

State Vs. Fatehchand

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Court : Madhya Pradesh

Decided On : Dec-08-1954

Reported in : 1955CriLJ959

Judge : A.H. Khan and; Nevaskar, JJ.

Appellant : State

Respondent : Fatehchand

Judgement :
ORDER

A.H. Khan, J.

1. This reference has been made by the learned Sessions Judge, Indore, recommending that the charge framed by the Additional City Magistrate, Indore, against Fateh Chand Under Section 8, Madhya Bharat Essential Supplies (Temporary Powers) Act (Act 3 of 1948), read with Clause 16(1), Cotton Textile (Control) Order of 1948 be quashed. The offence is alleged to have been committed between 7-12-1948 and 21-1-1949, when the Madhya Bharat Act No. 3 of 1948 was in force. This Act was repealed on 17-8-1950 by Section 17(4) of the Central Act known as the Essential Supplies (Temporary Powers) Act (24 of 1946) as extending to Part B States by the amending Act No. 52 of 1950.

2. The main grounds upon which the reference is based are:

1. that on the repeal of the Madhya Bharat Essential Supplies (Temporary Powers) Act 1948 by the Central Act referred to above, prosecutions pending under the Madhya Bharat Act and not concluded before 17-8-1950 could not be continued, since the repealing Act did not provide for such continuance.

2. that the General Clauses Act of the Centre (Act 10 of 1897) having not been extended to Madhya Bharat, will not apply so as to attach the provisions of Section 6(e) thereof to the present case.

3. After briefly stating the facts of the reference and after listening to the lengthy and elaborate arguments of the learned Counsel of both the sides, the point of focus in this case is really one, namely, to determine the effect of the repeal of the Madhya Bharat Essential Supplies (Temporary Powers) Act by the Central Act (Act 24 of 1946) as extended to Part B States on 17-8-1950, whether prosecution launched under the Madhya Bharat Act can be continued after the repeal? This will obviously depend on the determination of the question, whether the case attracts the application of Section 6, General Clauses Act and if it does not, whether the principles of it can be extended to construe the repeal.

4. Before considering the above proposition, I must briefly refer to three text books - Maxwell on the Interpretation of Statutes, Craies on the Statute Law and Statutory Construction by Crawford, to which copious references were made. Curiously enough, the learned Advocate-General and the learned Government Advocate, who oppose the reference and so also Messrs. Bharucha, Rege, Bhargava and Sanghi and others who arrayed on the side of the accused, all relied upon the above books, each seeking to make a point in his favour.

The authority of the books is undoubted and they are of inestimable help to every one who seriously makes their study a point. And yet it was interest-Ing to hear diverse arguments based on the same books - each reading in the book the point he sought to make out. What is the effect of the repeal of an Act by another Act is certainly a question which is of paramount importance, but I think that for all practical purposes, the question is settled both by enactments and judicial pronouncements not of the hoary past, but of comparatively recent years, I would, therefore, make an attempt to state the law as it appears to inc.

5. The rule of English Common Law was that if an Act was repealed, then in the absence of any provision in it to the contrary, it was deemed 'that the repealed Act never existed except as to matters and transactions past and closed'. See - 'Bennet v. Tattom' (1918) 118 LT 788 (A), for a discussion of this proposition. This Common law doctrine was expressed in very forceful language by Tindal C. J. in - 'Kay v. Goodwin' (1830) 6 Bing 576 (B), where he said:

I take the effect of a repealing statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.

The language of hyperbole thus employed to express the simple proposition that from the date of repeal, the repealed Act ceased to apply to past acts not concluded by the time the repeal came, gave rise to many complications. Certainly very forceful and picturesque phraseology is used when it is said that the effect of a repeal of a statute was to obliterate a statute from the records of the Parliament as if it was never passed, but nonetheless both as a matter of history and record, the repealed Act had its own place In the Statute Book,

This Common Law doctrine overlooked the principle that this extraordinary view disturbed the harmony and order in the realm, in so far as the vested rights became disturbed and offenders thought that if they transgressed any law and managed to escape liability for such time as the law was repealed, they would profit by their action. This was more true of cases falling under a temporary statute. It was unjust and against the principles of natural justice that a man who observed the law when it was in force should be treated on an equal footing with the person who violated it and who seeks immunity merely because the law is repealed. This amounted to putting a discount on good conduct.

Due to these and other problems, which constantly arose with the repeal of a statute and also to numerous cases of hardship, which arose out of such an interpretation, the first step which was taken to remedy it was to resort to the practice of inserting a proviso or a saving clause in all repealing statutes, the effect, of which was that the repeal of the statute did not affect rights, privileges,

penalties and forfeitures that had accrued under the repealed statute. Thus the saving clause in the repealing Act became a regular feature of all future legislation in England. The saving clause came to be looked upon as highly desirable for practical as well as equitable purposes.

