

Gulam Abbas and ors. Vs. the State

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SooperKanoon Citation : sooperkanoon.com/751951

Court : Rajasthan

Decided On : Nov-13-1950

Reported in : AIR1951Raj18

Judge : Nawal Kishore, C.J. and; Bapna, J.

Acts : Mewar Motor Spirit Rationing Order, 1941; Mewar Control of Supplies Act, 1947 - Sections 3 and 5; Mewar General Clauses Act, 1945 - Sections 6; Defence of Mewar Rules, 1939 - Rule 81(2); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 561A

Appeal No. : Criminal Misc. Appln. No. 36 of 1950

Appellant : Gulam Abbas and ors.

Respondent : The State

Advocate for Def. : Sumerdan, Public Prosecutor

Advocate for Pet/Ap. : N.C. Chatterji, Adv. assisted by; U.S. Trivedi, Adv.

Disposition : Petition dismissed

Judgement :

Bapna, J.

1. This is an application under Section 561 A, Criminal P. C., with a prayer that a case against the petitioners pending in the Court of the City Magistrate Udaipur, may be transferred to the High Court and the proceedings taken against the petitioners for contravention of the Mewar Motor Spirit Rationing Order, 1941 quashed. Reliance was also placed during the course of arguments on Article 228 of the Constitution in support of the prayer. The contention of the learned counsel for the petitioners is that the Mewar Motor Spirit Rationing Order, for contravening which the petitioners were being prosecuted, no longer remained in force and the prosecution of the petitioners was illegal and they were protected by Article 20 of the Constitution.

2. The Mewar Motor Spirit Rationing Order, 1941, which came into force on 15-8-1941 was issued by the Mewar Government under Rule 81 (2), Defence of Mewar Rules, 1939. The Rules were enacted under the Defence of Mewar Act, 1939 and the validity of the Defence of Mewar Act and the rules expired on 31-5-1947. On 16-5-1947, the Mewar Control of Supplies Act (VII [7] of 1947) was promulgated by His Highness the Maharana of Udaipur to provide for the continuance of powers to control the production, price and distribution and trade and commerce in certain essential commodities and 9. 3 thereof authorised the Government to make certain orders for regulating or prohibiting the production, supply and distribution of essential commodities so far as it appeared to the Government to be necessary or expedient for maintaining or increasing the supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. Section 5 of that Act provided that until other provisions were made under the Act, the orders made by competent authority under Sub-rule (2) of Rule 81, Defence of Mewar Rules, in respect of any matter specified in Section 3 which were in force immediately before the commencement of the Act were to continue in force as far as it was consistent with the Act notwithstanding the expiration of the Mewar Defence Rules, and were to be deemed to be orders made under Section 3 of the Act.

3. Petrol being one of the essential commodities mentioned in the schedule to the Act, the combined result of Section 3 and 5 was that Mewar Motor Spirit Rationing Order, 1941, made in exercise of the powers under Rule 81 (2), Defence of Mewar

Rules continued to remain in force even after 31-5-1947.

4. In April 1948, some of the States including Mewar agreed to integrate and the second Rajasthan Union was formed as one political unit known as the United State of Rajasthan. This Union consisted of the former Banswara, Bundi, Dungarpur, Jhalawar, Kishangarh, Kotah, Pratapgarh, Shahpura, Tonk and Mewar States. In order to unify the laws, the Maharana of Udaipur, who was the Raj Pramukh, promulgated the United State of Rajasthan Essential Commodities Control Ordinance, 1948 (Ordinance XIV [14] of 1948) on 19-6-1948. According to the preamble, this Ordinance was promulgated to provide for powers to control the production, prices and distribution of and trade and commerce in essential commodities and Section 3 thereof gave power to the Government of the United State of Rajasthan to issue order so as to provide for regulating or prohibiting the production, supply and distribution and trade and commerce in essential commodities so far as it appeared to be necessary or expedient for maintaining or increasing the supplies of any essential commodity or for securing their equitable distribution and their availability at fair prices. The schedule included petrol as one of the essential commodities. Section 3 of this Ordinance, which was applicable to the whole of the United State of Rajasthan corresponded to Section 3, Mewar Control of Supplies Act, 1947 which extended to Mewar only. No provision corresponding to Section 5, Mewar Control of Supplies Act was made in this Ordinance. No order on the lines of Mewar State Motor Spirit Rationing Order, 1941 was issued by the Government of the United State of Rajasthan in exercise of the powers under Section 3 of the Ordinance.

