T. Barai vs Henry Ah Hoe And Another on 7 December, 1982

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Author: A.P. Sen

Bench: A.P. Sen, E.S. Venkataramiah, R.B. Misra

PETITIONER:
T. BARAI

Vs.

RESPONDENT:
HENRY AH HOE AND ANOTHER

DATE OF JUDGMENT07/12/1982

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1983 AIR 150 1983 SCR (1) 905
1983 SCC (1) 177 1982 SCALE (2)1133
CITATOR INFO :
F 1983 SC1019 (66)
R 1985 SC1729 (10)
RF 1990 SC1277 (46)
RF 1990 SC2072 (11,46)

ACT:
Interpretation of Statutes-Central Act on a subject in Concurrent List amended by State Act-State Act enhanced punishment-A later Central Amendment Act with respect to the same matter reduced the punishment-State amendment if impliedly repealed-Repeal followed by fresh legislation-Section 6 of General Clauses Act-If applicable.

HEADNOTE:

For committing an offence under section 16(1)(a) of the Prevention of Food Adulteration Act, 1954, as it stood on March 1, 1972, the maximum punishment prescribed was imprisonment for six years and fine. Section 21 of the Act provided that such offences were triable by a Presidency Magistrate or Magistrate First Class. By the Prevention of Adulteration of Food, Drugs and Cosmetics (West Bengal Amendment) Act, 1973, enacted by the State Legislature of West Bengal, the maximum punishment for an offence under this section had been enhanced to imprisonment for life, as a result of which an offence committed under the section in the State of West Bengal became exclusively triable by a court of sessions. The Amendment Act received the assent of the President and came into force from April 29, 1974. In 1976 Parliament amended the Food Adulteration Act and the amendment came into force with effect from April 1, 1976. For offences punishable under section 16(1)(a) the Amendment Act provided for a reduced punishment for a term of three years instead of six years as before. By the same Amendment Act section 16A was inserted in the Act providing that all offences under section 16(1) shall be tried in a summary way by a Judicial Magistrate, First Class, or by a Metropolitan Magistrate.

On September 24, 1975 the appellant lodged a complaint against the respondent for having committed an offence punishable under section 16(1)(a) read with section 7 of the Act. On the date of the commission of the alleged offence the law in force in the State of West Bengal was the 1954 Act as amended by the West Bengal Amendment Act.

Purporting to follow the decision of a single Judge of the Calcutta High Court in B. Manna and Ors. v. State of West Bengal, (81 C.W.N. 1075) in which it was held that the Central Amendment Act was not intended to be retrospective in operation because it had not expressly repealed the West Bengal amendment nor dealt with the Act or any of its provisions in any manner, the Magistrate held that the case was triable by the Court of Sessions.

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Disagreeing with the view of the single Judge, a Division Bench of the High Court held that after the Central Amendment Act came into force on April 1, 1976 all proceedings pending for trial of offences punishable under s. 16(1)(a) as amended by the West Bengal Act which had not been concluded, would cease to be governed by the West Bengal Amendment Act and would come within the purview of the Central Act as amended by the Central Amendment Act and that therefore such offences committed prior to the amendment were triable in accordance with the procedure under s. 16A as amended by the Central Amendment Act.

On the question whether the previous operation of the repealed West Bengal Amendment Act in respect of any liability incurred thereunder is preserved by s. 8 of the

Bengal General Clauses Act, 1899 which is in pari materia with s. 6 of the General Clauses Act, 1897 both as to procedure for trial of such offences and the nature of punishment liable to be imposed.

Dismissing the appeal,

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HELD: By virtue of the proviso to Art. 254 (2) of the Constitution, Parliament may repeal or amend a repugnant State law either directly or by itself by enacting a law repugnant to the State law with respect to the same matter. Even though the subsequent law made by Parliament does not expressly repeal a State law, the State law will become void under Article 254 (1) if it conflicts with a later law made by Parliament creating repugnancy. Such repugnancy may arise where both laws operate in the same field and the two cannot possibly stand together: As for example, where both prescribe punishment for the same offence, both the punishments differs in degree or kind or in the procedure prescribed. In all such cases the law made by Parliament shall prevail over the State law under Art. 254(1). In the instant case when Parliament stepped in and enacted the Central Amendment Act, which is a later law made by Parliament with respect to the same matter the West Bengal Amendment Act stood impliedly repealed with effect from April 1, 1976. [915 D-G]

Zaverbhai Amaidas v. The State of Bombay [1955] 1 S.C.R. 799, applied.