This process of the insertion of a saving clause in each and every statute was felt burdensome as the output of legislation substantially increased, the second step adopted was that with a view to consolidate enactments relating to the construction of Acts of Parliament and abridging the statutes, an Act was passed in 1851, known as Lord Brougham's Act. This Act contained not only the interpretation of some words that were constantly and frequently employed in the Acts, but it also laid down rules of construction. This was followed in England by another Act, named as the Interpretation Act of 1889, which is in force today.

The Indian Law kept pace with English legislation and on the same pattern, two enactments were passed in India as well. The first Act of this description came in force in 1868 and came to be known as the General Clauses Act and was followed by another Act of 1887 bearing the same name. In order to consolidate the above two previous Acts, Act 10 of 1897, namely the present General Clauses Act, was enacted.

It is said that this Act did not create any new legislation, but its object was; (1) to shorten the language of statutory enactments (2) to provide for uniformity of expression, and (3) to safeguard against accidental slips in the future legislation., The Act is euphemistically called 'The Legislative Dictionary' and the justification for calling it so is that all Central Acts are to be interpreted and construed with its aid.

6. Thus it would appear that although historically in the 18th century and also in the first half of the 19th century, when an Act was repealed in the absence of a saving clause, the repeal Had the effect of wiping away all rights and liabilities under the repealed Act, except as to transactions past and closed, yet subsequent development in England gave a new direction and changed the complexion of Common Law, which Tindal G. J., had enunciated in - 'Kay v. Goodwin (B)', already referred to. It is now abundantly clear that the Judges in the twentieth

century will have to give the law on the subject a new orientation. No doubt now and then, the vicissitudes through which the law passed may be referred to, but for all practical purposes the Law of the land is altered and changed.

7. In considering the effect of the repeal of the Madhya Bharat Essential Supplies (Temporary Powers) Act (Act 3 of 1948) by the Act of Central Legislature, the Essential Supplies (Temporary Powers) Act (Act 24 of 1946), we have first of all to determine whether in construing the Central Act, we can invoke the provisions of the General Clauses Act to aid the interpretation.

8. The learned Sessions Judge, who made the reference has expressed the view that the General Clauses Act (Act 10 of 1897), has no force in Madhya Bharat and the learned Counsel of the accused support that view. The learned Advocate-General and the learned Government Advocate, relying upon - 'Hubbalal v. State of Madhya Bharat' AIR 1955 Madh-B 36 (C), contend that it applies to Madhya Bharat as well.

9. The contention put forward by the learned Counsel of the accused is that by Part B State Laws Act (Act 3 of 1951) a number of Central Acts were extended to Part B States, that in the list of the Acts so extended, the General Clauses Act of 1897 is not included. It is also urged that when the Acts of the Central Legislature were intended to be applied to the States (formerly governed by Indian Princes), which were merged in the Indian Provinces, the Merged States Laws Act (Act 59 of 1949) was passed and thereby the General Clauses Act was expressly made applicable to such areas.

It is argued that in the absence of any provision directly extending the General Clauses Act to Madhya Bharat, it cannot be deemed to have any operation in Madhya Bharat. As for the decision given in AIR 1955 Madh-B 36 (C), some doubt is felt at the Bar whether any Act can be passed without any regard as to its territorial application.

10. In considering all these arguments, it must be frankly conceded that there is no Act either of the Central Legislature or of the Madhya Bharat Government, which extends the General Clauses Act of 1897 directly to Madhya Bharat. Technically

the contention of the learned Counsel of the accused is true. But what my learned brother Dixit J. meant by referring to the absence of territorial extent of the General Clauses Act, was not that the scope of the Act was limitless, but that having regard to the nature of the Act, it must be deemed to be a part and parcel of all the Central Acts, in that it guided the interpretation and construction of all Central Acts and that whenever any Central Act was extended, the General Clauses Act would follow it, because without its aid the Central Act would not lend itself to correct interpretation.

That is why he said that 'its application (i.e., the application of General Clauses Act) is primarily with reference to Central Acts or Regulations... find that it is in this sense a part of every Central Act'. I am in complete accord with the view of my learned brother and I would like to fortify that position by adding a few observations of my own.

11. We must first try to ascertain the nature and object of the General Clauses Act. It was usual as I have said before till 1851 in England to give definitions of the words and terms used in a statute in the earlier part of it and if it was a repealing Act, to insert a saving clause at the end. The process lent itself to lengthy legislation and it was decided that instead of inserting the same thing over again and again in each and every Act, with a view to avoid repetition, and in order to resort to economy of words and also to provide for the uniformity of expression, the Interpretation Act was brought into existence.

