

Lalchand Vs. the State

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Court : Rajasthan

Decided On : Apr-09-1952

Reported in : AIR1954Raj10

Judge : Ranawat and; Sharma, JJ.

Acts : Rajasthan Essential Supplies (Temporary Powers) Ordinance, 1949 - Sections 20; Essential Supplies (Temporary Powers) Act, 1946 - Sections 17(2); Jaipur Essential Supplies (Temporary Powers) Act, 1947 - Sections 6 and 8; General Clauses Act

Appeal No. : Criminal Revn. No. 431 of 1950

Appellant : Lalchand

Respondent : The State

Advocate for Def. : C.B. Bhargava, Deputy Govt. Adv.

Advocate for Pet/Ap. : D.M. Bhandari, Adv.

Disposition : Application allowed

Judgement :

Sharma, J.

1. This is an application by Lalchand who is being prosecuted in the Court of the First Assistant City Magistrate, Jaipur, for an offence under Section 6 read with Section 8, Jaipur Essential Supplies (Temporary Powers) Act of 1947, hereinafter to be referred to as the Jaipur Act, on the allegation that he exported certain iron girders from Jaipur West Railway Station to Pokaran in Marwar on 5-4-1949 in contravention of Section 5 (a) of the Iron and Steel Control (Production and Distribution) Order of 1947, hereinafter to be referred to as the Jaipur Order. One Nanulal was also challaned along with him but he was discharged by the learned Magistrate. Lalchand has come in revision to this Court and the following two points are raised on his behalf:

1. that the Jaipur Act was repealed on the 20th July 1949 by the Rajasthan Essential Supplies (Temporary Powers) Ordinance, 1949, hereinafter to be referred to as the Rajasthan Ordinance, which was published in the Rajasthan Gazette dated 10-8-1949 and the Rajasthan Ordinance did not save any prosecutions launched under the Jaipur Act,

2. that no prima facie case was made out against the accused.

2. Taking up the first ground first, which, to our mind, is in fact the most important ground in the case, it was argued by the learned counsel on behalf of the accused that by Section 20(1) of the Rajasthan Ordinance the Jaipur Act was repealed. There is no provision in the Rajasthan Ordinance by which prosecutions launched under the Jaipur Order could be saved. It was argued that Section 6, General Clauses Act does not apply to the present case as the General Clauses Act was not in force in Rajasthan at the time when the Rajasthan Ordinance was promulgated. It was further argued that even if it be taken that the Central General Clauses Act applied to Rajasthan (which in fact did not apply), Section 6 would not apply all the same, because it applies only to the cases where a former Act is simply repealed and another one substituted in its place. For this reliance was placed upon two rulings of the Allahabad High Court one reported in -- 'Firm Danmal Parshotamdas v. Firm Baburam Chhotelal', AIR 1936 All 3 (A), and the other in -- 'Benares Bank Ltd v. Sri Prakasha'. AIR 1946 All 269 (B). In the first of these two rulings there are following observations of Suleman C. J. from which it

was inferred that S. 6(e), General Clauses Act applies 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.'

These observations of Suleman C. J. were quoted with approval by Braund J. in the second ruling of, the Allahabad High Court above referred to. It was further argued that whatever the Rajasthan Ordinance intended to save out of the orders or other things arising out of the Jaipur Act were expressly saved by Section 20(2) of the Rajasthan Ordinance. By that sub-section it was provided that

'any Order made or deemed to be made under the repealed Act, Ordinance and laws and in force immediately before the commencement of Rajasthan Ordinance shall continue in force and be deemed to be an Order made under the Ordinance and all appointments made, licenses or permits granted, directions issued, things done and action taken under any such Order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted, issued, done or taken in pursuance of the Rajasthan Ordinance.'

3. That was the only provision which related to saving and it did not save any action taken under any of the repealed Acts and therefore the present prosecution which was launched under the Jaipur Act could not be saved.

4. On behalf of the presentation it was conceded by the learned Deputy Government Advocate that there was no express provision in the Rajasthan Ordinance by which the present prosecution started under the Jaipur Act could be saved. HE HOWEVER ARGUED THAT THE PROSECUTION WAS SAVED BY THE PROVISIONS OF SECTION 6(c) and (e), Jaipur General Clauses Act, which continued to apply to the territories covered by the erstwhile Jaipur State by virtue of Section 3 of the Rajasthan Administration Ordinance No. 1 of 1949 which runs as follows:

'3. Continuance of existing laws --(1) All the laws in force in any covenanting State immediately before the commencement of this ordinance in that State shall, until altered or repealed or amended by a competent Legislature or other competent authority continue in force in that State, subject to the modification that any reference therein to the Ruler or Government of that State shall be construed as a reference to the Raj Pramukh, or, as the case may be, to the Government of Rajasthan.'

5. Reliance was placed on the following provisions of Section 6 of the said Act:

'6. Where any Act or Regulation made before or after the commencement of this Act. repeals any enactment hitherto made or hereafter to be made then, unless a different intention appears, the repeal shall not-

(c) affect any right, privilege, obligation, or liability, acquired, accrued or incurred, under any enactment so repealed; or

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.'

6. It was urged that the right of the State to prosecute the accused and the liability of the accused arose under the Jaipur Act and that, the present prosecution was a legal proceeding in respect of such right and liability and therefore the prosecution was saved under Clause (c) as well as Clause (e) of Section 6, Jaipur General Clauses Act. It was further argued that Section 6 applies not only when an enactment is simply repealed but also when it is repealed and another substituted in its place. Reliance for this was placed upon a ruling of Nagpur High Court reported in -- 'Liladhar Daulatram v. The State', AIR 1951 Nag 353 (C). It was further argued that the repeal of the Jaipur Act could put an end to the present prosecution only if a different intention appeared from the Rajasthan Ordinance which, it was submitted, did not appear.