The applicability of section 6 of the General Clauses Act, 1897 is not ruled out when there is a repeal of an enactment followed by fresh legislation. But the Parliament having reenacted the law relating to the same offence under s. 16(1)(a) of the Act and provided for altered procedure and also provided a reduced sentence, the accused must be tried according to the new procedure provided by s. 16A of the Act and must also have the benefit of the reduced punishment.

[919 G-H]

Dictum of Sargant J. in Re. Hale's Patent L.R. [1920] Ch. 377, held in applicable.

In so far as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence, no person can be convicted by such ex-post facto law nor can the enhanced punishment prescribed by amendment be applicable; but insofar as it reduces the punishment for an offence punishable under s. 16(1)(a) of the Act, there is no reason why the accused should not

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have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. [919 F-H]

Craies on Statute Law, 7th edn. at pp. 387-388 referred to.

It is a well-settled rule of construction that when a later statute again describes an offence created by an earlier statute and imposes a different punishment or varies the procedure, the earlier statute is repealed by implication.

Michell v. Brown [1959] 120 ER 909, 912, Smit v. Benabo [1937] 1 All ER 523 and Regina v. Youle [1861] 158 ER 311, 315-316 referred to.

The rule is however subject to the limitation contained in Art. 20(1) against ex post facto law providing for a greater punishment and has no application where the offence described in the later Act is not the same as in the earlier Act i.e, when the essential ingredients of the two offences are different. In the premises, the Central Amendment Act having dealt with the same offence as the one punishable under s. 16(1)(a) of the Act and provided for a reduced punishment, the accused must have the benefit of the reduced punishment. [921 E-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 40 of 1979.

From the Judgment and Order dated the 5th June, 1978 of the Calcutta High Court in Criminal Revision No. 133 of 1978.

D. Mukherjee, Pradeep Ghosh and P.K. Mukherjee for the appellant.

N.C. Talukdar and Amlan Ghosh for respondent Nos. 1 and

2. G.S. Chatterjee for respondent No. 3 (State of Bengal). The Judgment of the Court was delivered by SEN, J. This appeal by special leave from a judgment of the Calcutta High Court dated June 5, 1978 raises a question of some complexity. The question is as to the applicability of s. 16A of the Prevention of Food Adulteration Act, 1954 ("Act" for short) as inserted by the Prevention of Food Adulteration (Amendment) Act, 1976 (for short "the Central Amendment Act") with respect to prosecutions launched under s.16(1) (a) read with s.7 of the Act in the State of West Bengal between the period from April 29, 1974 to April 1, 1976. Such offences according to the law then in force i.e. the Act as amended by the Prevention of Adulteration of Food, Drugs and Cosmetics (West Bengal Amendment) Act, 1973 (for short "the West Bengal Amendment Act") were punishable with imprisonment for life and therefore triable by the Court of Sessions.

It is common ground that the offence with which the respondents are charged is alleged to have been committed under s.16(1)(a) at a time when the Act stood amended in its application to the State of West Bengal by the provisions of the West Bengal Amendment Act. If the law continued to stand as it stood on the date of the offence which was so committed, there would have been no difficulty because the maximum penalty would be imprisonment for life and fine and as such the

offences would be exclusively triable by the Court of Sessions. But a change was brought about when Parliament enacted the Central Amendment Act which came into force on April 1, 1976 by which the scheme of s.16 of the Act providing for various punishments was materially altered; so also the procedure for the trial of such offences. The effect of the Central Amendment Act was that the West Bengal Amendment Act stood impliedly repealed with effect from April 1, 1976 and the question is whether the previous operation of the repealed West Bengal Amendment Act in respect of any liability incurred thereunder is preserved by s.8 of the Bengal General Clauses Act, 1899 which is pari materia with s.6 of the General Clauses Act, 1897 both as to procedure for trial of such offences and the nature of punishment liable to be imposed.