As I had occasion to say earlier, the Parliament enacted a sort of Legislative Dictionary. In this context of the matter what was left unsaid in an Act, but what was nevertheless an essential part of the Act, was found in the Interpretation Act. Thus it will be obvious that the Interpretation Act or for the matter of that, the General Clauses Act (which is the opposite number of the English Interpretation Act) was an Act which supplemented all statutes. The one was incomplete without the other. On the surface, a statute and the Interpretation Act may possess separate entities, yet in reality they are one. This being so, wherever an Act of the Parliament would be made applicable, there the General Clauses Act would also go.

12. There is one more reason why particularly in the case under our consideration, I think that the Indian Parliament as a matter of fact extended the General Clauses Act to Madhya Bharat along with the Central Essential Supplies (Temporary Powers) Act of 1946. I invite reference to Clause 31 of Section 1 of the 1946 Act, which reads as follows :

1. (3) It shall cease to have effect (on the thirty-first day of January 1953) except as respects tilings done or omitted to be done before (that date), and Section 6, General Clauses Act, 1897 (10 of 1897) shall apply upon the expiry of this Act as if it had then been repealed by a Central Act.

13. It is obvious that at the expiry of the Act, Section 6, General Clauses Act is expressly made applicable to Madhya Bharat as well. The effect of the above clause is that at its expiry in 1955, all rights, liabilities, investigation and legal proceedings shall continue as if the Act has not expired. Now if the General Clauses Act is riot applicable in the beginning (i.e., on the date the Essential Supplies (Temporary Powers) Act of 1946 was extended to Madhya Bharat, how shall it be effective on its expiry. The question may well be asked that if the General' Clauses Act already applies to every Central Act, where was the need of inserting this provision in the Essential' Supplies (Temporary Powers) Act. The reason, which is not far to seek, is that S. fr, General Clauses Act as a rule applies to cases where one Act is repealed by another. But a temporary legislation, which expires by the efflux of time is not an Act which is repealed by another enactment. And for this purpose it was necessary to insert this Statutory provision.

14. I am for the above reasons of the view that whenever any Central Act is in force in Madhya Bharat, there the General Clauses Act of 1897, would also be deemed to have been extended.

15. Mr. Sanghi, the learned Counsel, supporting the reference has further argued that even if the General Clauses Act of 1897 is held to be in force in Madhya Bharat, Section 6 of it says that unless a different intention appears, the repeal shall not affect pending proceedings and that the proviso to Section 17(4) shows a different intention. He contends that proviso to Clause 4 of Section 17, Essential Supplies (Temporary Powers) Act of 1946, lays the limit to which the past

transactions are protected and because the intention is restricted to what has been said in the proviso, Section 6 cannot be invoked any more.

The proviso referred to by him reads as follows: 'Provided that any order made and in force immediately before that day in the said State shall continue in force and be deemed to be an order made under this Act, and all appointments made, licenses or permits granted, and directions issued, under any such order and in force immediately before that day shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act.

16. On the basis of this, Mr. Sanghi contends that because a different intention appears from this proviso, Section 6 is no more applicable. But the proviso does not throw any light on the intention as referred to in Section 6, General Clauses Act, but it really embodies the provisions of Section 24, General clauses Act, which refer to the continuation of orders etc., issued under enactments repealed and re-enacted. I do not find 'different intention' in the proviso so as to oust the application of Section 6, General Clauses Act to the present case.

17. In opposing the reference, the learned Advocate-General and the learned Government Advocate have submitted that even if the General Clauses Act does not apply in terms, its principle should be extended to a case, such as the present one. In support of their submission, they have cited the following authorities : - 'National Sewing Thread Co. v. James Chadwick and Bros, Ltd.' : [1953]4SCR1028 , in which the above decision has been followed; - *Tiare Dusadh v. Emperor* AIR 1944 FC 1 (E); - *'Sua Das v. The State'* AIR 1952 Ajmer 9 (F); - *'Emperor v. Ranchhodlal'* AIR 1948 Bom 370 (FB) (G).

18. The learned Counsel, who support the reference take their stand on - *'Keshavan v. State of Bombay'* : 1951 CriLJ680 , and contend that on p. 130, column 2, it is observed that 'it is well known that on the expiry of a temporary statute, no further proceedings can be taken under it, unless the statute itself saved pending proceedings'. It is enough to say that the Madhya Bharat Essential Supplies (Temporary Powers) Act (Act 3 of 1948) in spite of its being termed 'Temporary Powers Act' is not a temporary statute because it does not say when it will cease to have effect. Its name no doubt suggests that it is a temporary law, but

there being no reference in it as to when it will terminate, it cannot be called a temporary statute. On the face of it, it purports to be law, which does not possess the features of temporary legislation.

