(1975) 07 MAD CK 0031

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 3542 of 1976

Devaraja Naicker APPELLANT

Vs

The Inspector of Police Food Cell (C.I.D.) Chingleput Unit RESPONDENT

Date of Decision : 29-07-1975

Acts Referred:
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1975) 07 MAD CK 0031

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : S. Balathandapani, for the Appellant; K. Sengettian for the Public Prosecutor on behalf of the State, for the Respondent

Final Decision : Allowed

Judgement

Natarajan, J.—This petition has been filed to quash the proceedings in C.C. 599/75 on the file of the Sub Divisional Judicial Magistrate, Poonamallee on the ground that the prosecution against the petitioner therein is ex facie not maintainable.

2. The petitioner is owning a rice mill and on 22nd October 1974 the premises of the mill was searched by the Inspector of Police. Food Cell (C.I.D.), Chingleput Unit. It was then found that 24.75 quintals of paddy and 29 quintals of rice found on the premises had not been entered in the registers maintained by the petitioner. The petitioner''s explanation was that the paddy bags belonged to his brother, who was living with him and who had retained the bags for his own use after surrendering to Government the levy paddy. With regard to the 29 quintals of rice the case of the petitioner was that they had been given by five agriculturists late in the evening on 21st October 1974 and it was under those circumstances he had not entered the rice and paddy bags in the registers maintained by him. Notwithstanding his explanation the paddy and rice bags were seized and taken away. The petitioner is challenging the seizure of the paddy and rice bags under Art. 226 of the Constitution before this Court, but we

are not concerned with his contentions therein.

3. Sanction was given by the District Collector of Chingleput to prosecute the petitioner on 3rd December 1974 and in consequence thereof charge sheet was laid against him on 8th June 1975 in the court of the Sub-Divisional Judicial Magistrate, Poonamallee. The charge was that the petitioner had contravened the provisions of Tamilnadu Paddy and Rice (Regulation and Disposal of Stocks) Order, 1968 (hereinafter referred to as the "1968 order"), read with Ss. 3 and 7 of the Essential Commodities Act, 1955 on the ground that he had stored paddy and rice without obtaining a licence therefor. The 1968 Order has been superseded by the Tamilnadu Paddy and Rice (Regulation of Trade) Order, 1974 (hereinafter referred to as the "1974 Order"). Clause 28(1) of the 1974 Order states that the 1968 order "is hereby repealed". It is on the basis of this clause the petitioner contends that the prosecution against him under the 1968 order is no longer maintainable and therefore, the proceedings in the pending case should be quashed.

4. The petitioner''s contention is opposed by the learned Public Prosecutor and he places reliance on sub-clause (2) of clause 28 of the 1974 Order which reads as follows:

Notwithstanding such repeal, anything done or any action taken under the said order including any order or direction issued shall be deemed to have been made or issued under this Order.

The learned Public Prosecutor''s contention it that by reason of this saving clause, the 1968 Order is still kept alive in so far as anything done or action taken under that Order is concerned. Apart from this, he would also contend that S. 6 of the General Clauses Act would come into operation and that would have the effect of validating the prosecution launched against the petitioner.

5. The arguments advanced by the petitioner''s counsel and the Public Prosecutor center upon two aspects, the first relating to the attraction of S.6 of the General Clauses Act to the 1974 Order and the second, the effect of sub-clause (2) of Clause 28 of the 1974 Order in respect of proceedings taken under the 1968 Order, Before going into the arguments in detail, I may refer to the situation that would prevail if there had been no saving clause in the 1974 Order. In that case, the 1968 Order would stand completely repealed and will have no existence from the date of its repeal. The effect of the repeal would then be as laid down in Bindra''s Interpretation of Statutes (5th Edition) 1970 at p. 701:

I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law Kay v. Goodwin 1830-6 Bing. 576.

Inasmuch as in this case the repeal Order contains a saving clause, relating to the 1968 Order, we need not dilate more on this aspect of the matter.