First as to facts. On August 16, 1975 the appellant, a Food Inspector of the Corporation of Calcutta, visited the Chungwa Restaurant run by the respondents at Chittaranjan Avenue, Calcutta and purchased a quantity of Hyacinth's ground white pepper (compound) with fried rice powder and sent the same to a Public Analyst for analysis. On such analysis, the sample was found to be adulterated as it contained no rice powder but wheat powder. On September 24, 1975 the appellant lodged a complaint against the respondents for having committed an offence punishable under s.16(1)(a) read with s.7 of the Act in the Court of Senior Municipal Magistrate, Calcutta. The gravamen of the charge was that the respondents had stored and/or exposed for sale and/or used Hyacinth's ground white pepper (compound) with fried rice powder for the purpose of manufacturing and preparing different articles of food which was adulterated and misbranded.

On the date of the commission of the alleged offence i.e. on August 16, 1975 the law in force in the State of West Bengal was the Act as amended by the West Bengal Amendment Act which provided that such an offence would be punishable with imprisonment for life. The learned Magistrate following the decision of Anil Kumar Sen, J. in B. Manna and Ors. v. The State of West Bengal(1) sustained a preliminary objection raised on behalf of the Corporation and held that the case was triable by the Court of Sessions. Disagreeing with the view of Anil Kumar Sen, J. in B. Manna's case, (supra), a Division Bench of the High Court held that after the Central Amendment Act came into force on April 1, 1976, all proceedings pending for trial of such offences punishable under s.16(1)(a) of the Act as amended by the West Bengal Amendment Act which had not been concluded, would cease to be governed by the West Bengal Amendment Act and would come within the purview of the Act as amended by the Central Amendment Act and therefore such offences committed prior to such amendment are triable in accordance with the procedure prescribed by s.16A of the Act as amended by the Central Amendment Act. It accordingly set aside the order of the learned Magistrate and directed him to proceed with the trial.

Upon these facts, three questions fall for consideration in the appeal viz. (1) whether the Central Amendment Act impliedly repealed the West Bengal Amendment Act with effect from April 1, 1976; and if so, the effect of such repeal. (2) Whether the High Court was justified in holding that the West Bengal Amendment Act shall be deemed to have been obliterated from the Statute Book for all intents and purposes inasmuch as the Central Amendment Act manifests an intention to the contrary so as to exclude the operation of s.8 of the Bengal General Clauses Act, 1899. And (3) Are the pending proceedings to be governed by the change of procedure brought about by s.16A of the Act as introduced by the Central Amendment Act; and further whether the continued operation of

the repealed West Bengal Amendment Act is preserved with regard to the punishment to be imposed.

For a proper appreciation of the points in controversy, it is necessary to deal with the statutory changes brought about. First we may refer to the provisions of the Act as it stood on March 1, 1972, the relevant provisions whereof were as follows:

> "16(1) If any person-
>
> (a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food-
>
> (i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health;
>
> (ii) ** ** ** He shall, in addition to the penalty to which he may be liable under the provisions of s.6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees.
>
> Provided that-
>
> (i) if the offence is under sub-cl. (i) of cl. (a) and is with respect to an article of food which is adulterated under sub-cl. (i) of cl. (i) of s.2 or misbranded under sub-cl. (k) of cl. (ix) of that section; or ** ** ** ** the court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees."
>
> "20(1) ** ** ** (2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act."
>
> ** ** ** **
>
> 21. Notwithstanding anything contained in s.32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or any Magistrate of the first class to pass any sentence authorized by this Act, in excess of his powers under s. 32 of the said Code."

On these provisions, the maximum punishment which could be imposed for committing any offence under s.16(1)(a) was imprisonment for six years and fine. Such an offence not being under the Indian Penal Code, 1860 was triable not exclusively by the Court of Sessions under the provisions of s.29(2) of the Code of Criminal Procedure, 1973 read with Schedule II thereunder. To overcome the

limit imposed by s.32 of the Code on sentences which a Presidency Magistrate or a Magistrate of First Class could impose, s.21 of the Act was inserted. The result was that such offences become triable by a Presidency Magistrate or a Magistrate of the First Class. That was the law in force in the whole of India as on March 1, 1972.

On April 29, 1974, the Prevention of Adulteration of Food, Drugs and Cosmetics (West Bengal Amendment) Act, 1973 enacted by the State Legislature of West Bengal having been assented to by the President, became the law applicable to the State of West Bengal as from that date. It would appear that the State of West Bengal had taken a step forward with a view to make anti-social offences such as adulteration of articles of food meant for human consumption, or manufacture or sale of spurious drugs etc. which constituted a menace to the society and deserved a deterrent punishment, to be punishable with imprisonment for life. S.6 of that Act inserted the following amendment.

