State Of U.P vs Seth Jagamander Das & Ors on 30 April, 1954

Equivalent citations: AIR 1954 SUPREME COURT 683

Author: Mehr Chand Mahajan

Bench: B.K. Mukherjea, V. Bose, N.H. Bhagwati, Mehr Chand Mahajan

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           CASE NO.:
Appeal (crl.)  5 of 1952

PETITIONER:
STATE OF U.P.

RESPONDENT:
SETH JAGAMANDER DAS & ORS.

DATE OF JUDGMENT: 30/04/1954

BENCH:
M.C. Mahajan (CJ) & B.K. Mukherjea & V. Bose & N.H. Bhagwati & T.L.
Venkatarama Ayyar

JUDGMENT:
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JUDGMENT AIR 1954 SC 683 Mehr Chand Mahajan, C.J.

1. This is an appeal by the State of Uttar Pradesh against the judgment in Criminal Revision No. 981 of 1950 by the High Court of Judicature at Allahabad quashing the proceedings taken against the respondents under Section 120-B, I. P. C. read with Rules 81(4) and 121 of the Defence of India Rules and ordering their discharge.

2. It was alleged by the prosecution that the respondents infringed the provisions of Section 2 of the Non-Ferrous Metals Control Order, 1942, during the years 1943-1945 and thus committed an offence punishable under the above provisions of the law. No prosecution however was commenced against them till the 16th January 1950 in spite of the fact that a complaint against them had been made to the police in August 1948.

There is no satisfactory explanation for this long delay in putting the chalan in Court and for the leisurely conduct of the investigation which concerned the provisions of an Act which it was known to all concerned had an uncertain life. It is a matter of regret that offences of a serious character should go unpunished simply because of the dilatory methods of the investigation agency.

3. On the 19th April 1950 the respondents made an application before the trial magistrate for quashing the proceedings commenced on the 16th January 1950 on the ground that the trial could not be continued because the Defence of India Act and the Rules framed thereunder had expired

and because the Government of India Act, 1935 had also been repealed by the Constitution. The magistrate refused to quash these proceedings. The judgment giving the reasons for this decision is by no means a specimen of clear thinking.

The respondents filed an application in revision against this order in the Court of the Sessions Judge at Meerut, Mr. Maheshwari Dayal. This is how the learned Sessions Judge disposed of this matter:

> "The learned magistrate by means of a very elaborate and well reasoned judgment repelled this contention and held that the Defence of India Rules still subsisted and the offenders who committed breach of these rules were liable to prosecution. The magistrate's view is impeached in the present revision proceedings. But after going through arguments of the magistrate's judgment and considering the applicants' learned counsel and relevant legal provisions I find myself in agreement with the learned magistrate.
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> The magistrate has taken very great pains over this case and has written an excellent judgment which should serve as a model to other magistrates and be a source of inspiration to them. I have not come across such an excellent judgment dealing with important questions of law written by a magistrate. I do not think it would serve any useful purpose to record elaborately my reasons for upholding the magistrate's view, as it would be no more than reiteration of what the magistrate has already stated in his judgment. The magistrate's judgment should speak not only for the magistrate but for me also and I adopt his arguments and reasonings."

The High Court very aptly remarked that the Sessions Judge refused to do anything himself in the matter and only contended himself by pouring encomia on the trial Court.

The use made of superlatives by the Sessions Judge in praise of the judgment of the magistrate discloses that either he never understood what the magistrate had held or he failed to grasp the legal propositions that he had to tackle. The Sessions Judge clearly did not discharge his duty in this case.

4. The respondents went up in revision to the High Court. The High Court allowed the application and, as above stated, quashed the proceedings taken against the respondents and discharged them of their bail bonds. At the request of the State a certificate was granted under Article 132 of the Constitution of India for leave to appeal to this Court and this appeal was filed in this Court on 12-2-1952.

5. Mr. C. P. Lal who appeared in support of the appeal proved incapable of giving any assistance to the Court and was unable to tell us what was wrong with the decision of the High Court. So far as we have been able to see for ourselves there are no adequate grounds for reversing that judgment and for allowing the appeal.

6. The Defence of India Act was enacted in exercise of the powers granted under Section 102 of the Government of India Act, 1935. The Control Order under which the respondents were being

prosecuted related to a subject contained in the Provincial List (List II of the Seventh Schedule of the Government of India Act, 1935) and but for the proclamation of emergency the Central Government would not have been competent to make it.

The emergency which existed in 1939 when the Defence of India Act was passed was continuing when the Control Order was passed in 1942. Section 1(4) of the Defence of India Act provided that the Act shall remain in force during the continuance of the war and for a period of six months thereafter. The war came to an end on 1st April 1946 and the Act expired on the 30th of September 1946 together with all rules and orders made thereunder.

7. 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.

On the 30th March 1946, before the expiry of the Defence of India Act, the Governor-General promulgated an Ordinance "The Defence of India (Second Amendment) Ordinance" No. XII of 1946. This Ordinance amended Section 1(4) of the Defence of India Act by adding a saving clause in the following terms:

> "But its expiry under the operation of this sub-section shall not affect--
>
> (a) the previous operation of, or anything duly done or suffered under this Act or any rule made thereunder or any order made under any such rule....."