6. As regards the question of applicability of S. 6 of the General Clauses Act to the 1974 Order, I am afraid S. 6 will have no application to the Order in question. That Section lays down that:

Where this Act (General Clauses 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-

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

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Wide as the ambit of S. 6 may be, it must be noted that its scope is confined only to the General Clauses Act itself or any Central Act or Regulation. As far as the 1974 Order is concerned, it is undoubtedly neither a Central Act nor a Regulation. It has been framed by virtue of the powers delegated to the State Government by the Central Government under the Essential Commodities Act. S. 3 of the said Act empowers the Central Government to make orders to provide for a regulation or prohibiting the production, supply and distribution thereon and trade and commerce therein of any essential commodity, S. 5 of the same Act empowers the Central Government to delegate its powers under S. 3 to State Government. It is, therefore by the authority derived by it under S. 3 and the notified order made by the Central Government under S. 5, that the Government of Tamil Nadu has passed the 1968 and 1974 Orders. Consequently, the General Clauses Act will not apply to die above-said Order passed by the Tamil Nadu Government.

7. In S. Krishnan and Others Vs. The State of Madras, the Supreme Court laid down that the general rule 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. This ratio was referred to and followed in two other cases Gopi Chand Vs. The Delhi Administration, and State of Orissa Vs. Bhupendra Kumar Bose, . It, therefore, follows that even in respect of temporary statutes S. 6 of the General Clauses Act cannot be invoked to validate the proceedings under the statute after it had ceased to have force.

8. The position has been made still more clear by the Supreme Court in Rayala Corporation v. Director of Enforcement AIR 1970 S.C. 494 at 503. Said the Supreme Court thus :

In the case before us, S. 6 of the General Clauses Act cannot obviously apply on the omission of R 132A of the Defence of India Rules for the two obvious reasons that S. 6 only applies to repeals and not to omissions and applies when the repeal is of a Central Act or Resolution and not of a Rule (underlining by me).

For the prosecution reliance was placed in T.S. Baliah Vs. T.S. Rengachari, where it was held that the right of instituting prosecution in respect of proceedings which are pending at the commencement of the new Income Tax Act (1961) is not taken away by the new Act. This case can have no relevance to the matter agitated before me, for, that case was concerned with the effect of the repeal of a Section in the Income Tax Act which is a Central Act.

9. Having regard to the terms of S.6 of the General Clauses Act and the ratio laid down in the cases referred to above, it is quite clear that the prosecution cannot rely upon S. 6 of the General Clauses Act to validate the proceedings instituted against the petitioner under the 1968 Order.

10. Then we are only left with the saving clause contained in sub-cl. (2) of Cl. 28 of the 1974 Order. Though the sub-clause states that the repeal of the 1968 Order shall not affect anything done or any action taken under the said order, I am afraid this cannot ensure to the benefit of the prosecution in the controversy between the parties. The words in the sub-clause themselves refer to "anything done or any action taken", can it be said in the instant case that the launching of prosecution against the petitioner after the 1968 Order had been repealed will amount to "anything done or any action taken" as provided for in sub-cl. (2). My answer is that clearly it will not amount to one of the two things contemplated in the sub-clause. I may quote in this context the view expressed by the Supreme Court in a somewhat similar situation in a case which arose under the Defence of India Rules. In Rayala Corpn v. Director of Enforcement AIR 1970 S.C. 494 the appellant before the Supreme Court was prosecuted for contravention of R. 132A of the Defence of India Rules, 1962. By the time prosecution was launched, R. 132A had been omitted except as respects things done or omitted to be done under that Rule. The omission was effected by means of Defence of India (Amendment) Rules, 1965. It was represented before the Supreme Court that in view of the detection of R. 132A the prosecution thereafter was not maintainable. The argument advanced before the Supreme Court and the opinion of the Board is to be found in the following passage at p. 502:

The argument of Mr. Sen was that, even if there was a contravention of R. 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 R. 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 Cl. 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 offences under R. 132A(4) of the D.I.Rs, after 1st April 1968, when the rule was omitted, has to be held invalid.

I am of opinion that the decision in that case will directly apply to the facts in the instant case. Though there is slight difference in the wording of the Defence of India (Amendment) Rules, 1965 and sub-cl. (b) of Clause 28 of the 1974 Order, I do not think the legal position is changed in any manner. The words "anything done or any action taken" occurring in sub-cl. (2) of Clause 28 can have reference only to proceedings already instituted before tie 1968 Order was repealed and can have no reference to proceedings instituted or charge-sheets laid after that order had been repealed.

11. The petitioner is, therefore, well-founded in his contention that the prosecution against him is not legally sustainable. The petition will consequently stand allowed and the proceedings in C.C. 599/75 on the file of the Sub Divisional Judicial Magistrate, Poonamallee, will stand quashed.