> "In the Prevention of Food Adulteration Act, 1954-
>
> ** ** ** ** **
> (ii) in section 16-
>
> (a) in sub-s.(l), for the words "a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees", the words "life and shall also be liable to fine" shall be substituted;"

The following words were substituted in the proviso to sub- s.(1):

> "(b) in the proviso to sub-s.(1), for the words "the Court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees", the following words shall be substituted, namely:-
>
> "(ii) if the Court thinks that for any adequate and special reasons to be mentioned in the judgment a lesser sentence would serve the ends of justice, the Court may impose a sentence which is less than a sentence of imprisonment for life;"

It will be seen that the West Bengal Amendment Act brought about a radical change so far as the Act was concerned in its application to the State of West Bengal. The maximum punishment for an offence under s.16(1)(a) when committed in the State was punishment of imprisonment for life so that under the provisions of the Code of Criminal Procedure, 1973, such an offence became exclusively triable by a Court of Sessions and ceased to be triable either by a Presidency Magistrate or a Magistrate of the First Class.

For this reason, the provisions of s.20 were also materially altered :

"20(1) All offences punishable under this Act shall be cognizable and non-bailable.

(2) Any police officer not below the rank of a Sub Inspector of Police may arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of his having been concerned in any of the offences punishable under this Act."

The Act also introduced s.19A with regard to burden of proof and it read :

"19A. When any article intended for food is seized from any person in the reasonable belief that the same is adulterated or misbranded the burden of proving that such article intended for food is not adulterated or misbranded shall be on the person from whose possession such article intended for food was seized."

It was not long before Parliament stepped in to meet the growing menace of the anti-social offence of adulteration of articles of food meant for human consumption which was a threat to the national well-being and it was felt that such offences must be ruthlessly dealt with. It was also felt that there should be a summary trial of these offences. The Prevention of Food Adulteration (Amendment) Act, 1976 was accordingly brought into force with effect from April 1, 1976. It not only created new offences but also enhanced the punishments provided. But at the same time it also provided for graded punishment for various types of offences. Incidentally, it mollified the rigour of the law by providing for a reduced punishment for an offence punishable under s.16(1)(a). We are however not concerned with other types of offences except the one punishable under s.16(1)(a) and for this the maximum punishment provided was for a term of three years instead of six years. In s.16 of the Act for sub-s.(1), the following sub-section insofar as relevant was introduced :

"(1) Subject to the provisions of sub-s.(1A), if any person-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-

cl.(m) of cl.(ia) of s.2 or misbranded within the meaning of cl. (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

* * * * * he shall, in addition to the penalty to which he may be liable under the provisions of s.6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees."

A new proviso was inserted conferring power on the Court for any adequate and special reasons to be mentioned in the judgment to impose a reduced punishment for a term which shall not be less than three months but may extend to two years, with fine which shall not be less than five hundred

rupees.

As regards the procedure for trial of such offences, the Act introduced s.16A which is important for our purposes, and it reads :

> "16A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under sub- section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial :
>
> Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year :
>
> Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code."

There were some corresponding changes brought about in s.20 of the Act. Sub-s.(2) of s.20 provides :

> "(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act."

There is no doubt or difficulty as to the law applicable. Art. 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Art. 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter.

Clause (1) lays down that if a State law relating to a Concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a Concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a Concurrent subject would be that the State Act will prevail in that

State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the Proviso to clause (2). The Proviso to Art.254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Art.254(1). That being so, when Parliament stepped in and enacted the Central Amendment Act, it being a later law made by Parliament "with respect to the same matter", the West Bengal Amendment Act stood impliedly repealed.

