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State Vs. Kishan

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SooperKanoon Citation : sooperkanoon.com/497298

Court : Madhya Pradesh

Decided On : May-10-1955

Reported in : 1955CriLJ1504

Judge : Nevaskar, J.

Appellant : State

Respondent : Kishan

Judgement :
ORDER

Nevaskar, J.

1. This is a reference by the Sub-Divisional Magistrate, First Class, Mhow Under Section 432, Criminal P. C, and involves a question whether the Harijan Ayogyata Niwaran Sanshodhan Vidham, Samvat 2007, No. 63 of 1950 which received the assent of H. H. the Raj Pramukh on 17-5-1950 is a good law.

2. The question arose in connection with prosecution of accused Kishan, a barber and another accused Ramnath Under Section 4 and 5 read with S. & of the Act aforesaid. Accused Kishan. is said have refused his services as a barber though complainant Chenya, a Balai Harijan, was prepared to pay-reasonable charges for the same. Accused Ram-nath is said to have poured out vulgar abuses upon the complainant for his being a member of lower order.

3. On these facts both the accused are being prosecuted and tried. At the close of the trial at the stage of argument question arose whether the Amended Act referred to above can be looked into1 in this case if the question of passing a sentence arises. It was contended on behalf of the accused that the Amendment Act of Madhya Bharat Legislature, Act No. 63 of 1950 is contrary to Article 35 of the Constitution and hence ultra vires the powers of the body.

Article 17 of the Constitution provides as follows :

Untouchability' is abolished and its practice in any form is forbidden. The enforcement of ainy disability arsing out of 'untouchability' shall be an offence punishable in accordance with law.

Article 35 then provides :

Notwithstanding anything in this Constitution:

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws :

(i) with respect to any of the matters which under Clause (3) of Article 16, Clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in Sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the- matters referred to in Sub-clause (i) of (a) or providing for punishment for any act referred to in Sub-clause (ii) of that clause shall subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.

4. From these two Articles when read together it appears that under the former there is a solemn declaration that 'untouchability' in any form is forbidden, It is totally abolished. The Article further lays down that the enforcement of any disability arising out of stigma of untouchability is made an offence under Part III of the Constitution and the actual enumeration of offences and penal ties therefor are left to be provided for by am Act of Parliament. This must have been intended to bring about uniformity in the matter of legislation on tin's subject throughout India.

Powers of State Legislature to make laws prescribing punishment for those acts which are declared to be offences under Article 17 are withdrawn by Article 35 of the Constitution and are vested in the Central Parliament. The provision has a prospective application and laws in force in the State before' the commencement of the Constitution are specifically saved and are to continue until altered, repealed or modified or amended by Parliament.

5. The Amendment Act No. 63 of 1950 is made after the promulgation of the Constitution and deals with punishment in respect of acts which are declared under Article 17 of the Constitution to be offences.

6. The Amendment Act therefore in so far as it deals with the question of punishment so as to amend or modify the law in. force in Madhya Bha- rat at the time of the commencement of the Constitution trespasses upon the legislative field secured for exclusive operation for Parliament ancfc therefore being contrary to Article 35 is invalid.

7. Government Advocate Mr. Sharma tried to contend that the acts for which the accused are beiing prosecuted i.e., those Under Sections 4 and 5 of the 'Harijan Ayogyata Nivaran Vidhan' 1950 do not amount to enforcement of disability arising out of uotouchability.

8. The argument has hardly any substance. The people belonging to higher classes in the society when they refuse professional service to a, 'Harijan' on the ground of his being Harijan seek to perpetuate and enforce disability arising out of untouchability when they offer insults to a Harijan on the ground of his being so, they do the same thing.

9. The acts clearly fall within the inhibition contained in Article 17 of the Constitution and are clearly offences as described therein.

10. The law in force at the commencement of the Constitution is saved until Parliament enters the field of legislation so as to affect it. But after the commencement of the Constitution powers of the State Legislature so as to amend or modify that law are gone,

11. No decision of this Court or of Supreme Court of this question is brought to my notice.

12. The reference is therefore accepted and it is declared that the Amendment Act No. 63 of I 1950 in so far as it deals with the question of sentences so as to amend the law which was in force at the commencement of the Constitution is ultra vires the powers of Madhya Bharat Legislature and is to that extent void.

13. A copy of this judgment may be sent to the State Government.

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