**(1990) 10 KL CK 0021**

**In the High Court Of Kerala**

**Case No :** Criminal MC No. 910 of 1990

I. Ismail Kutty APPELLANT

Vs

Asstt. Collector of Central Excise and Others RESPONDENT

**Date of Decision :** 12-10-1990

**Acts Referred:**

Constitution of India, 1950 — Article 13, 13(1), 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 482
General Clauses Act, 1897 — Section 6
Gold (Control) Act, 1968 — Section 27
Press (Emergency Powers) Act, 1931 — Section 15, 18, 2(6)
Press and Registration of Books Act, 1867 — Section 1

**Citation :** (1992) CriLJ 1761

**Hon'ble Judges :** K.G. Balakrishnan, J

**Bench :** Single Bench

**Advocate :** K. Rajagopalan, for the Appellant; M.N. Sugurapalan and P.P. Aysha Youseff, C.G.P., for the Respondent

**Final Decision :** Dismissed

## Judgement

K.G. Balakrishnan, J.—This is a petition filed u/s 482 of the Code of Criminal Procedure to quash the proceedings in C.C. No. 7/89 pending before the Additional Chief Judicial Magistrate''s Court (Economic Offences), Ernakulam. The Assistant Collector, Central Excise Trivandrum Division filed complaint against the petitioner alleging that he committed violation of Section 27 of the Gold (Control) Act. The contention of the petitioner is that the Gold (Control) Act, 1968 was repealed by the Gold (Control) Repeal Bill, 1990 passed by the Parliament and therefore the prosecution initiated against the petitioner under the Gold (Control) Act is not sustainable and the petitioner-accused should be discharged. It is contended that the effect of the repeal is to obliterate the statute repealed completely as if it had never been passed and it must be considered as a law which never existed. The petition is opposed by the respondents. The learned Central Government Standing Counsel contended that by virtue of the provisions contained in Section 6 of the General Clauses Act the repeal of the Gold (Control) Act will not affect any investigation or legal proceedings initiated under the repealed Act.

2. Whenever there is a repeal of an enactment the consequences that flow from such repeal are stated in Section 6 of the General Clauses Act. Section 6 of the General Clauses Act runs thus:

6. 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

...

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid".

Section 6(c) and (d) clearly show that any legal action taken against anybody under the repealed Act will not be affected, unless a different intention appears from the repealed enactment. In the instant case the learned counsel for the petitioner contended that the Statement of Objects and Reasons given in the Gold (Control) Repeal Bill, 1990 will show that the intention of the Legislature is that no prosecution or other proceedings be continued under the repealed Act. In the Statement of Object and Reasons it is mentioned that over the past 22 years the results achieved under the Act have not been encouraging and the desired objectives for which the Act was introduced have not been achieved due to various socio-economic and in the vast multitude of the country''s population and the lack of adequate administrative machinery. It is also mentioned that this regressive and purely regulatory Act has given rise to considerable dissatisfaction in the minds of the public as it has caused hardship and harassment to the artisans and small self-employed goldsmiths who have not been able to develop their skills and earn proper living on account of the rigours which this Act imposed upon them. It is true that in the Statement of Object and Reasons it is stated that the Act was regressive and purely regulatory and has given rise to considerable dissatisfaction in the minds of the public. This by itself is not sufficient to hold that the Legislature intended that every prosecution and other proceedings initiated under the repealed Act is to be stopped forthwith by the enactment of the Gold (Control) Repeal Bill, 1990. The Statement of Objects and Reasons given in the Repeal Bill does not give rise to a different intention as envisaged under Clause 6 of the General Clauses Act. Therefore, it is to be presumed that the repeal of the Act shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Repealed Act.

3. In State of Punjab Vs. Mohar Singh, a similar question came up for consideration. It was held (at page 258 of Cri LJ):

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. Of course, the consequences laid down in Section 6 of the 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.

4. In Keshavan Madhava Menon Vs. The State of Bombay, the Supreme Court held that Article 13(1) of the Constitution of India has no retrospective operation. That was a case in which the petitioner therein published a pamphlet describing it as a "book" within the meaning of Section 1 of Press and Registration of Books Act. The Bombay Government Authorities however took the view that the pamphlet was a "news sheet" within the meaning of Section 2(6) of Press (Emergency Powers) Act, 1931 and as it had been published without the authority the petitioner was prosecuted. During the pendency of the proceedings the Constitution of India came into force on 26-1-1950. On 3-3-1950 the Petitioner filed a written statement submitting inter alia that the definition of news sheet as given in Section 2(6), 15 and 18 of the Press (Emergency Powers) Act, 1931 was ultra vires and void in view of Article 19(1)(a) read with Article 13 of the Constitution. The Supreme Court held that Article 13(1) will have no retrospective operation and transactions which are past and closed and rights which have already vested will remain untouched. The above decision also would strengthen the contention that whatever action taken under the repealed Act is not affected by the subsequent repeal of the enactment, unless a different intention appears from such repealing enactment.

 

5. For the above reasons, the prosecution initiated against the petitioner is not liable to be quashed. The criminal miscellaneous case is dismissed.