

In Re : Jeevanlal and anr.

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SooperKanoon Citation : sooperkanoon.com/806958

Court : Chennai

Decided On : Nov-22-1965

Reported in : 1966CriLJ1150

Judge : Sadasivam, J.

Appellant : In Re : Jeevanlal and anr.

Judgement :

ORDER

Sadasivam, J.

1. This is a petition by the accused in C.C. No. 18572 of 1964 on the file of the IV Presidency Magistrate, G.T. Madras, to revise the order of the IV Presidency Magistrate rejecting their application that they cannot be tried under Section 409 I.P.C., having regard to the provisions contained in the Pawn Brokers Act.

2. The learned IV Presidency Magistrate has, on the charge-sheet filed by the police, framed three charges against the petitioners under Section 409 I.P.C. The contention of the learned advocate for the petitioners is that the offence with which they were charged is punishable under Section 16(7) of the Pawn Brokers Act, and that the special provisions of the Pawn Brokers Act override the general provisions of the Indian Penal Code. In my opinion the learned IV Presidency Magistrate has rightly rejected the contention of the petitioners.

3. The learned advocate for the petitioners relied on *Gopal Ji v. Shree Chand (S)* : AIR1955 All28 in support of his contention that where there is a special Act dealing with the special subject, resort should be had to that Act instead of to a general provision which is exercisable or which is available under extraordinary circumstances only. The writ of Habeas Corpus is a high prerogative writ in England which could be invoked in appropriate cases to restore minors to proper custody when they were in illegal detention. But the writ was never intended to be utilised or used for purposes of merely determining rival claims of competing guardians. Section 491 Cr.P.C. is a general power in the nature of habeas corpus. It was pointed out in the above decision that the power under the Guardians and Wards Act is a power under a special Act dealing with a special subject, resort should be had to that Act instead of to a general provision which was exercisable or which was available under the extraordinary circumstances only.

4. The decision in *Antulal v. Kunwar Pal Singh* : AIR 1958 MP7 relied on by the learned advocate for the petitioners is equally inapplicable to the facts of the present case. The decision in that case was that a provision contained in a special statute which is a consolidating statute and was passed subsequent to the existing general statute must prevail over the general statute. Section 517 of the Gwalior Civil Procedure Code which is similar in terms to Order 20 Rule 14, C.P.C. is a general provision unlike Section 21 of the Gwalior Pre-emption Act which applied to the facts of that case. It was rightly pointed out in that decision that the provisions contained in the Gwalior Pre-emption Act should apply to the facts of that case.

5. The learned advocate for the petitioners; referred to the section relating to implied repeal in penal acts at page 177 of *Maxwell on Interpretation of Statutes*, 11th Edn. It is true that when the new Act impliedly repeals an old one, then the new Act alone would apply. But it cannot be pretended in this case that the Pawn Brokers Act in any way repeals the provisions contained in the Indian Penal Code, namely, Section 409 I.P.C. to the extent to which the Pawn Brokers Act makes provision for the same. It is pointed out in the above book that it would seem that an Act which (without altering the nature of the offence, as by making it felony instead of misdemeanour) imposes a new kind of punishment, or provides a new

course of procedure for that which was already an offence, at least at common law, is usually regarded as cumulative and as not superseding the pre-existing law.

6. Section 5 of the Indian Penal Code, specifically provides that nothing in the Act shall affect the provisions of the special or local law. It is true that no prosecution under the Code would be admissible, if it appears upon the whole frame of the special Act that it was intended to be complete in itself and to be enforced only by the penalties created by it. It is clear from the charge framed in this case that the acts alleged against the petitioners fall under Section 409 I.P.C. It is true that it may fall also under Section 16(7) of the Pawn Brokers Act. There is nothing in the Pawn Brokers Act, which takes away the right to prosecute the accused under a more serious provision of Section 409 I.P.C. There may be cases which may not fall under Section 409 I.P.C. but which could come within Section 16(7) of the Pawn Brokers Act alone. In the present case it is open to the prosecution to charge the petitioners both under Section 409 I.P.C. and Section 16(7) of the Pawn Brokers Act; but the petitioners cannot be punished under both these provisions. The General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments then the offender shall be liable to be prosecuted under either or any of those enactments but shall not be punished twice for the same offence. In fact, even where the accused is guilty of the specific offence under the Pawn Brokers Act, he could be convicted under an appropriate section of the Indian Penal Code if the punishment under the special Act, namely, Pawn Brokers Act, is no adequate.

7. For the foregoing reasons, I see no grounds to interfere in revision with the order of the learned IVth Presidency Magistrate rejecting, the preliminary objection of the petitioners. The criminal revision case is dismissed.