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SooperKanoon Citation : sooperkanoon.com/752065

Court : Rajasthan

Decided On : Aug-17-1950

Reported in : AIR1951Raj23

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

Acts : Jaipur Criminal Tribes Act, 1930; Jaipur General Clauses Act, 1944 - Sections 3

Appeal No. : Criminal Appeal Nos. 57 of 1950 and 79 of Samwat 2005

Appellant : The State

Respondent : Nanga and anr.

Advocate for Def. : Ramesh Chandra Sharma, Adv. for Raghunath, Adv.

Advocate for Pet/Ap. : R.K. Rustogi, Government Adv.

Judgement :

Nawal Kishore, C.J.

1. These are two appeals Nos. 57 of 1950 and 79 of St. 2005 by the State against the orders of learned Extra Magistrate and Sessions Judge, District Jaipur, respectively, acquitting the accused of the offence under Section 20(2), Criminal Tribes Act. Since the point arising in them is common, this judgment will dispose of both the appeals.

2. In App. No. 79 the learned Sessions Judge has acquitted the accused holding that the Criminal Tribes Act was only a Police and Judicial Department Notification and had not been made by or with the assent of His Highness the Maharaja Sahib Bahadur as was necessary according to the definition of 'Act' in Section 3, Jaipur General Clauses Act. The Act was accordingly held to be ultra vires and the conviction and sentence awarded to the accused by the learned Magistrate of the trial Court was set aside. In App. No. 57, which arises from a different case, the Extra Magistrate has acquitted the accused following the above view of the Sessions Judge.

3. In the Jaipur Gazette, where the Criminal Tribes Act is published the heading of the publication no doubt is 'Police and Judicial Department Notification.' The language of the Act, however, shows that it was not a notification at all and was actually an enactment and further that it bears the signature at the end of a member of His Highness's Council in existence at the time the Act was passed. In the circumstances, there is no force in the view of the learned Sessions Judge that it was only a notification and not an Act. The other point on which the judgment is based is a little significant but again without force. According to Section 3, Jaipur General Clauses Act, 'Act' has been defined to be an Act which has been made by or with the assent of His Highness the Maharaja Sahib Bahadur. Inasmuch as the word 'before' is used in the opening clause, the definition is intended to apply to all Acts made before the passing of the General Clauses Act. But in the opening clause it is further provided that this definition will not apply if there is anything repugnant in the subject or the context. The question which calls for a determination at this stage is whether there was any repugnancy in the subject or context and therefore, it was not necessary for an Act passed before the Jaipur General Clauses Act to have been made by or with the assent of the Maharaja Sahib Bahadur. It appears from what has been contended at the Bar that the Criminal Tribes Act was passed in the year 1930 and Published in the Jaipur Gazette on 1-6-1930. On this date, His Highness the Maharaja Sahib Bahadur was a minor and the Government of the State was being run by a Council of Ministers with a President. This Council had been authorised according to Rule 4 of Schedule III published in the Jaipur Gazette dated 11- 8-1923 to exercise certain powers. These powers as delegated to individual Ministers are defined in

Schedule IV while in Rule 4 of Schedule III referred to above, it is stated that all other business will be disposed of at meetings of the full Council. This, in our opinion, also includes the business of legislation and inasmuch as in those days there was no other legislative body and the Council of Ministers was authorised to frame laws, it was, by the very facts that His Highness the Maharaja was a minor and the Council was acting on his behalf, not required to obtain his assent. Accordingly, the subsequent legislation on the point embodied in the Jaipur General Clauses Act providing for the assent of His Highness the Maharaja Sahib Bahadur must be held to be repugnant to the subject and we are not prepared to hold that in the circumstances mentioned above, an Act could not be said to be an Act because it had not received the assent of His Highness the Maharaja Sahib Bahadur. It may be pointed out that the General Clauses Act is neither substantive law nor a repealing Act, and that Section 3 contains a number of definitions which have been provided only for the purpose of interpretation of the various statutes. Owing, however, to the repugnancy as set out above, the definition cannot be made use of for the interpretation of Acts which were passed previous to the enactment of the General Clauses Act. The learned Sessions Judge, therefore, was not justified in holding that the Criminal Tribes Act was not an Act because it had not been made with the assent of His Highness The Maharaja Sahib Bahadur. From the fact that the Act had not received the assent of His Highness the Maharaja the learned Sessions Judge jumped to the conclusion that the Act was ultra vires. It is obvious that he did not quite understand the meaning of the term 'ultra vires.' It only means that something has been done by person or body of persons which was beyond his or their power. The Criminal Tribes Act was passed by a Council of Ministers who were fully competent to legislate according to what has been stated above. Hence the learned Judge was mistaken in holding the Act to be ultra vires. Further, the Act has been on the Statute book of the State since 1930 and according to Section 41, Government of Jaipur Act, it shall continue to be in force till altered or repealed or amended by competent authority. For all these reasons, we are unable to agree with the view taken by the learned Sessions Judge. The appeals accordingly succeed and are hereby accepted and both the cases sent back to the learned Extra Magistrate and the learned Sessions Judge respectively for disposal on the merits.

