has not been pressed before us. In my opinion, there is considerable force in the first contention. According to the English law, as a general rule, unless there is some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it and it ceases to have any further effect. It would follow that an offence committed against a temporary Act must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate (see Craies on Statute Law, Edn. 3, p. 342.). A distinction also seems to have been drawn between an Act which is repealed and a temporary Act which expires, but this difficulty was removed to a considerable extent by the passing of the Interpretation Act of 1889. In England there is also the Act: of Parliament Expiration Act, 1808, which to some extent meets the difficulty caused by an offence being committed between the expiration of a previous Act and the coming into force of the new Act, which professedly continues the operation of the first Act.

6. Similar to the provision of Section 38, English Interpretation Act, we have Section 6, General Clauses Act, 1897, under which when an Act repeals any previous enactment the repeal does not revive anything not in force or existing at the time of the repeal, or affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or effect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or affect any

investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act of Regulation had not been passed.

7. Section 30, General Clauses Act, as subsequently amended, now makes the Act applicable not only to the Acts of the Governor-General, but also to the Ordinances made and promulgated by the Governor-General under the Government of India Act. Thus the General Clauses Act would certainly be applicable to the two Ordinances (Ordinances 2 and 10 of 1932) in question, but Section 6 is applicable to a case where a previous Ordinance has been 'repealed' by a subsequent Ordinance or by a subsequent Act and would not necessarily apply to a case where a temporary Ordinance automatically expires after the period during which it is in operation is over. It follows that although Section 30 makes the Act applicable to the Ordinances, Section 6 has no application to such temporary Ordinances. Section 6 lays down that a penalty already incurred is not to be affected by the subsequent Act and that the penalty may be imposed as if no repealing Act had been passed. Obviously this section has no reference to the order of a competent Court which has already enforced a temporary Ordinance which is subsequently repealed. Once a person has been convicted and sentenced it is altogether immaterial whether an Act on which the order of the Court was based expires or is subsequently repealed. The continuance of the punishment is not in consequence of the operation of Section 6 any longer, but is by virtue of the order of a competent Court though it was based on the Act before it was repealed.

8. The learned Assistant Government Advocate has relied on the case of *Jogendra Chandra Roy v. Superintendent of the Dum Dum Special Jail* : AIR1933 Cal280 , in which a Bench of the Calcutta High Court at p. 281 thought that although the provisions of Section 6, General Clauses Act, do not apply in terms to the case of a temporary statute, the term of which has expired, it may reasonably be contended that they merely give a statutory expression to a rule of construction which was already in existence and which applies with equal force to statutes that

had been expressly repealed and to temporary statutes the terms of which had expired. In that case the question was whether an accused person who was undergoing a sentence of imprisonment in consequence of his conviction under an Ordinance, which had subsequently expired, should be left off. It seems that the point was not argued before the Bench that the continuance of the sentence was a result of the order of the Court and not the applicability of Section 6, General Clauses Act.

9. When an offence is committed under a temporary Ordinance which is subsequently repealed before the accused has been committed there is obviously considerable difficulty in convicting him even if a subsequent Ordinance incorporates that very offence, provided there is no provision therein for the continuance of previous proceedings. He cannot be convicted under the relevant section of the old Ordinance because at the time the Court is to pass its order that Ordinance has ceased to exist. He cannot be convicted under the corresponding section of the new Ordinance because no offence was committed while this Ordinance has been in force. It is to avoid such an anomaly that there is a practice to have a clause in the new Ordinance which would ensure the continuance of proceedings already taken under the previous Ordinance. It is noteworthy that in Section 80(2)(c), of Ordinance 10 of 1932: express provision was made that the new Ordinance shall operate to confer a power to continue a trial or proceeding under any provision of any of the Ordinance specified in Sub-section 1, which was pending at the time of the expiry of the said Ordinances as if such trial or proceedings were a trial or proceeding begun under the corresponding section of the new Ordinance. This provision was quite general and would have kept alive all legal proceedings and trials started under any of the section of the former Ordinance. But when this latter Ordinance was about to expire the Governor-General did not issue a fresh Ordinance embodying any provision similar to Section 80(2)(c). In place of it the Criminal Law Amendment Act No. 23 of 1932 was passed which contained a somewhat similar provision in its Section 20, but that provision was very much restricted in its scope and it laid down that any person accused of the commission of an offence punishable under certain specified sections of Ch. 6, Special Powers Ordinance of 1932 (No. 10) may notwithstanding the expiry of the said Ordinance be tried and punished as if such

offence were punishable under or by reason of the corresponding enactment of the new Act. It is to be noted that there was no reference to any of the other sections of the Special Powers Ordinance.

10. The first charge is in respect of an offence committed under Section 17 of Ordinance 10 of 1932 read with Section 21 Ordinance 2 of 1932 and Section 80(2)(c) of Ordinance 10 of 1932, which are not sections in Ch. 6 referred to in Section 20, Criminal Law Amendment Act. It is therefore clear that although the legislature has specifically provided that trials under specified sections should be continued, the Act is silent as regards trials under any of the other sections.

