

C.A. Baloo and Another Vs. Union of India and Others

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Court : Chennai

Decided On : Sep-07-1990

Reported in : [1992]197ITR545(Mad)

Judge : Arunachalam, J.

Acts : [Income Tax Act, 1961](#) - Sections 137, 269 (T) and (SS), 271 (D) and (E), 276 (E) and (DD) and 297(2)

Appeal No. : Criminal Miscellaneous Petitions Nos. 7552, 7554, 7556, 7558, 7560, 7562, 7564, 7566, 7568, 7570, 75

Appellant : C.A. Baloo and Another

Respondent : Union of India and Others

Advocate for Def. : Ramasami, K. Adv.

Advocate for Pet/Ap. : V. Ramachandran, Adv.

Judgement :

Arunachalam, J.

1. The petitioner in the first batch, Crl. M. P. No. 7552 of 1985, etc., is M/s. Jayalakshmi Financiers represented by its proprietor, C. A. Baloo. In the second batch. Crl. M. P. No. 7962 of 1985, etc., the petitioner is M/s. Samarias Finance,

Madras. The respondent in all these petitions, in both batches, is the Assistant Director of Inspection (Investigation), Office of the Deputy Director, Inspection, Income-tax Department, Madras-34.

2. The first batch of cases are referable respectively to C. C. Nos. 187 to 197 of 1985, pending on the file of the Additional Chief Metropolitan Magistrate (E. O. II), Egmore, Madras. The second batch of cases in the serial order are referable to C. C. Nos. 283 to 318 of 1985, pending on the file of the same learned Magistrate.

3. Prosecutions have been initiated against the respective petitioners in these petitions by the respondent alleging violation of the provisions of section 269SS of the Income-tax Act, 1961, punishable under section 276DD of the same Act. Since various deposits are involved, several dates, the petitioners had received in cash various deposits as evidenced by cash book entries which amounted to contravention of the provisions by cash book entries which amounted to contravention of the provisions of the Income-tax Act aforesaid.

4. In all these petitions filed under section 482, Criminal Procedure Code to call for the records and to quash the pending prosecutions as not maintainable and an abuse of the process of the court, Mr. V. Ramachandran, learned counsel appearing on behalf of the respective petitioners, urged a single contention before me. While urging this contention, he submitted that, in the grounds raised in the petition, the constitutional validity of section 269SS of the Act had been questioned, but that ground has now become infructuous in view of the dismissal by this court of several writ petitions challenging the validity of that provision.

5. The single ground urged is that, with effect from April 1, 1989, section 271D had been introduced in the Income-tax Act while omitting section 276DD with effect from the same date. Section 271D, as it stands now, imposes only a penalty for violation of section 269SS and prosecutions for such violation had been done away with. The authority to impose penalty will be the Deputy Commissioner of Income-tax. Therefore, after the introduction of section 271D, prosecutions can no longer be maintained especially when the earlier 276DD had merely been repealed without any saving clause to sustain the pending prosecutions. He placed before me the judgment of the Supreme Court in T. Barai v. Henry Ah Hoe

: 1983 CriLJ164 , for the proposition that the earliest State Act must be deemed to have been impliedly repealed by the latest Central Act and the provisions of the latest Central Act alone would be applicable.

6. Countering this argument of learned counsel for the petitioner, Mr. Ramasami, K., appearing on behalf of the respondent contended, that, on the same date when section 276DD was omitted, 271D was introduced. Similarly, on the mode of repayment of deposits punishable under section 276E, the violation being of section 269T of deposits punishable under section 276E, the violation being of section 269T of the Act, section 276E was omitted on April 1, 1989, and section 271E was inserted on the same date, providing for penalty alone and not for prosecution. The effect would be, according to learned counsel, that after April 1, 1989, prosecutions for violation of section of sections 269SS and 269T may not be available, but the pending proceedings cannot be deemed to have been obliterated. He would contend that sections 6 and 6A of the General Clauses Act would save the pending prosecutions and the intention contra was not discernible by the repeal of a particular section and reintroduction of another section. He has placed before me certain decided cases to substantiate his contention.