19. Moreover, a distinction should be made between statutes that cease to exist by efflux of time and such is a temporary statute), and statutes that are repealed. The Madhya Bharat Essential Supplies (Temporary Powers) Act did not cease to exist because it had run out its allotted span, but it was repealed by a Central Statute, namely, the Essential Supplies (Temporary Powers) Act of 1946. The moment a statute is repealed, no matter whether it is a temporary or permanent statute, the repeal attracts the provisions of Section 6, General Clauses Act.

20. In AIR 1953 SC 357 (D), their Lordships of the Supreme Court have expressed the view that

assuming however, but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for any reason apply, we see no justification for holding that the principles of construction enunciated in these provisions have no application for construing these charters.

This decision was followed in AIR 1955 Madh-B86 (C), and there is no doubt that the Supreme Court case is an authority for the proposition that if for some reason or other, the General Clauses Act cannot be applied in terms, its principles can be extended to construe the law. It being so, in the alternative I hold that even if strictly speaking the General Clauses Act does not apply (and it is not conceded that it is so) then by extending the principles of Section 6, General Clauses Act, legal proceedings can be instituted and continued for acts done during the continuance of the Madhya Bharat Essential Supplies (Temporary Powers) Act of 1948.

21. Having regard to the authority of the Supreme Court : [1953]4SCR1028 , I consider it unnecessary to examine other cases cited before me.

22. The learned Government Advocate Mr. Sharma has suggested to us another way of examining the proposition before us. Relying upon the authority of - 'Firm

Dan Mai Parshotam Das v. Firm Babu Ram Chhote Lai' AIR 1936 All 3 (I), he seeks to make a distinction between Acts which have been simply or merely repealed and Acts which have been repealed and re-enacted.

Sulaiman C, J. in the above case observed that: 'It seems that Section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, Section 6(e), General Clauses Act, is not applicable, and we would have to fall back on the provisions of the new Act itself.

23. The learned Government Advocate has invited our attention to a passage on p. 657 occurring in the Construction of Statutes by Crawford, an American Author. I can do no better than to quote it.

Often the Legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the same enactment re-enact all or certain portions of the pre-existing law. Of course, the problem created by this sort of legislative action involves mainly the effect of repeal upon rights and liabilities which accrued under the original statute. Are those rights and liabilities destroyed or preserved? The authorities are divided as to the effects of simultaneous repeals and re-enactments. Some adhere to the view that the rights and liabilities accruing under the repealed Act are destroyed, since the statute from which they sprung has actually terminated, even though for only a very short period of time.

Others, and they seem to be in majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the re-enactment neutralizes the repeal, thereby continuing the law in force without interruption. Logically, the former attitude is correct, for the old statute does cease to exist as an independent enactment, but all practical considerations favour the majority view. This is so even where the statute involved is a penal act.

24. This passage, the learned Government Advocate, contends is authority for the proposition that where an Act repealed an Act, and simultaneously re-enacted it (as in the case before us), then the re-enactment has the effect of neutralising the repeal and in consequence the law will be deemed to be in force without interruption. In the case before us the Madhya Bharat Essential Supplies (Temporary Powers) Act was not only repealed by the Central Essential Supplies (Temporary Powers) Act of 1946, but the law on the subject was also re-enacted by the Act. According to this view, the law being in force uninterrupted, prosecution for past transaction should be launched under the new Act:.

25. Cut having already held (that in the first place the General Clauses Act applies in terms and in the second place, if it does not strictly apply, then its principles can be invoked to construe the Act before us, it is unnecessary to consider the new approach" in the matter.

26. In the view that I take of the matter, both on authority and reason, I hold that proceedings before the Additional City Magistrate, Indore are an order and the reference is in consequence rejected.

Kevaskar, J.

27. The present reference and other criminal appeals and revisions placed along with it before us involve among other things, the same question viz., whether after the repeal of Madhya Bharat Essential Supplies (Temporary Powers) Act No. 3 of 1948 by the Essential Supplies (Temporary Powers) Amendment Act, No. 52 of 1950 (Central Act) which extended the application of Essential Supplies (Temporary Powers) Act No. 24 of 1946 to Part B States, the prosecutions either pending or to be instituted in respect of the acts amounting to offences under the Madhya Bharat Act are maintainable, can be continued or instituted and maintained. The learned Sessions Judge, Indore, who has made the reference in Cr. Revn. No. 109 of 1952 and other cases, took the view that such prosecutions, if pending, are rendered abortive or abate as he calls them.

