

(1945) 08 MAD CK 0017
In the Madras High Court
In Re: T.S. Chockalingam

Date of Decision : 22-08-1945

Acts Referred:

Defence of India Rules, 1962 — Rule 3

Citation : (1945) 58 LW 470 : (1945) 2 MLJ 295

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The appellant is the editor, printer and publisher of the vernacular daily paper ""Dinasari."" He has been convicted

by the Chief Presidency Magistrate, Egmore, of offences punishable under Clause 5 (1) of the Newspaper Control Order, 1942, on the ground

that he had published during the weeks ending 25th June, 1944, and 2nd July, 1944, newsprint covering 28 and 32 pages respectively, in violation

of Clause 5 (1) of the said Newspaper Control Order limiting the number of pages to be published in a week to 26, and sentenced to pay a fine of

Rs. 200 on each count.

2. There are no disputes about the facts of this case; but what was contended was that no prosecution can lie under the Newspaper Control Order

of 1942, as it was superseded by the Newspaper Control Order of 1944, which came into force on 17th July, 1944, which contained no

provisions similar to Clauses (1) of the earlier Order, and that on the date on which he was prosecuted there was no law in the Statute book under

which he had committed any offence in respect of the acts complained of. In short, the argument was that even though it was an offence under the

Order as it stood on the date on which the publications were made, still by reason of the fact that the law which he is said to have contravened was

superseded and ceased to be the law on the date on which he was prosecuted he could not be held to be guilty of any offence.

3. The question as to whether an offence was committed or not depends on the state of the law when the offence was committed and not on the

law as it is on the date on which the prosecution is started. In the case of penal provisions, a person who commits an offence becomes liable the

moment the offence is committed. But what is urged for the appellant is that this interpretation of the law is incorrect and that the provisions of the

General Clauses Act do not apply to the interpretation of this Order. It is true that under Rule 3 of the Defence of India Rules the General Clauses

Act of 1887 shall apply to the interpretation of those rules so far as it applies to the interpretation of a Central Act. Now the rules to which they are

said to apply are the Defence of India Rules, whereas the Newspaper Control Order is not a rule made under the Defence of India Act. But then

even if the General Clauses Act shall not apply to the interpretation of the Newspaper Control Order by reason of Section 3 of the Defence of

India Rules, still the General Clauses Act could be looked into as a rule of prudence in the interpretation of these rules.

4. My attention has not been drawn to any provision of law governing the interpretation of the Newspaper Control Order. In the absence of any

legislative enactment, Courts have to apply principles of equity and good conscience analogous to the principles of the General Clauses Act. The

printing and publishing of newspapers during the weeks ending 25th June, 1944 and 2nd July, 1944, containing 28 and 32 pages respectively

became an offence at the end of each of those two weeks when the newspapers were published with the number of pages mentioned above. There

can be no doubt that the appellant was guilty of having committed offences under the Newspaper Control Order of 1942 on those dates.

5. The prosecution in this case was laid only on 28th October, 1944. By that time the Newspaper Control Order of 1942 had been superseded

and a new Order had been promulgated under which the act of the appellant would not constitute an offence. In the order of 1944 which

superseded the old Order, there is no express saving clause as regards the offences already committed under the previous order which was

repealed. The question for consideration is whether by the supersession of the old Order by the new one containing no provision as regards acts

done prior to the passing of the new Order, in respect of which offences had been committed under the old Order, no prosecution could be laid in

respect of those acts, the question whether a particular act amounts to an offence or not is a matter to be considered with reference to the

substantive law on the date on which the offence was committed. The question for consideration is, where an offence was committed under an Act

which is superseded and which is not an offence under the superseding Act, the offender ceases to be liable to be prosecuted by reason of the

repealing of the previous Act, when there is no saving clause in the subsequent Act with reference to offences already committed.

6. Section 6 of the General Clauses Act provides as follows:

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 .(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 has not

been passed.

As already stated above, the provisions of the General Clauses Act though they do not apply as such can be looked into as a rule of prudence, in

dealing with a question of interpretation of the kind raised by the defence in the case. The Newspaper Control Order of 1944 is no doubt a

superseding order. It does not contain any provision that there shall be no prosecution for offences already committed under the order which was

superseded; nor has the superseding order made any provision in respect of such offences already committed under the order which was

superseded.

7. In *Benoari Lal Sarma and Others Vs. Emperor*, the question as to what were the rules governing the interpretation of a Letters Patent which

was not a statute was discussed, and it was pointed out that though the Letters Patent is not an Act it should be construed in the same way as an

Act and that even if the Interpretation Act did not apply in terms to the Letters Patent, the principles underlying the Interpretation Act should be

applied in construing the Letters Patent. The principle enunciated in the above case could be applied to the facts of this case, and applying the

same, I find that in the absence of any provision in the Newspaper Control Order of 1944 in respect of acts which are offences under the

superseded order and which have become offence liable to be proceeded against the offender could be proceeded against and punished as it the

old order had been in force in respect of those particular offences. In the view taken by me, it is unnecessary to refer to the other cases cited

before me. If the principles under the General Clauses Act still apply as a general rule of law, the Magistrate was justified in having convicted the

appellant inasmuch as the offences were completed the moment they were committed and the mere fact that in the superseding Act this was not

made an offence would not help the accused. I therefore confirm the convictions.

8. With regard to the sentence, I think it is excessive. By printing some more pages than what he ought to, he has given more to his subscribers

than what he had to, and he was the loser by that act. Also it was only under a mistaken impression that a week must be counted only as six days

he seems to have published a few more pages than he ought to. The very fact that in the superseding enactment it is not thought necessary to put

any limit on the number of pages to be printed goes to show that this is only a technical offence. This is not a case for imposing such a severe

sentence. Further it is long after the offence was committed that this prosecution was started. This is not the only paper that committed this error.

Other papers have also published similarly taking a week to be six days. In these circumstances, a nominal sentence will meet the ends of justice. I

therefore reduce the sentence to a fine of Re. 1 in respect of each count.