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Court : Rajasthan

Decided On : Aug-12-1986

Reported in : 1986WLN(UC)376

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Criminal Misc. Petition No. 80 of 1986

Appellant : Jai Chand

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Kanta Bhatnagar, J.

1. In this application under Section 482 of the Code of Criminal Procedure petitioner Jai Chand has prayed for quashing the proceedings against him under Section 3/7 of the Essential Commodities Act (here in after to be referred as 'the Act') pending before the Special Judge, Sirohi.

2. On December 17, 1982 shop of the petitioner was inspected by the Enforcement Inspector. A complaint against him was filed in the Court of Special Judge, Sirohi on the ground of violation of Rule 6(a) of the Rajasthan Cattle Fodder (Sale of Stock and Prohibition of Export) Order, 1981 (for short 'the

Order'). The allegations were that the petitioner had imported 25 bags of Guar from Gujarat to Abu Road by Truck No. RJQ 4162 and thus violated the provisions of the Order. A number of grounds have been raised in the petition for getting the proceedings pending before the Special Judge, Sirohi quashed, but the learned Counsel for the petitioner confined his arguments to the point that the Order of 1981 ceased to have force on July 31, 1983. As such after the expiry of that temporary statute no prosecution under Order can be launched or continued on the ground of violation of any provision of that statute.

3. The inspection of the shop was made on December 17, 1982 when the order was in force. The First Information Report at Police Station Sirohi against the petitioner was filed on August 25, 1985. The challan against him was filed on November 20, 1985. The Order of 1981 was in force for the specified period up to July 31, 1982. Later on this date was substituted by date September 30, 1982. By a further amendment the date was substituted by July 31, 1983. After July 31, 1983 the Order of 1981 ceased to have force. It was in the year 1985 that another Order was passed. The proceedings against the petitioners were initiated for violation of Section 6(a) of the Order of 1981 which undisputedly ceased to have force on July 31, 1983.

4. The pertinent question calling for determination is as to whether the proceedings in the case under the Act which was in force when the alleged offence is said to have been committed can be continued when the complaint and the chargesheet have been filed when the Order had already ceased to have force.

5. Their learned Counsel for the petitioner submitted that a temporary statute is for a specific period and after its ceasing to have force by efflux of time, no proceedings can either be initiated nor can be continued if already initiated for violation of any provision of that statute.

6. The learned Public Prosecutor does not dispute the position that the order of 1981 was not in force when the proceedings in the case were initiated. His argument however is that the Order was enacted under the provisions of the Act and therefore, violation of any provision in the Order would make a person liable to

punishment if the violation by him was during the period the Order was not in force.

7. It was in exercise of powers conferred by Sub-clauses (b) and (c) of Section 3 of the Essential Commodities Act 1955 (Central Act X of 1955) read with notification of the Government of India in the Ministry of Agriculture (Department of Agriculture and Cooperative) published under Order No. 32-5/79-. DII dated September 10, 1981 that the State Government had made the Order of 1981. At that time Section 1 of the Act read as under:

Section 1 Short title, commencement and extent--(i) This Order may be called the Rajasthan Cattle Fodder (Sale of Stocks and Prohibition of Export) Order, 1981.

(ii) It comes into force with immediate effect i.e. 26-10-1981;

(iii) It shall extend to the whole of the State of Rajasthan;

(iv) This order shall remain in force upto 31-7-1982.

8. By the Notification of the Relief Department dated October 26, 1981 Clause (iv) of Section 1 of the Order was amended and the date July 31, 1981 was substituted by the date July 31, 1982. Again by the Notification of the Relief Department dated May 7, 1982 this substituted by the dated July 31, 1983. This date was was not extended thereafter. The Order of 1981 thus ceased to be in force on July 31, 1983. Thereafter a new Order in 1985 has been passed by the said Department but it is not relevant for the present purpose because here the allegation is about the violation of Section 6(a) of 1981 Order amended twice and remaining in force up to July 31, 1983.

9. The object enacting temporary statute is to serve the contingency or requirement of a particular period. When the purpose is served, the temporary statute spends up. If the period specified in the temporary statute is not extended then it will terminate ipso facto. A person cannot be prosecuted under the dead law unless there is saving clause to that effect. The question about prosecution after expiry of the Order the provisions of which were alleged to be violated came for consideration before this Court in the case of Ramchander v. State of

The matter related to some alleged offence under Rajasthan Guest Control Order 1965. By the Notification No. S.O. 29 dated September 9, 1971 the Rajasthan Guest Control Order, 1965 was rescinded. The offence in entertaining 500 to 600 persons was alleged to have been committed on May 27 and 28, 1971 by the petitioner. The S.H.O. submitted his report on May 29, 1971 requesting the Court to take cognizance of the offence under Section 3/7 of the Essential Commodities Act read with Rule 3 of the Rajasthan Guest Control Order, 1965. On receipt of the report the SDM Parbatsar ordered to register the case and issued warrant of arrest against the accused-petitioner. The petitioner went in revision before the Sessions Judge, Merta against the cognizance of the alleged crime but the revision petition was rejected. On October 12, 1971 the revision petition was filed in this Court against the order of the learned Sessions Judge, Merta. The ground taken was that the learned Sessions Judge had not taken into consideration the fact that the Rajasthan Guest Control Order, 1965 was rescinded by the Government Notification dated September 9, 1971 published in the Rajasthan Gazette on the same date. There was no dispute on the point that there was no saving clause inserted in the Notification rescinding the Rajasthan Guest Control Order. It was observed by this Court that the general rule is that unless it contains some special provision to the contrary, a temporary Act ceases to have any further effect after it has expired and that no proceedings can be taken under it any longer and proceedings already taken and pending terminate automatically as soon as it expires.

10. Following the principles enunciated in the various authorities referred to in the judgment including the Supreme Court decision in the case of S. Krishna v. State of Madras : [1951]2SCR621, his Lordship held that the offence once committed against temporary enactments have to be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate.

11. The principles enunciated in the above referred case and the decisions referred to therein are in full force applicable to the case on hand. In this

connection reference may also be made to the principles enunciated in the case of *Qudrat Ullah v. Bareilly Municipality* : [1974]2SCR530 . The litigation in the case related to the construction of a contract between the Municipal Board, Bareilly and the Thekedar under it of the Municipal Market. When there was litigation for ejectment, the defendant raised the argument of vested right by virtue of the U.P. (Temporary) Control of Rent and Eviction Act (3 of 1974). The argument did not find favour with their Lordships. It was held that after the enactment of the UP. Public Premises (Eviction of Unauthorised Occupants) Act, 1972, the bar of eviction under the Old Act was not saved by virtue of Section 43 and Section 6 of the General Clauses Act. The argument of any valid right in the defendant was not taken to hold good. Similarly the contention that the later Act was being applied retrospectively was not considered to have any foundation. Their Lordships discussed the effect of subsequent Act repealing the earlier one and laid down certain principles of which relevant for our purpose is that the rights of a statutory tenant created under a temporary statute, as it was in that case, go to the extent of merely preventing the eviction so long as the temporary statute lasts. The conclusion is that the temporary statute has force till it lasts and no action can be taken under it after it ceases to have effect of either by repeal or is spent up by efflux of time. I am therefore inclined to hold that after July 31, 1983 no proceedings could be taken or continued for violation of any provisions of the Order of 1981. As such the proceedings against the petitioner could not be continued.

12. Consequently, the petition under Section 482 of the Code of Criminal Procedure is allowed and the proceedings against the petitioner pending before the learned Special judge, Sirohi under Section 3/7 of the Act read with Rule 6(a) of the Order are quashed.