

State of Rajasthan Vs. Rajak

State of Rajasthan Vs. Rajak

SooperKanoon Citation : sooperkanoon.com/769332

Court : Rajasthan

Decided On : Nov-05-2003

Reported in : 2004CriLJ3519; 2004(2)WLC169

Judge : Sunil Kumar Garg, J.

Acts : [General Clauses Act, 1897](#) - Sections 6; [Essential Commodities Act, 1955](#) - Sections 3; Rajasthan Cattle Fodder (Sale of Stock and Prohibition of Export) Order, 1985

Appeal No. : Crl. Appeal No. 477 of 1987

Appellant : State of Rajasthan

Respondent : Rajak

Advocate for Def. : Sandeep Mehta, Adv.

Advocate for Pet/Ap. : Panne Singh, P.P.

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been preferred by the State of Rajasthan against the judgment dated 2-7-1987 passed by the learned Special Judge. Essential Commodities Act,

Jalore in Criminal Case No. 5/ 1986 by which the learned Special Judge, Essential Commodities Act, Jalore dropped the proceedings against the accused respondent holding that the trial against the accused respondent could not be proceeded further for violation of Clauses 6 and 7 of the Rajasthan Cattle Fodder (Sale of Stock and Prohibition of Export) Order, 1985 (hereinafter referred to as the Order of 1985) punishable under Section 3/7 of the Essential Commodities Act as on 2-7-1987, the Order of 1985 was not in force.

2. It arises in the following circumstances :

(i) On 7-11-1985 stayam Das (P.W.2), Tehsildar Sanchore checked Truck No. RSN 9655 belonging to M/s Rakesh Transport Company in the belt area within 10 Kms. Range of Border of Gujarat Rajasthan through Fard Checking Ex. P/1 and in that Truck, the accused respondent was the driver at that time and that truck was carrying 100 sacks of Gwar powder, out of which 50 sacks were to be delivered to Tagraj Ganesh Mal and 50 sacks were to be delivered to Mishrimal Champal. The aforesaid goods were seized through Fard Seizure is Ex. P/2.

(ii) Further case of the prosecution is that goods were being carried without permit and thus, there was violation of Clauses 6 and 7 of the Order of 1985 punishable under Section 3/7 of the Essential Commodities Act.

(iii) After investigation challan was filed against the accused respondent for violation of clauses 6 and 7 of the Order of 1985 punishable under Section 3/7 of the Essential Commodities Act.

3. That on 27-2-1986, charge was framed for offence under Section 3/7 of the Essential Commodities Act by the learned Special Judge, Essential Commodities Act, Jalore against the accused respondent who pleaded not guilty and claimed trial.

4. That during the course of trial, when 7 witnesses had been produced by the prosecution, an application dated 25-6-1987 was moved on behalf of the accused respondent before the learned trial Court stating that since the provisions of Order of 1985 came to an end on 31-7-1986 and after 31-7-1986 Rajasthan Cattle

Fodder (Sale of Stock and Prohibition of Export) Order, 1986 (hereinafter referred to as the Order of 1986) came into force w.e.f. Oct. 1986 and since there was no saving clause in the Order of 1986, the proceedings under the Order of 1985 could not be continued and, therefore, the proceedings be dropped and the accused be acquitted.

5. The learned Special Judge after placing reliance on the judgment of this Court in the case of Jai Chand v. State of Rajasthan reported in 1986 WLC (UC) 376 came to the conclusion that after July, 1986 no proceedings in respect of violation of provisions of Order of 1985 could be taken or continued and hence, the learned Special Judge dropped the proceedings vide judgment dtd. 2-7-1987.

6. Aggrieved from the judgment dtd. 2-7-1987 passed by the learned Special Judge, Essential Commodities Act, Jalore, the present appeal has been filed by the State of Rajasthan.

7. In this appeal, the main submission of the learned P. P. is that when the offence was committed, the Order of 1985 was in force and thus, the accused respondent committed breach of provisions of Order of 1985 and thus, he should have been punished.

8. On the other hand, the learned counsel for the respondent has supported the impugned judgment dtd. 2-7-1987 passed by the learned Special Judge and submitted that no interference is called for in the impugned judgment and order. The learned counsel for the respondent has placed reliance on the case of State of Uttar Pradesh v. Seth Jagamander Das reported in AIR 1954 SC 683 : 1954 Cri LJ 1736

9. I have heard both and perused the record of the case.

10. It may be stated that this Court in the case of Jai Chand (supra) has held as under:

'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.'