7. I have carefully considered the rival contentions and I am of the view that the petitions have no merit and are liable to be dismissed. The reasons for such a view are as hereunder. It is no doubt true that after the introduction of section 271D in the Income-tax Act with effect from April 1, 1989, only penalty can be imposed and prosecutions are not feasible for contravention of the provisions of section 269SS of the Act. It cannot also be disputed that, before the introduction of section 271D, prosecution was permissible under section 276DD of the Act and no penalty as such departmentally was provided therefor. These prosecutions were initiated even in 1985 when section 276DD was in the statute book. Acceptance of the arguments of learned counsel for the petitioner would result in a rather strange position. The petitioners will not be liable to pay penalty under section 271D of the Act, since it was introduced only on April 1, 1989, and prior to that date when that law was not in the statute book, they cannot be proceeded against. If a prosecution also cannot be launched under the then existing section 276DD of the Act, the resultant position would be that there can be neither a prosecution nor a

penalty proceeding against these petitioners though violation of section 269SS has been alleged and the respondent was prepared to substantiate his case by oral and documentary evidence. This certainly could not have been the intention of the Legislature.

8. In the decision reported in *T. Barai v. Henry Ah Hoe* : 1983 CriLJ164 , the apex court was considering the offence committed by the accused therein under section 16(1)(a) of the Prevention of Food Adulteration Act, 1954, on August 16, 1975, when the Act stood amended in its application to the State of West Bengal by the West Bengal Amendment Act of 1973. Such offences, in view of the said amendment, were punishable with imprisonment for life and, therefore, triable by the Court of Sessions. But a change was brought about by the Central Amendment Act, 1976, providing for a reduced punishment (a term of three years instead of six years) for an offence under section 16(1)(a). The procedure for trial of this offence was materially altered. Consequently, the Supreme Court held that the West Bengal Amendment Act stood impliedly repealed with effect from April 1, 1976. It was also considered therein as to whether the previous operation of the repealed West Bengal Amendment Act was preserved by section 8 of the Bengal General Clauses Act. It was held that the Central Amendment Act, being a later law made by Parliament 'with respect to the same matter', the West Bengal Amendment Act stood impliedly repealed. Further, the Central Amendment Act having dealt with the same offence as the one punishable under section 16(1)(a) and provided for a reduced punishment, the accused must have the benefit of the reduced punishment. Thus, section 16A of the Act (as inserted by the Central Amendment Act of 1976) would be applicable to the trial for the aforesaid offence. The principle laid down was that just as a person accused of the commission of an offence had no right to trial by a particular court or to a particular procedure, the prosecutor equally has no right to insist that the accused be subjected to an enhanced punishment under the repealed Act. Obviously, the law laid down in the aforesaid decision will not be attracted to the facts of this case.

9. In the same ruling, the Supreme Court has stated that 'whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act whether it has been specifically mentioned in the repealing Act or not,

will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But, when the repeal is followed by fresh legislation on the same subject, the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention'. In the latter part of the judgment of the apex court mentioned above, note had been taken of the decision in *State of Punjab v. Mohar Singh Pratap Singh*, AIR 1955 SC 84, wherein, while considering sections 4, 7 and 11 of the East Punjab Refugees (Registration of Land Claims) Act (12 of 1948) and the validity of the prosecution under the Act, the Supreme Court state as hereunder (at page AIR 1955 SC 88 :

'Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow, unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. The court cannot, therefore, subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. The provisions of section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment.'

10. The observations of the Supreme Court in *Rayala Corporation (P) Ltd. v. Director of Enforcement*, AIR 1970 SC 494, need extraction. In para 3, the third question raised has been formulated as hereunder (at page 496) :

'The third point raised relates to the charge of violation of rule 132A (2) of the D. I. Rs. punishable under rule 132A (4) of these Rules and is to the effect that rule 132A of the Defence of India Rules was omitted by a notification of the Ministry of Home Affairs dated March 30, 1965, and, consequently, a prosecution in respect of an offence punishable under that rule could not be instituted on March 17, 1968, when that rule had ceased to exist.'

11. In answering this question in para 12, the Supreme Court has observed as follows (at page 502) :

'The argument of Mr. Sen was that, even if there was a contravention of rule 132A (2) by the accused when that rule was in force, the act of contravention cannot be held to be a 'thing done or omitted to be done under that rule', so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted. He conceded the possibility that, if a prosecution had already been started while rule 132A was in force, that prosecution might have been competently continued. Once the rule was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force. We are inclined to agree with the submission of Mr. Sen that the language contained in clause 2 of the Defence of India (Amendment) Rules, 1965, can only afford protection to action already taken while the rule was in force, but cannot justify initiation of a new proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a proceeding after the rule had ceased to exist. On this interpretation, the complaint made for the offence under rule 132A (4) of the D. I. Rs., after 1, 1965, when the rule was omitted, has to be held invalid.'