The reasons given by him for taking this view is that although the Essential Supplies (Temporary Powers) Amendment Act No. 52 of 1950 repealed the

Madhya Bharat Act No. 3 of 1948, and extended the application of the Essential Supplies (Temporary Powers) Act No. 24 of 1948 (which will be called 'the Central Act' hereinafter), there is nothing in the amending Act to indicate that the rights, liabilities or penalties acquired, accrued or incurred under the State Act are not to be affected. He further holds that the General Clauses Act (Central) No. 10 of 1897 has not been extended specifically to Part B States, and therefore, Section 6 of the latter Act cannot be applied while construing the effect of repeal. The result of this legislative lacuna according to him, is that the offences committed under the pre-existing law cannot now be punished.

28. The question is of great general importance and there is no doubt that it needs serious consideration.

29. Before we consider the pros and cons of this question it will be useful to state the historical facts leading to the extension of the Central Act to Part B States.

30. Prior to integration of Princely States now forming Madhya Bharat each of the component State was a Sovereign State. Each of these States had an Act of its own on the subject of Essential Supplies and Essential Supplies (Temporary Powers) Act No. 24 of 1946 which applied to British India; then was inapplicable there. After the integration of States into Madhya Bharat, Act No. 3 of 1948 was passed. This was known as Essential Supplies (Temporary Powers) Act No. 3 of 1948. This practically reproduced the provisions of the Central Act with slight changes of minor character except that this Act did not specify the duration for which the Act was to remain in force in Madhya Bharat. In that respect it differed from the Central Act and cannot strictly be called a 'temporary law'.

It neither specified the period of its duration, nor to any event on the happening of which it was to cease to have its effect. Under this Act, in pursuance of the rule making power, various orders and notifications were made and issued by the Government of Madhya Bharat. Then the Amending Act (Central) No. 52 of 1950 was passed. This extended the operation of the Central Act No. 24 of 1946 to all Part B States excepting the State of Jammu and Kashmir. Under Clause 2 of Section 1 of this Act the Central Government was authorised to appoint a date on which the Central Act was to be brought into force in the aforesaid Part B States,

This date was so appointed by a 'Gazette' Notification by the Central Government. It was 17-8-1950.

By the Amending Act a Clause (4) was added in Section 17. It runs as follows :

(4) If immediately before the day on which this Act comes into force in a Part B State, there is in force in the State any law which corresponds to this Act, such corresponding law shall on that day stand repealed in so far as it relates to any of the essential commodities governed by this Act; Provided that any order made and in force immediately before that day in the said State shall continue in force and be deemed to be made, granted or issued in pursuance of this Act.

31. The question for consideration is what is the effect of the repealing provision in this clause as regards the acts which amounted to offences punishable under the pre-existing Act prior to its repeal.

32. In view of these facts and the provisions aforesaid the principal points pressed on behalf of the accused are as follows ;

1. Prior to 17-8-1950 the Madhya Bharat Act was in force and notifications and orders, contravention of which is alleged, in these cases, were made under that Act.

2. Section 8 of the Madhya Bharat Act provided for a penalty in respect of any contravention of an order made or deemed to be made Under Section 4 of that Act subject to certain exceptions.

3. The repealing provisions contained in Section 17(4) of the Central Act had the effect of repealing the entire Act except that the orders and notifications issued thereunder survived and became orders and notifications under the Central Act as applied to that territory.

33. Section 8 of the Madhya Bharat Act therefore was repealed.

34. The effect was that although the acts committed prior to the date of repeal amounted to an offence Under Section 8 of the repealed Act, they cannot be punished under that section. Then although the notifications and orders issued

Under Section 4 of the repealed Act became notifications and orders Under Section 3 of the Central Act, Section 7 of the latter Act cannot be availed of for punishing acts which when committed did not amount to offences under that section of the substituted Act, The result is that all pending prosecutions are rendered ineffective for punishing tile accused for the alleged offences.

35. In this connection it was put forward on behalf of the accused that under modern systems of civil law in the absence of express provision or one arising by necessary implication, an act in order that it should be considered to be an offence must be an offence both when it was committed and when the punishment is sought to be imposed. Therefore, it is argued that, if an act is not an offence, when committed, but became so later on, the alleged offender cannot be punished. Similarly if an act be an offence when committed but ceased to be so when the penalty is sought to be imposed, then too he cannot be punished. It is only when both these circumstances co-exist that a person can be penalised.

36. Secondly it was contended that there is no provision in the Amendment Act No. 52 of 1950, whereby the Madhya Bharat Act was repealed, similar to Section 6, General Clauses Act, 1897 (Central).

37. Thirdly, it was urged that Section 6, General Clauses Act is a legislative departure from the common law principle enunciated in point No. 1 and in the absence of statutory provision principle underlying Section 6 cannot be invoked.