5. It was urged that in the absence of any provision in the Ordinance on the lines of Section 5, Mewar Control of Supplies Act, the provisions of Mawar State Motor Spirit Rationing Order, 1941 ceased to have force from 24-6-1948 the date on which the Ordinance came into force, and, therefore, any alleged contravention of the provisions of the said Order did not constitute any offence. It was contended that Ordinance XIV [14] of 1948 promulgated by His Highness, the Raj Pramukh of the United State of Rajasthan covered the same ground as Act No. VII [7] of 1947 of Mewar, the only difference being that while the Act was applicable only to Mewar (Udaipur State), the Ordinance was applicable to Mewar as also to the

other nine Convenanting States, and that as the two statutes related to the same subject matter and had the same purpose and further as the new statute covered the entire subject-matter of the old statute, the old statute, namely, the Mewar Control of Supplies Act must be deemed to have been repealed by the new statute, the Ordinance and as no saving clause was provided in the Ordinance on the lines of Section 5 of the Act the Motor Spirit Rationing Order, 1941, ceased to have force.

6. The above argument did not seem to take into account the provisions of Section 6, Mewar General Clauses Act (Act xvii [17] of 1945). The said section lays down that :

'Where any enactment is repealed and re-enacted with or without modification, any appointment, notification, order, scheme, rule, bye-law, form or any other kind of instrument made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, bye-law, form or other bind of instrument made or issued under the provisions so re-enacted.'

The said section is on the lines of Section 24, Indian General Clauses Act, and fulfills the same purpose. It validates orders issued under an old enactment if it is repealed and re-enacted with or without modification until new orders are issued under the re-enacted Act. According to the argument of the learned counsel, the Ordinance virtually re-enacted the provisions of the Control of Supplies Act with certain modifications and the implied repeal was argued on the ground that it covered the entire field of the previous Act. The case was, therefore, of a repeal of an old Act and its re-enactment with modifications as contemplated in Section 24, Indian General Clauses Act or Section 6, Mewar General Clauses Act.

7. It was next argued that the continuance of the Motor Spirit Rationing Order safeguarded by Act vii [7] of 1947 became inconsistent with the provisions of ordinance xiv of 1948 as Section 6 of the Act was not reproduced in the Ordinance. It was contended that not only was it not reproduced but the word 'omitted' occurs opposite Section 6 in the Ordinance which indicated that the

legislative authority had intended to leave out Section 5 of the Act on purpose and, therefore, the continuance of the Mewar Motor Spirit Rationing Order, 1941 deemed to have been issued under the Act became inconsistent with the provisions of the Ordinance,

8. The argument assumes that the Essential Commodities Control Ordinance, 1948 was issued by adaptation of the Mewar Control of Supplies Act, 1947. It may be pointed out that the legislation for controlling the production, prices and distribution of and trade and commerce in essential commodities in the Indian States or Union of Indian States did not proceed on original lines but reflected the general policy of the Government of India and closely followed the legislation in British India prior to 1947 and after the independence the legislation in the Indian Dominion. The Defence of Mewar Act and the Defence of Mewar Rules were only counterparts of the Defence of India Act and the Defence of India Rules. The Mewar Motor Spirit Rationing Order and various other orders were similarly counterparts of the orders issued by the Central Government. The Mewar Control of Supplies Act followed the Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV [24] of 1946) by the Indian Legislature. Similarly the Essential Commodities Control Ordinance, 1948 followed the lines of the same Central Act (Act XXIV [24] of 1946). The modifications that appear in the Ordinance do not necessarily indicate that the adaptation of law was made from the Mewar Act. A bare perusal of Section 5 of the Central Act makes it clear why it had to be dropped out. The section in the Central Act gives power to the Central Government to give certain directions to the Provincial Governments. In the Rajasthan Union there were no provinces. The omission to re-enact Section 5 of the Mewar Act in the Ordinance is of no consequence in view of the existence of Section 6, Mewar General Clauses Act, so far as the applicability of the Ordinance in Mewar is concerned.

9. As regards the argument, that the Motor Spirit Rationing Order should be deemed to have expired on the ground of inconsistency, it may be pointed out that the inconsistency of the order passed under the previous Act referred to in Section 6 should be with the re-enacted provision, that is, the order previously passed could not have been passed under the re-enacted provision. Such a contingency,

for example, could arise if the order under the previous Act related to a commodity which was declared essential under the earlier Act but was not so declared under the later Act. Section 6 does not save such orders as are passed under the earlier Act but which cannot be passed under any provision in the later Act. In the present case, petrol or motor spirit was an essential commodity both under the Mewar Act and the Rajasthan Ordinance and the Mewar Motor Spirit Rationing Order of 1941 which was continued by virtue of Section 5, Control of Supplies Act as if it had been passed under Section 3 of the Act was not only not inconsistent but was quite consistent with the Ordinance.