7. We have considered the arguments of both the learned counsel. It is not necessary for us to pronounce any opinion in this case whether Section 6, General Clauses Act applies only to those cases where an enactment is simply repealed or

to those also where another is substituted after the repeal in its place. It therefore becomes unnecessary to consider the view of the Allahabad and Nagpur High Courts in relation to this point. We find that at the time when the Rajasthan Ordinance was promulgated there was no single General Clauses Act for the whole of Rajasthan. This has been admitted by the learned counsel for both the sides. It is not the case of either party that the Central General Clauses Act had been applied to Rajasthan at that time. The only point for consideration is whether the Jaipur General Clauses Act can save the present prosecution. It was argued by the learned counsel for the accused that Jaipur General Clauses Act could not apply to the whole of Rajasthan and that if it were to be held that it applied only to those parts which formed the territories of the erstwhile Jaipur State a very anomalous position would arise. There may be many States now forming part of Rajasthan which might have had no General Clauses Act at all. There might be others in which Section 6 might not have been enacted in the form in which it was enacted in the Jaipur General Clauses Act. Thus if the arguments of the learned Deputy Government Advocate were valid, the result would be that after the promulgation of the Rajasthan Ordinance the prosecutions launched under the Acts repealed thereby might remain alive in the territories of the erstwhile Jaipur State while in some other territories they may not remain alive. It would be putting a very absurd interpretation on the provision of the Rajasthan Ordinance which was to apply to the whole of Rajasthan. The learned Deputy Government Advocate said in reply that there was no absurdity in such a situation, because it was the Jaipur Act to which the Jaipur General Clauses Act was being applied and not to Rajasthan Ordinance.

8. On a careful consideration, we are driven to the conclusion, that it could not be the intention of the Rajasthan Ordinance that the prosecutions under the different Essential Supplies (Temporary Powers) Acts or Ordinances which were repealed by Section 20 of the Rajasthan Ordinance should be treated differently in different areas. By the Rajasthan Ordinance a unified Act was given to the whole of Rajasthan and we do not think that it was intended that subjects of different parts of Rajasthan should be treated differently in the matter of prosecutions arising under the repealed laws. Section 20 (2) clearly makes a saving in favour of the orders made under the repealed Act, Ordinances and laws in force immediately

before the commencement of the Ordinance and also in favour of appointments made, licenses or permits granted, directions issued, things done and action taken under any such order and in force immediately before the commencement of the Rajasthan Ordinance. If it were the intention of the law-making authority that prosecutions launched under the different Acts repealed by the Rajasthan Ordinance were to survive after its enactment there was no difficulty in saying that things done or action taken under any of, the repealed laws and in force immediately before the commencement of the Ordinance would also continue in force. In the face of the facts that there was no unified General Clauses Act for the whole of Rajasthan at the time when the Rajasthan Ordinance came into being and that the Central General Clauses Act was not adapted in Rajasthan and that the Legislature clearly made a saving in favour of the things it wanted to save, our only inference is that the Legislature did not intend that prosecutions under the different repealed laws would continue in spite of the repeal of the laws themselves. We are strengthened in this view by a later amendment of the Rajasthan Ordinance which was brought to our attention by the learned Deputy Government Advocate. This is Section 20A of the Ordinance which was inserted by Section 2 of the Amendment Ordinance No. 49 of 1949 and runs as follows :

'2. Insertion of Section 20A --After Section 20 of the Rajasthan Essential Supplies (Temporary Powers) Ordinance, 1949 (No. 13 of 1949), the following sections shall be and deemed always to have been inserted, namely : 20A. Saving of certain orders made before promulgation of Ordinance. Notwithstanding anything contained in Sub-section (3) of Section 1 any order made or notification issued, thing, done or action taken under any of the laws repealed by Section 20 after the commencement of this Ordinance but before its publication in the Rajasthan Gazette shall continue in force and be deemed respectively to be made, issued, done or taken under this Ordinance.'

9. According to this provision any order made or notification issued, thing done or action taken under any of the laws repealed by Section 20 after the commencement of the Rajasthan Ordinance but before its publication in the Rajasthan Gazette shall continue in force and be deemed respectively to be made, done, or taken, under the Ordinance. The necessity for this amendment Ordinance

arose from the fact that whereas the Rajasthan Ordinance was deemed to have come into force on 9-7-1949 its publication in the Rajasthan Gazette was made on 10-8-1949. Thus it was thought that the actions taken under the Rajasthan Ordinance before 10-8-1949, the date of its publication in the Gazette, would be invalid and in order to validate them the amendment Ordinance had to be passed and by Section 20A which was added by Section 2, it was provided that things done or action taken etc., under any of the laws repealed by Section 20 of the Ordinance shall continue in force and would be deemed to be made, issued, done or taken under the Ordinance-. Thus it is clear that if the Legislature intended that prosecutions launched e.g., under the Jaipur Act repealed by the Rajasthan Ordinance, would continue in force notwithstanding the repeal by the Ordinance, a clear saving would have been made in favour of such prosecutions as well. We are of opinion that the Legislature, while enacting the Rajasthan Ordinance and repealing the Jaipur Act thereby, did not intend that prosecutions under the Jaipur Act should survive after the coming into force of the Rajasthan Ordinance. In this view of the matter the present prosecution would not be saved if Section 6, Jaipur General Clauses Act applies as a different intention appears from the provisions of Section 20 of the Ordinance. On this ground alone, the application for revision should succeed and there is no necessity to go into the question whether a prima facie case had been made out against the accused.

10. The application is allowed and the proceedings for the prosecution of Lalchand accused pending in the lower Court are quashed. The applicant is discharged.

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