The case of Zaverbai Amaidas v. The State of Bombay(1) illustrates the application of the Proviso to Art.254(2). The Essential Supplies (Temporary Powers) Act, 1946 was enacted by the Central Legislature, s.7 of which provided for penalties for contravention of orders made under s.3 of the Act. The provision with regard to the penalties was that if any person contravenes any order made under s.3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. The then Province of Bombay felt that the maximum punishment of three years, imprisonment provided by s.7 of the Act was not adequate for offences under the Act and with the object of enhancing the punishment provided therein, enacted Act 36 of 1947. By s.2 of that Act it was provided that notwithstanding anything contained in the Essential Supplies (Temporary Powers) Act, 1946, whoever contravenes an order made under s.3 of the Act shall be punishable for a term which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to fine. The Bombay Act thus increased the sentence to imprisonment for seven years and also made it obligatory to impose a sentence of fine, and further provided for a minimum sentence of six months and the Court was bound to impose a minimum sentence except for reasons to be recorded in writing. The Act having been reserved for the assent of the Governor-General and received his assent under s.107(2) of the Government of India Act, 1935, came into operation in the Province of Bombay notwithstanding the repugnancy. Subsequently, the Essential Supplies (Temporary Powers) Act, 1946 under-went substantial alterations and was finally recast by the Essential Supplies (Temporary Powers) Amendment Act, 1950. The Amendment made in 1950 substituted a new section in place of s.7 of the Act. The scheme of the new section was that for purposes of punishment, offences under the Act were grouped under three categories and the punishment to be imposed in the several categories were separately specified. S.7 was thus a comprehensive Code covering the entire field of punishment for offences under the Act graded according to the commodity and character of the offence. It was held by this Court that the Bombay Act was impliedly repealed by s.7 of the Essential Supplies (Temporary Powers) Amendment Act, 1950.

It is strenuously argued on behalf of the appellant that s.16A of the Act is not retrospective in operation, and that it does not deal with procedure alone but touches a substantive right. The submission is that in view of cls.(c), (d) and (e) of sub-s.(1) of s.8 of the Bengal General Clauses Act, 1899 which provide that if any law is repealed then unless a different intention appears, the repeal shall not affect any liability incurred under any enactment so repealed or affect any legal proceeding or remedy in respect of such liability, penalty or punishment as aforesaid. It is said that there was a liability incurred by the commission of an offence punishable under s.16(1)(a) of the Act as amended by the West Bengal Amendment Act and s.8 of the Bengal General Clauses Act' 1899 preserved the continued operation of the repealed West Bengal Amendment Act for imposition of that punishment. The contention is that where rights and procedure are dealt with together by the repealing Act, then, intention of the legislature is that the old rights are still to be determined by the old procedure. In support of the contention, reliance is placed on the decision of the Sargant, J. in re Hale's Patent(1). We are afraid, the contention cannot prevail. Just as a person accused of the commission of an offence has no right to trial by a particular court or to a particular procedure, the prosecutor equally has no right to insist upon that the accused be subjected to an enhanced punishment under the repealed Act. The dictum of Sargant.J. in re Hale's Patent is therefore not applicable.

Whenever there is a repeal of an enactment, the consequences laid down in s.6 of the General Clauses Act though it has been specifically mentioned in the repealing Act or not, will follow, unless, as the section itself says, a different intention appears. In State of Punjab v. Mohar Singh(1), this Court has elaborately dealt with the effect of repeal. 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 inquiry would be, not whether the new Act expressly keeps alive old rights and liabilities", in the words of Mukherjee,J., "but whether it manifests an intention to destroy them." The Court held that it cannot subscribe to the broad proposition that s.6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by fresh legislation. S 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 Act and the mere absence of a saving clause is not by itself material. The Court therefore held that the provisions of s.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. Of course, the consequences laid down in s.6 of the General Clauses Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute which is of a temporary nature automatically expires by efflux of time. The principles laid down by the Court in Mohar Singh's case (supra), have consistently been followed in subsequent cases. The old doctrine of extinguishing or effacing the repealed law for all purposes and intents except for the acts past and closed has now given way to the principles enunciated by the Court in Mohar Singh's case, (supra).

The question that falls for consideration in the appeal is whether a "contrary intention" appears from the provisions of the Central Amendment Act so as to exclude the applicability of s.8 of the

Bengal General Clauses Act. Anil Kumar Sen,J. in B. Manna's case, (supra), mentions several reasons why the Central Amendment Act was not really intended to be retrospective in operation so that it would not cover cases of offences committed prior to the enactment itself. In the first place, he observes that the Central Amendment Act had not expressly repealed the West Bengal Amendment Act nor dealt with the Act or any of its provisions in any manner. It was enacted with reference and having regard to the provisions of the Act as it stood before the Central Amendment Act came into force. Even if the Central Amendment Act had not expressly repealed the West Bengal Amendment Act, it would still be repealed by necessary implication under Art. 254(1) as it conflicts with a later law with respect to the same matter enacted by Parliament.