38. Last point taken was that General Clauses Act, 1897 (Central) cannot follow every Central Act in every nook and corner of India. It can only apply like every other Central Act to such parts of India to which it has been specifically applied. No distinction in this respect can be made between the provisions of General Clauses Act 1897 and any other Central Acts.

39. Learned Advocate General and the Government Advocate who represented the opposite view, on the other hand contended that General Clauses Act, 1897 is an Interpretation Act of the Centre and it follows every Central Act as a matter of course. The Act has no territorial application but is applicable to all Central legislations irrespective of the territorial limits within which the latter operates. The

General Clauses Act therefore applies in terms and by reasons of Section 6 of that Act the penalties incurred under the pre-existing statute cannot be affected and are capable of being imposed as if the repealing Act had not been passed.

This will also justify the institution and continuation of any legal proceeding in respect of the same. Reliance is placed for this part of the contention upon the decision of this Court reported in AIR 1955 Madh-B Sfi (C). In the alternative it is urged that even if the General Clauses Act be held for the inapplicable by reason of the absence Of express extension of it to Madhya Bharat, still the provisions contained in Section 6 of that Act, being based on general principles regarding interpretation of statutes are applicable even where the Act is inapplicable in terms. Reliance in this connection is placed upon the decisions reported in AIR FC 1 (E); AIR 1953 SC 357 (D); AIR 1952 Aimer 9 (F) and AIR 1955 Madh-B 36 (C).

40. Lastly, it is urged that Section 6 or general principles thereunder can only apply to the cases of absolute repeal. But where there is repeal followed by re-enactment of practically the same provisions, the rights acquired or accrued, liabilities and the penalties incurred remain intact as there is no repeal.

41. On these respective contentions of the two sides the only questions to which the entire controversy is reduced are two:

1. Does the General Clauses Act applying terms to construe the Essential Supplies (Temporary Powers) Amendment Act No. 52 of 1950?

2. Do the principles contained in Section 6 of the General Clauses Act No. 10 of 1897 be held applicable, if the Act does not apply, for the purpose of construction of aforesaid Act No. 52 of 1950?

42. I propose to consider each of these questions in order hereafter.

43. As regards the first question, General Clauses Act, 1897, prior to 14-8-1947 applied only to those territories which were comprised in what was known as British India. After that day Dominion of India came into existence and the Act continued to apply to the same territories. This state of affairs continued till the promulgation of the Constitution. Till the promulgation of the Constitution Central

Acts were not applicable by their own force to Indian States now known as Part B States. The individual States, and after merger the union of such princely States were sovereign bodies and the rulers of those States prior to merger and the legislatures established after the merger, exercised sovereign powers of legislation.

From this historical retrospect it follows that till the Constitution came into force provisions of General Clauses Act did not apply by their own force and the Act was inapplicable to the States which (ire now known as Part B States. Till the Constitution came into force, therefore, there were territorial limitations to this Act as to all other Central Acts.

44. The Constitution did not provide for automatic extension of all Central laws in respect of the subjects contained in Central list or Concurrent list but it preserved by Article 372 all existing laws except those which were repealed or altered expressly or by implication under the Constitution itself. The State laws therefore continued to have their force and effect until a suitable legislation was made by Parliament on the subject in pursuance of the power under the Constitution.

Thereafter several Acts which were applicable to British India prior to 14-3-1947 and which had become Acts applicable to territories other than Part B States were extended by a process of amendment. Criminal Procedure Code Amendment Act extended the application of Criminal Procedure Code to Part B States. Civil Procedure Code Amendment Act, 1950 extended the application of Civil Procedure Code, 1908 to Part B States and in 1951 several Central Acts were extended to Part B States by what is known as Part B States Extension of Laws Act of 1951.

45. Specific provisions similar to Section 6, General Clauses Act were made in each of the amending Acts of the Centre referred to above. However, General Clauses Act, which only applied to the territories of India other than territories of States now forming part of what is known as Part B States, was not specifically extended by any amending Act of the Parliament. There is no express provision in the Constitution by which it got itself extended to Part B States; nor does this result follow by necessary implication on account of any provision in the Constitution. No

Act is passed by the Parliament to bring about that result. It is therefore difficult to resist the contention that the General Clauses Act 1897 is not applicable in terms to Part B States.

46. The reasoning adopted by Dixit J. in AIR 1955 Madh-B 36 (C), that in General Clauses Act 1897 there is no territorial extent clause and hence it is bound to follow every other Central Act if the same is extended to any territory under the Constitution, is highly convenient, plausible and attractive; but it is difficult to hold that by reason of the absence of territorial extent clause there were no territorial limitations to the applicability of the Act or that no Parliamentary legislation was necessary after the Constitution to extend its application to Part B States.