11. The legislature must be presumed to be aware that Section 6, General Clauses Act was inapplicable to Ordinances which expire automatically, and so trials under those Ordinances would not have been protected by Section 6. It was thought fit to provide that trials under certain specified sections should be continued and completed in spite of the fact that the Special Powers Ordinance has expired. The necessary implication is that the ordinary rule which makes it impossible to convict a person under a section of an Ordinance of a temporary Act, which has expired, prevails as regards sections not specified in Section 20, Criminal Law Amendment Act. It necessarily follows that it is impossible now to proceed with the trial of the accused so far as charges framed under such sections of the Ordinance of 1932 are concerned. As regards the second point urged in revision it is contended that there is really no legal evidence on the record to show that the District Congress Committee in fact exists. No affidavit has been filed before us, and it is highly inappropriate at this stage to examine the evidence and decide whether there is any legal evidence at all.

12. The learned advocate for the accused has urged that inasmuch as after the declaration that the District Congress Committee of Fatehpur was an illegal body there is no presumption that the accused, or for the matter of that any other member of that body continued to be a member, it must be presumed that the District Congress Committee has ceased to exist, and that without a positive proof that it is continuing, no prosecution can go on. It is unnecessary to decide this point in this case, but I wish to guard myself against being understood to hold that

in the absence of such positive proof there is presumption that a body which has been declared by Government to be illegal has in fact ceased to exist. I would therefore allow this revision in part and quash the criminal proceedings so far as the first charge is concerned, but not interfere with regard to the second charge.

Mukerji, J.

13. The facts of the case have been stated at length by the learned Chief Justice and it is not necessary for me to state them again. Briefly, the applicant before us was charged before a Magistrate at Fatehpur under two heads: The first charge against him was that having written a letter bearing no date, between 16th January 1932 and 26th January 1932 at Fatehpur, he disobeyed a certain direction given to him by an order dated 12th January 1932 by the District Magistrate of Fatehpur. It is said that by writing that letter the applicant contravened the law as laid down in Section 21 of Ordinance 2 of 1932 and Section 17 of Ordinance 10 of 1932.

14. The second charge against the applicant was that by writing the aforesaid letter he committed an offence under Section 17(2), Criminal Law Amendment Act, 14 of 1908. The Magistrate has not yet decided the case but as soon as the charge was framed the applicant went before the Sessions Judge with an application to revise the proceedings. The learned Sessions Judge having refused to interfere, the applicant came up before this Court and the matter has ultimately come before a Full Bench having regard to the importance of the question raised.

15. The first and most important point for decision is whether the prosecution should now continue having regard to the fact that both the Ordinances 11 and 10 of 1932 have expired. The contention for the applicant is that the trial is now impossible having regard to the present state of the law.

16. Section 6, General Clauses Act, of 1897, does not apply to Ordinances which have expired by lapse of time. Section 6 read with Section 30, General Clauses Act, applies to Acts and Ordinances which have been repealed. That is not the case here. No Ordinance has been re-pealed the Ordinances mentioned have expired by lapse of time. Thus by virtue of Section 6, General Clauses Act, the trial cannot be continued. Act 23 of 1932 which received the assent of the Governor-

General on 19th December 1932 has taken to some extent the place of the expired Ordinances. This contains a provision that in respect of certain offences specified in Section 20, notwithstanding the expiry of the Ordinance (Ordinance 10 of 1932 which permitted the trial of offences committed under earlier Ordinances after their expiry) trial may be continued and the accused person may be punished. But this Section 20 makes no mention of an offence under Section 21 of Ordinance 11 of 1932 or Section 17 of Ordinance 10 of 1932. It follows that the legislature never meant that trials for offences committed under the provisions of law other than those mentioned in Section 20 of Act 23 of 1932 should be continued. In this view the trial on charge 1 of the applicant should not be continued.

17. On the second charge we have been told that there is no evidence on the record sufficient for a conviction of the applicant. Although this Court has very great powers in respect of criminal trials it has never been deemed desirable that the High Court should sift evidence and arrive at a conclusion one way or the other as to whether an offence has been committed or not, where the Magistrate has not yet pronounced his opinion on the facts and no appeal has been heard by the Sessions Judge. On this ground I would decline to interfere with the trial of the applicant on charge No. 2. I would not express any opinion as to the correctness or otherwise of a Bombay case: *Emperor v. Shripad Ramchandra Jog* : AIR1931 Bom129 , cited by the learned Counsel for the applicant. It may lay down a good law, it may lay down a bad law, it may be applicable to the facts of the case or it may not be applicable, the question not having been raised before us, I have not considered the situation. I entirely agree with the order proposed to be passed by the learned Chief Justice.

King, J.

18. I also agree. The first charge against the applicant is in respect of an offence under Section 21, of Ordinance 11 of 1932 read with Section 17, Ordinance 10 of 1932. As both these Ordinances have now expired the question is whether the trial can proceed on the basis of this charge. Section 6, General Clauses Act, 1897, does not apply because the Ordinances in question have not been repealed but

have expired automatically. Section 20, Criminal Law amendment Act of 1932, has made express provisions for the continuance of trials in respect of offences under certain specified sections of Ordinance 10 of 1932 but Section 17 of that Ordinance is not included amongst the sections specified. In my opinion, this is conclusive as showing the intention of the legislature that trials for offences under certain sections of Ordinance 10 should be continued, notwithstanding the expiration of that Ordinance but that trials for offences under other.' sections of that Ordinance which are not specified, should not be continued. The maxim of interpretation 'expressio unius est exclusio alterius' is clearly applicable. We must take it that the legislature intended that the trial of offences under Section 17 of Ordinance 10 should not be continued. As regards the second charge I think it is unnecessary, and indeed improper, to express any opinion at the present stage. It remains to be seen whether the accused can be proved to have assisted in the management of an unlawful association and I express no opinion on that point.