Secondly, the learned Judge refers to the language of the statute itself. He observes that unlike many other statutory provisions creating similar offences and providing punishment therefor, in the Act the material provisions are not in terms like "any person guilty of an offence of manufacturing, storing, selling or distributing any article of food which is adulterated shall be punishable with...". On the other hand, he points out that the terms of s. 16(1)(a) of the Act are "if any person..... manufactures for sale, or stores, or sells, or distributes any article of food which is adulterated, he shall.....". The learned Judge is of the view that on the words used and on their terms the only consistent implication is that such manufacture, storage, sale or distribution must be after the enactment has come into force and not prior thereto. In our view, nothing really turns on the language of s. 16(1)(a) because the Central Amendment Act has not created a new offence thereby but dealt with the same offence as before.

Lastly, the learned Judge refers to the new offences created by the Central Amendment Act, one of them being that under s. 16(1)(b) of the Act with regard to manufacturing for sale, or storing, or selling, or distributing any adulterant which was not in the Act at any time before. Accordingly, he holds that it is not possible to give retrospective effect to the other parts of the Act and observes that it could never have been the intention of the Legislature nor was it possible to give retrospective effect to the Act. According to him Art. 20(1) of the Constitution stands in the way of giving retrospective effect to s. 16(1)(b) of the Act and thus renders the act which was otherwise innocent at the time when it was done to be an offence by later enactment. We are not concerned with new offences created by the Central Amendment Act or with offences for which an enhanced punishment is provided for and therefore there is no question of Art. 20(1) of the Constitution being attracted. We are here concerned with the same offence, namely, an offence punishable under s. 16(1)(a) of the Act for which a reduced punishment is provided for.

It is only retroactive criminal legislation that is prohibited under Art. 20(1). The prohibition contained in Art. 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under s. 16(1)(a) of the Act, there is no reason why the accused should not have the

benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common-

sense. This finds support in the following passage from Craies on Statute Law, 7th edn. at pp. 387-88 :

> "A retrospective statute is different from an ex post facto statute. "Every ex post facto law ..... "

said Chase J. in the American case of Calder v. Bull(1) "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive ; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement : as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction ..... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

To illustrate, if Parliament were to re-enact s. 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life, instead of the present sentence of death or imprisonment for life, then it cannot be that the Courts would still award a sentence of death even in pending cases.

In Rattan Lal v. The State of Punjab(2), the question that fell for consideration was whether an appellate court can extend the benefit of Probation of Offenders Act, 1958 which had come into force after the accused had been convicted of a criminal offence. The court by majority of 2 : 1 answered the question in the affirmative. Subba Rao, J. who delivered a majority opinion, concluded that in considering the question, the rule of beneficial construction required that even ex post facto law of the type involved in that case should be applied to reduce the punishment.

It is settled both on authority and principle that when a later statute again describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implication. In Michell v. Brown(1) Lord Cambell put the matter thus :

> "It is well settled rule of construction that, if a later statute again describes an offence created by a former statute and affixes a different punishment, varying the procedure, the earlier statute is repealed by the later statute See also Smith v. Benabo.(2) In Regina v. Youle,(3) Martin, B. said in the oft-quoted passage :

> "If a statute deals with a particular class of offences, and a subsequent Act is passed which deals with precisely the same offences, and a different punishment is imposed by the later Act, I think that, in effect, the legislature has declared that the new Act shall be substituted for the earlier Act."

The rule is however subject to the limitation contained in Art. 20(1) against ex post facto law providing for a greater punishment and has also no application where the offence described in the later Act is not the same as in the earlier Act i.e. when the essential ingredients of the two offences are different.

In the premises, the Central Amendment Act having dealt with the same offence as the one punishable under s. 16(1)(a) and provided for a reduced punishment, the accused must have the benefit of the reduced punishment. We wish to make it clear that anything that we have said shall not be construed as giving to the Central Amendment Act a retrospective operation insofar as it creates new offences or provides for an enhanced punishment.

In the result, the appeal must fail and is dismissed.

P.B.R. Appeal dismissed.