To my mind, the meticulous care taken in appending, to every legislation of Parliament, when like same is extended to Part B States, provisions similar to Section 6 of the General Clauses Act is an indication that General Clauses Act is not expressly applicable to every Central legislation the moment it is extended. It is submitted by the learned Advocate General that these provisions are inserted in the amending acts by way of abundant caution and no inference can be drawn merely by their existence that the Act is inapplicable to Part B States. It is true no doubt, that insertions of clauses in a legislation by way of abundant caution are not unknown and some times a provision is inserted even at the risk of repetition. But this cannot be said of the entire Act. It may be that General Clauses Act itself is unnecessary and it is possible to follow the principles even without express legislation. But where a Central Act is thought of, its applicability and enforcement has to be brought about by an express legislation of the Parliament. There is no such law made by Parliament nor is there anything in the Constitution to enable us to hold that the Act has been made applicable to Part B States. One argument which seems to have appealed to my learned brother Khan J. is that the fact that the General Clauses Act is applicable can be inferred by reason of the provisions of Section 1(3) of the Act itself. This section reads as follows :

1(3) It shall cease to have effect (on the thirty first day of December, 1952) except as respects things done or omitted to be done before (that date), and Section 6, General Clauses Act 1897 (10 of 1897) shall apply upon the expiry of this Act, is if

it had then been repealed by a Central Act.

47. It is clear to me that this provision is inserted specifically as Essential Supplies (Temporary Powers) Act No. 24 of 1946 is a temporary statute and would ordinarily expire on 26-1-1955 and Section 6, General Clauses Act would not apply as the Act in question would not cease to be in force by reason of repeal in the absence of a specific provision to that effect. There is nothing in this provision peculiar to Part B States and the provision is intended for the entire field of its operation. It certainly indicates an anxiety on the part of the framers of the Act that provisions of Section 6 ought to apply although the Act might come to an end without an express repeal. From this provision in my humble opinion it is not correct to reason that the General Clauses Act is applicable to Part B States by anything contained in the Essential Supplies (Temporary Powers) Act No. 24 of 1946 or by the Amending Act No. 52 of 1950.

48. Mr. Sanghi who appeared for the opponent in Cr. Revn. No. 2 of 1954 which is also being heard on this point along with the reference in question, tried to argue that even if Essential Supplies Act (and hence Section 6 of that Act), applies still there are indications of contrary intention in the Essential Supplies (Temporary Powers) Amendment Act No. 52 of 1950, which has inserted a proviso to Clause 4 of Section 17. This proviso reads as follows:

Provided that an order made and in force immediately before that day in the said State shall continue in force and be deemed to be an order made under this Act, and all appointments made, licenses or permits granted, and, directions issued, under any such order and in force immediately before that day shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act.

49. Argument probably is that since the saving relates only to orders made and in force immediately before the application of the Central Act, as well as to appointments made, licenses or permits granted and directions issued under such orders, we should infer that there is no saving as regards the rest.

50. In view of the view I take as regards the applicability of the General Clauses Act in terms to Part B States, it is unnecessary to consider this reasoning but if I were required to consider it I would be inclined to hold that the argument is not tenable.

51. This brings us to the second question viz., whether the principles contained in Section 6, General Clauses Act can be invoked and applied while construing the effect of repeal of the Mulhalla Bharat Essential Supplies (Temporary Powers) Act No. 3 of 1948 by the Essential Supplies (Temporary Powers) Amendment Act No. 52 of 1950 particularly when it relates to penal liability under the repealed statute.

52. The subject of simultaneous repeal and re-enactment is dealt with by Crawford in his work entitled Statutory Construction in Section 322 as follows:

Often the legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the Same enactment re enact all or certain portions of the pre-existing law. Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statute. Are those rights and liabilities destroyed or preserved? The authorities are divided as to the effect of simultaneous repeals and re-enactments. Some adhere to the view that the rights and liabilities accruing under the repealed Act are destroyed, since the statute from which they sprung has actually terminated even though for only a very short period of time.

Others, and they seem to be in majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the re-enactment neutralizes the repeal, thereby continuing the law in force without interruption. Logically, the former attitude is correct, for the old statute does cease to exist as an independent enactment, but all practical considerations favour the majority view. This is so even where the statute involved is a penal act.

53. The author considered the question on the basis of American decisions and although he was impressed by the logic of the first view he had to concede that second was the view held in the majority of decisions and is more practical.

Although actual cases in which the latter view was taken are not placed before us, we may assume that there was no specific provision in the later statute, similar to one in Section 6, General Clauses Act. For had there been anything specific, there would be no occasion to consider the logic or practicability of the one or the other of the view.