11. Before applying the above principle to the fact of the present case, it may be stated that the Order of 1985 came into force in the year 1985 and it remained in force up to 31-7-1986, Sub-clause IV of Clause 1 of the Order of 1985 is very much clear on the point that the Order of 1985 shall remain in force upto 31-7-1986.

12. There is also no dispute on the point that the Order of 1986 came into force in the month of Oct. 1986.

13. Thus, when the Order of 1985 expired by efflux of time i.e. on 31-7-1986 automatically, therefore, from every point of view, the Order of 1985 would be termed as temporary statute.

14. Now the question for consideration is whether on expiry of temporary statute by efflux of time proceedings initiated during the pendency of that statute can be continued later on after expiry of that statute or not.

15. That appreciate this contention, Section 6 of the [General Clauses Act, 1897](#) has to be seen and for convenience Section 6(c) of the General Clauses Act is quoted here :

'6. Effect of repeal : Where this Act or any Central Act or Regulation made 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:

(a)&(b)

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

(d) &(e)

16. The Hon'ble Supreme Court in the case of State of U. P. v. Seth Jagamander Das (supra) has observed as under :

'When a Statute is repealed or comes to an automatic end by efflux of time, no prosecution for acts done during the continuance of the repealed or expired Act can be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or a dead Act. In cases of repeal of statutes this rule stands modified by Section 6 of the General Clauses Act, An expiring Act however is not governed by the rule enunciated in that section.

The Hon'ble Supreme Court in the case of State of U. P. v. Seth Jagamander Das (supra) has clearly observed that in cases of repeal of statutes, this rule stands modified by Section 6 of the General Clauses Act already quoted above. Thus, expiring Act is not governed by provisions of Section 6 of the General Clauses Act.

17. There is distinction between the two statutes viz. when a statute is repealed by another enactment and where it comes to an end automatically by efflux of time. The statute which comes to an end by efflux of time is temporary statute.

18. In my opinion, when a statute is repealed, it would not invalidate the pending prosecution as Section 6(c) of the General Clauses Act is very much clear on the point. For that case of Isher Das v. State of Haryana reported in AIR 1992 SC 1595 : (1992 Cri LJ 2327) may be referred to wherein the Hon'ble Supreme Court has observed that merely expiry of a Statute does not invalidate the pending prosecution.

19. Now the question which arises for consideration is whether provisions of Section 6 of the General Clauses Act are applicable to the temporary statute or not.

20. In my considered opinion the provisions of Section 6 of the General Clauses Act in relation to the effect of repeal do not ordinarily apply to a temporary Act. Stating this proposition, Gajendragadkar. J. as he then was, indicated the consequence of repeal of a temporary Act. In State of Orissa v. Bhupendra Kumar reported in AIR 1962 SC 945, the Hon'ble Supreme Court held as under:

'As observed by Patanjali Sastri, J. as he then was, in S. Krishnan v. State of Madras (1951) SCR 621 : (1951 (52) Cri LJ 1103) the general rule in regard to a

temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. That is why the Legislature can and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of Section 6 of the General Clauses Act.'

21. Thus, expiry of temporary statute is different from repeal of an Act and Section 6 of the General Clauses Act is not applicable to the former while it is applicable to later. Since in the present case, the Order of 1985 was temporary enactment, therefore, the learned trial Judge placing reliance on the case of Jai Chand (supra) had dropped the proceedings against the accused respondent for violation of provisions of Order of 1985, he has not committed any illegality or irregularity.

22. Since the Order of 1985 is a temporary statute, therefore, the argument of learned P. P. that it would apply to the existing case is rejected.

23. For the reasons mentioned above, no interference is called for in the impugned judgment dated 2-7-1987 passed by the learned Special Judge, Essential Commodities Act, Jalore and the appeal filed by the State of Rajasthan deserves to be dismissed.

Accordingly, the present appeal filed by the State of Rajasthan is dismissed after confirming the Judgment dated 2-7-1987 passed by the learned Special Judge, Essential Commodities Act, Jalore in criminal Case No. 5/1986.