12. The principle stated by the apex court is the same in several other cases cited before me, and they do not have to be referred to, for it only increases the volume, especially when there is no change in the principle.

13. In *R. V. M., T. V. D. and Co. v. CIT* : [1963]50ITR23(Mad) , while considering the change of law-Repeal of Ordinance by later Act - and whether the Ordinance ceased to have effect even with regard to the period before it was repealed, it was

stated as hereunder (at page 28) :

'It is not necessary to refer to the several provisions of the General Clauses Act which really nullify the above argument. It will be sufficient to refer to section 6 of the General Clauses Act, which clearly provides that where any Central Act repeals any enactment previously made, then unless a different intention appears, such repeal shall not affect the previous operation of any enactment so repealed. The Ordinance effected a change in the law effective from April 1, 1949, and before the Ordinance lapsed, an Act of the Legislature was passed continuing the amendments. The mere fact that the Ordinance was repealed by the later enactment does not mean that the Ordinance which effected a change was rendered a dead letter even during the period when it was lawfully in force.'

14. On the use of words 'omitted' and 'repealed', a Division Bench of this court in J. K. K. Angappan v. ITO : [1974]94ITR397(Mad) held as hereunder (headnote) :

'The mere use of the word 'omit' instead of 'repeal' by the Legislature cannot be taken to show its intention to exclude the application of section 6 of the General Clauses Act, 1897. Repealing a provision is the same as omitting it. The liability to pay annuity deposit was a present liability which existed on April 1, 1967, the date on which the provisions relating to annuity deposit were omitted from the Income-tax Act, 1961, by the Finance Act, 1966. Therefore, section 6 of the General Clauses Act, 1897, will stand attracted and notwithstanding the omission annuity deposit payable before April 1, 1967, could be assessed and recovered even after that date.'

15. K. S. Venkataraman J., in S. V. Ramakrishna Mudaliar v. Mrs. Rajabu Fathima Bukari : [1965]58ITR288(Mad) stated (headnote) :

'That the principle enacted in section 6 of the General Clauses Act that, unless a contrary intention appears, the repeal of an Act would not 'affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ' would apply to a repeal of one of the sections of an Act, as for example, the omission of section 137 by the Finance Act of 1964. A contrary intention is not apparent in the Finance Act of 1964 and neither sub-section (1) nor

sub-section (2) of section 138 as inserted by the Finance Act, 1964, destroys the prohibition contained in section 137 of the Income-tax Act, 1961. Hence, in a case governed by section 137, the prohibition would continue to operate in spite of the deletion of the section in 1964'. In *T. S. Baliah v. T. S. Rangachari*, ITO : [1969]72ITR787(SC) , the Supreme Court observed as follows : 'There is a repeal by implication only if the court is satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together and the repeal of the prior enactment must flow from necessary implication of the later enactment. Under section 6, General Clauses Act, the repeal of the India Income-tax Act, 1922, by the 1961 Act, does not affect legal proceedings instituted and continued in respect of any matter pending under the 1922 Act at the time of repeal unless a contrary intention can be gathered from the new statute. Parliament did not intend section 297(2) of the Income-tax Act, 1961, to be completely exhaustive and in regard to such matters as are not expressly saved by section 297(2) of the Act, the provisions of section 6(e), General Clauses Act, a legal proceeding in respect of an offence committed under the 1922 Act may be instituted even after the repeal of the 1922 Act by the 1961 Act, and punishment imposed as if the repealing Act had not been passed.'

16. A conspectus of the case-law certainly shows that the prosecution initiated against the petitioners can definitely survive. Section 6 of the General Clauses Act which deals with the effect of repeal reads '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 affect the various aspects mentioned in sub-divisions (a) to (e) thereof.' Section 6A takes in its fold the repeal of Act making textual amendment in the Act or Regulation'. In other words, it concerns itself, with omissions, insertions or substitutions. Unless a different intention appears, the repeal in terms of this section' shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.'

17. From the insertion of the new sections, while omitting the earlier sections referred to above in the Income-tax Act, it is not possible to gather a contrary intention that the Legislature desired that prosecutions which were permissible

under section 276DD of the Act and already initiated before insertion of the new section, were to be erased or obliterated.

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