54. In AIR 1953 SC 357 (D), one of the questions for consideration before their Lordships was, whether principles underlying Section 8, General Clauses Act can be applied and followed in those cases where the terms of Letters Patent granted to various High Courts had to be construed. Their Lordships find that the canon of construction contained in Section 38(1), English Interpretation Act and Section 8, General Clauses Act (Central) is one of general application where statutes or Acts have to be construed.

Their Lordships further held:

Assuming however but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for any reason apply, we see no justification for holding that the principles for construction enunciated in those provisions have no application for construing these charters.

55. This decision of their Lordships of the Supreme Court does indicate that even where the provisions of the General Clauses Act 1897 cannot be applied, principle embodied in certain of its provisions can usefully be followed in the matter of construction. Section 38(2), Interpretation Act and Section 6, General Clauses Act also incorporate a rule as to constructions of statutes and is of a declaratory nature and except in those cases where there are indications to the contrary, in the context, then there is no reason why the same may not be followed as a principle of sound reason.

56. In the case of this Court reported in AIR 1955 Madh-B 36 (C) and referred to earlier in this judgment, the Division Bench took the view that even if the provisions of General Clauses Act, be held inapplicable in terms, thus can be no justification for holding that the general principles of construction embodied in the Act can have no application in the construction of Central Acts in force in Part B

States.

57. In AIR 1952 Aimer 9 (F), similar view was taken and reliance in this connection was placed upon decision of Federal Court reported in AIR 1944 FC 1 (E). 'In re, Chockalingam' AIR 1945 Mad 521 (J), Kuppuswami Ayer J. applied the principles embodied in Section 6, General Clauses Act to cases of violation of orders under News Paper Control Order 1942, when tins latter order was superseded by News Paper Control Order 1944. He held that the provisions of General Clauses Act, though they do not apply as such, can be looked into as a rule of precedence. This was a case involving penal consequences.

58. Mr. Sanghi tried to distinguish some of these cases on the ground that every case ought to be considered to have been decided on its own facts and that excepting the Ajmer case in none of the other cases question regarding applicability of the provisions of Section 6, General Clauses Act contains both matters viz., common law principles accepted by the laws of all civilised nations as well as legislative departures from common law rules. Where it is the former, the principles contained in particular provisions of General Clauses Act can be followed. But where it is the latter, then this cannot be done. He further urged that the provisions of Section 6 fall in the second of the aforesaid two categories.

To my mind the distinction sought to be made by Mr. Sanghi is artificial and it is not easy to disentangle what is a common law principle and what is a legislative departure. In my opinion the Act indicates a modern trend of thought in the matter of construction and embodies generally accepted principles of construction of statute law.

59. At any rate, we will be adhering to the view prevalent in other parts of India in the matter of construction of Central Act and thereby avoiding inconsistency.

60. Mr. Sanghi also tried to urge that there must be something to construe before we resort to rules of construction. Where we have to add something to what is already expressed in the statute, we do not construe it but interpolate. Under particular] cases this argument may have substance but it cannot be usefully employed where we have to construe a Central Act and General Clauses Act 1897

provides a guide in doing so.

61. Copious references were made by counsel on either side to the decision of their Lordships of Supreme Court in AIR 1951 SC 128 (H). To my mind in view of the specific pronouncement of their Lordships in the later case reported in AIR 1953 SC 357 (D), it is unnecessary to consider the submissions of either side bearing on that case.

62. The learned Government Advocate wanted us to construe the provision contained in the proviso to Section 17(4) itself to be such as to import the same legal consequences as those arising by reason of specific provisions of the nature contemplated Under Section 6, General Clauses Act. He tried to argue that since the notifications, orders, etc., under the Madhya Bharat Act are by statutory fiction taken to be those under the Central Act, the Central Act itself is, as it were, antedated in its application to Madhya Bharat or for the matter of that other Part B States where there is a question regarding -travention of these notifications.

I am unable to accept this contention. That provision is intended for those cases where there is a contravention of those orders and notifications after the Central Act comes into force and cannot apply to earlier period. In fact in every case of repeal where both the effects are intended, two separate clauses are put down one as regards future acts of contravention of those notifications and the other for the past acts of contravention.

63. On account of the view I take as regards the applicability of the principle underlying Section 6, General Clauses Act I think the reference ought to be rejected and the case be proceeded with according to law. In those cases where the Courts have acquitted on the grounds indicated in the reference, the orders of acquittal will have to be set aside. If the cases involve other points than the one indicated above, the cases may be placed before a single Bench or a Division Bench as the case may be according to rules for being disposed of finally.