10. It was contended that the Mewar General Clauses Act lost its force by the formation of the Union of Rajasthan in 1948. The argument has no force as by virtue of the United State of Rajasthan Administration Ordinance, 1948 (no. I [I] of 1948), the previous laws in force were continued until their repeal or amendment by competent authority and it was not shown that the Mewar General Clauses Act, 1945 which was in force in Mewar was repealed by competent authority. The Incidents which are the basis of the proceedings before the Magistrate are alleged to have taken place in the territory of the former State of Mewar.

11. It was argued that after the formation of Greater Rajasthan, the same subject-matter dealt with by ordinance xiv [14] of 1948 in the previous smaller State of Rajasthan was dealt with in Greater Rajasthan by the Rajasthan Essential Supplies (Temporary Powers) Ordinance (ordinance XIII [13] of 1949) and Section 20 thereof expressly repealed ordinance XIV [14] of 1948 of the former Rajasthan as also all other laws with respect to the matters covered by the Ordinance for the time being in force in any part in Rajasthan. Reliance was placed on the second part of Sub-section(2) and it was contended that it only validated 'appointments made, licences or permits granted, directions issued, things done and action taken under any order in force.' The opening words of Sub-section (2) of Section 20, however, expressly kept in force any order made under the repealed Act or law which was in force immediately before the commencement of the said Ordinance. The provision referred to by learned counsel for the petitioner is in addition to the continuance in force of the order itself. The first portion of Sub-section (2) directs continuance of order made under the previous law and the second part validates

actions taken under that order. It may be stated that in Section 2 of the ordinance XIII [13] of 1949, petroleum and its products are mentioned in the list of essential articles.

12. It may be pointed out that a further development of the law, not referred to at the Bar, took place in 1950, when the Essential Supplies (Temporary Powers) Act, 1946 (Act xxiv [24] of 1946) as amended by the Essential Supplies (Temporary Powers) Amendment Act, 1950 (Act LII [52] of 1950) came into force throughout the Indian Dominion. under Section 17(4), all previous laws in States of the B part relating to essential articles mentioned in the Act were repealed but nevertheless the orders passed under the aforesaid laws were continued in force. In this Act also petroleum and its products are included in the list of essential articles.

13. The contention of the learned counsel for the petitioners that Motor Spirit Rationing Order, 1941 expired on 24-6-1948 is, therefore, untenable.

14. The case is pending in the Court of Magistrate at Udaipur and the exercise of the inherent power of the High Court is sought on the ground that there was no law in existence under which the petitioners could be prosecuted and that therefore, the High Court should interfere as otherwise the continuance of the prosecution of the petitioners in the lower Court would be an abuse of the process of the Court. The principles in a matter of this kind are well discussed in *Abdul Wali v. Emperor*, A.I.R. (20) 1933 oudh 387: (35 Cr. L. J. 148) wherein it has been laid down that if a bare statement of the facts would indicate that the proceedings taken in the lower Court were illegal, the High Court could, and should, interfere and quash the proceedings. In the present case, the accused is being tried for various offences committed during a period from 1-5-1948 to 11-11-1949. Some of the acts relate to a period prior to 24-6-1948 the date on which Ordinance xiv [14] of 1948 came into force and these acts are covered by Mewar Control of Supplies Act, 1947. To these acts, Section 4, Mewar General Clauses Act, was applicable and the repeal of the Act or the order under the act did not affect the prosecution. Section 17 of Ordinance no. xiv [14] of 1948 is also to the same effect. So far as this portion of the case is concerned, it has not been shown how the proceedings against the petitioners were contrary to law. With respect to the other acts alleged to have

been committed by the petitioners after 24-6-1948, the contention that the Motor Spirit Rationing Order expired on that date, has been fully discussed above and it has been held that the said contention has no force. In my opinion, no case has been made out in which the High Court should exercise its powers under Section 561A, Criminal P. C, for the purpose of transferring the case to itself.

15. The exercise of the powers under Section 228 presupposes that a substantial question of law as to the interpretation of the Constitution is involved in a case pending before the subordinate Court. The article of the Constitution, of which an interpretation is alleged to have been involved, is stated to be Article 20. That article says that:

'No person shall be convicted of any act except for violation of a law in force at the time of the commission of the act charged as an offence.'

There can be no dispute about it. The language of the article is very simple and no question of its interpretation is involved. The point at issue is whether the law for which the petitioners are being prosecuted was in force at the time of the commission of the act. The question is not as to the interpretation of any article of the Constitution but as to the interpretation of the various provisions of the Acts or Ordinances which have been referred to in the earlier part of the judgment for a finding whether the Mewar Motor Spirit Rationing Order was still in force. In that view, no substantial question of the interpretation of the Constitution is involved in this case.

16. This petition has, therefore, no force and is dismissed.

Nawal Kishore, C.J.

17. I agree.