This saving clause is almost in the same terms as Sections 6(a), (b), (c),

(d) and (e) of the General Clauses Act. Thus the saving clause achieved the purpose which otherwise would have been achieved, if it was a case of a repeal, by Section 6 of the General Clauses Act.

By virtue of the provisions of the saving clause "for things done or omitted to be done under the Defence of India" the prosecution could be commenced even after the expiry of the Act. The saving clause added in the Act by the Ordinance clearly permitted a prosecution for offences committed before the expiration of Defence of India Act even after its expiry.

8. In the year 1947 when the two Dominions of India and Pakistan were constituted under the Indian Independence Act, the Dominion Legislature took the place of the Central Legislature and it passed "The Repealing and Amending Act, 1947, Act II of 1948." Among other Acts and Ordinances repealed was 'Ordinance XII of 1946. The schedule of repealed Acts also mentioned though unnecessarily the Defence of India Act which had already died a natural death in September 1946 and required no repeal.

Section 3 of this Act contains a saving clause to the effect that the repeal of an enactment by it was not to affect any other enactment in which such enactment has been applied, incorporated or referred to and that the Act was not to affect the effect or consequences of any thing already done or suffered or any obligation or liability acquired or incurred or any remedy or proceeding in respect thereof or the proof of any past act or thing, or revive or restore any right, restriction, exemption or other matter or thing that had ceased to have effect under the repealed enactment.

If the Defence of India Act itself could be said to be repealed by this statute and had not expired by efflux of time this saving clause undoubtedly would have permitted prosecution for offences committed under the repealed Defence of India Act, but as already pointed out, the Defence of India Act was dead long before its repeal by this Act and could not be brought to life again for purposes of repeal by Act II of 1948 and hence the circumstance that the Act was mentioned in the schedule to Act II of 1948 has to be left out of consideration.

9. The High Court took the view that the Defence of India Act expired on 30th September 1946; the Ordinance XII of 1946, however, remained in force. This Ordinance had amended Section 1(4) of the Defence of India Act and the amendment remained in force so long as the Ordinance was not repealed. That Ordinance was, however, repealed by Act II of 1948 and this repeal came into effect from the 5th of January 1948, and as the prosecution in this case was not started before that date, therefore nothing could be said to have been done under the Ordinance which was saved after 5-1-1948.

It held that the liability of the present respondents to be punished arose under the Defence of India Act and not under the Ordinance which merely extended the period during which they could be prosecuted and punished and that had their prosecution started during the life of the Ordinance or during the life of the Defence of India Act it could then be argued that the continuation of the prosecution was something done, or a liability incurred, under the Ordinance and could be carried on under the saving clause of Act II of 1948, but that as no prosecution was commenced at all before 5-1-1948 and there was nothing done, there was no liability incurred which could possibly be affected by the repeal of the Ordinance.

In the result it was concluded that after 5-1-1948 no fresh prosecution could be commenced for offences committed under the Defence of India Act on subjects included in the Provincial List of the Seventh Schedule of the Government of India Act.

10. The High Court also took the view that under Section 102(4) of the Government of India Act, 1935 the prosecution of the respondents for the offences committed by them could possibly have been continued after the 5th January 1948, but that after the repeal of the Government of India Act on the 26th of January 1950 by Article 395 of the Constitution it could no longer be continued as Section 6 of the General Clauses Act had no application to the repeal of the Government of India Act, 1935, by the Constitution. In the result it reached the conclusion that the prosecution being under the Defence of India Act, which had expired, and as the law, under which it was allowed to continue, also became a dead letter on the 26th of January 1950, it must therefore be quashed.

11. In our judgment, no grounds exist for taking a view contrary to the one expressed by the High Court. It is quite clear that the life of the Defence of India Act having expired on the 30th of September 1946, in the absence of a saving clause no prosecution for infringement of its provisions could be commenced after the expiry of the life of the Act, Section 6 of the General Clauses Act not being applicable to such a case. Such a saving clause was, however, provided by the Ordinance XII of 1946. That Ordinance itself was repealed by Act II of 1948, and as nothing was done in this case before the 5th of January 1948 no fresh proceedings could be commenced after that date for violation of the provisions of the Defence of India Act.

Section 102(4) of the Government of India Act, under the provisions of which possibly the prosecution of the respondents for offences committed by them could have been justified and continued, was also repealed by the Constitution on the 26th of January 1950 a few days after this prosecution was commenced. Section 6 of the General Clauses Act has no application to the repeal of a statute made by Parliament in England and the repeal of which has been brought about by the Constitution of India.

It was for this reason that in Article 372 of the Constitution it was provided that "Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395..... the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

This Article has no operation to the laws that had previously been repealed or which had died a natural death.

Explanation III of this Article enacts that "Nothing in this Article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force."

The Defence of India Act or any provisions for extending its life therefore cannot be called in aid for continuing the prosecution in the present case.

12. The result therefore is that there is no substance in this repeal and it is accordingly dismissed.