(1978) 07 PAT CK 0019

In the Patna High Court

Case No : Criminal Miscellaneous No. 102 of 1978

Kashi Ram Dhandania APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 26-07-1978

Acts Referred:

Constitution of India, 1950 — Article 352
General Clauses Act, 1897 — Section 6

Citation : (1978) 26 BLJR 854

Hon'ble Judges : Uday Sinha, J;P.S. Sahay, J

Bench : Division Bench

Judgement

P.S. Sahay J.

1. This application is for quashing the entire proceeding of P. S. case No. 65 of 1968 pending in the Court of Shrimati Rekha Kumari, Subdivisional Judicial Magisrate, Bhagalpur, in which charge has been framed for contravening the provisions of Rules 1260(1) and 126/(2)(vi) of the Defence of India Rules.

2. On the 25th May 1965 Mr. D. K. Sinha, Inspector of Central Excise, Patna, searched the premises of Tara Jewellery House, Bhagalpur, belonging to the petitioner and recovered 429.900 gms of primary gold and 963.500 gms of gold ornaments, both above 14 carat. Again on the 26th May 1965 gold ornaments weighing 7428.800 gms of gold and gold ornaments were seized from the residence of the petitioner. On these allegations a petition of complaint (Annexure 1) was filed by the Assistant collector of Central Excise, Patna, against the petitioner and his son, Narayan Prasad Dhandania for having committed offences under Rule 126(c)(d)(h) of the Defence of India Rules. On the same day cognizance was taken and the petitioner and his son, Narayan Prasad Dhandania were summoned for trial.

3. Nine witnesses were examined by the prosecution, and charges were framed against the petitioner on 11,8.1970 the son of the petitioner, Narayan Prasad Dhandania, was however, discharged. Copies of the charges have been filed

along with this application marked Annexures 2 and 2/1. It seems that the petitioner moved this court in Criminal Miscellaneous 4160 of 1975 for the quashing of the charge, but it was summarily dismissed with certain observations on 7.11.1975. On 29.11.1975 the trial Court passed certain orders and for that the petitioner came to this Court for clarification, and necessary orders were passed on 22.12.1975. The petitioner prayed for leave to appeal to the Supreme Court which was rejected on 8.1.1976. The case of the petitioner is that no progress was made in the case for about two years and, therefore, this application has been filed for the quashing of the proceedings.

4. Mr. M. P. Pandey appearing on behalf of the Customs Department has raised a preliminary objection that the petitioner had earlier moved this Court for quashing Criminal Miscellaneous 4160 of 1975 which was dismissed on 7.11.1975. and, therefore, another application on the same fact and with the same prayer is not maintainable. Reliance in this connection has been placed on the case of U.J.S. Chopra Vs. State of Bombay, .Learned counsel on behalf of the petitioner has placed reliance on Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, .where their Lordships have held that the fact that a similar application for quashing the proceedings on the former occasion was rejected by the High Court is no bar to the quashing of the proceedings at the later stage, and such quashing will not amount to revision or review of the earlier order passed by the High Court. In that case a petition for quashing was filed, which was dismissed, and again another application was filed after two years and no progress was made, and the High Court quashed the proceedings, and against that the State of West Bengal moved the Supreme Court, and the application was dismissed, in spite of the fact that the same Court had rejected the application of these petitioners two years earlier. In my opinion, this decision completely supports the contention raised on behalf of the petitioner. Therefore, the preliminary objection raised on behalf of the Customs Department is overruled.

5. Mr, Lalnarain Sinha appearing on behalf of the petitioner has contended that cognizance had been taken on 26.2.1968, and Gold (Control) Ordinance came into force on 29.6.1968 which was followed by an Act. Thus, according to him, there was a period of void between 26.2.1968 and 29.6.1968. He has, therefore, urged that the cognizance taken was bad in law and the petitioner could not be prosecuted for having committed offence on 26.5.1965 and 26.5.1965. Further, it has been submitted that by virtue of Section 116 of the Gold (Control) Act 1968 which repealed Gold (Control) Ordinance and Gold (Control) Act of 1965, Section 6 of the General Clauses Act will not be attracted. Mr. Pandey for the Department has submitted that Section 6 of the General Clauses Act will be attracted in this case and the prosecution was perfectly legal and valid. After hearing Learned Counsel for the parties, in my opinion, the contention raised on behalf of the petitioner cannot be accepted. Before I deal with the submissions made at the bar, I will briefly narrate the legislative history of the provisions relating to the gold control.

6. The president of India promulgated a proclamation of emergency on 26.10.1962 in exercise of the powers conferred on him under Clause (1) of Article 352 of the Constitution of India. The Parliament was not in session at that time, and on the same day the Defence of India Ordinance (ordinance No. IV of 1962) was promulgated and it was published in the Gazette of India Extraordinary. In pursuance of the power given under the Ordinance, Defence of India Rules, 1962, were framed. The ordinance was replaced by the Defence of India Act 1962 (Act 1 of 1962) which came into force with effect from the 12th December 1962. The Rules framed earlier were continued under the Act. By a notification published in the Gazette of India on 9.1.1963 the Rules were amended by incorporating therein part XIIA. The same is called Gold control Rules, 1963. Under Rule 126(1) every person not being a dealer was required to make a declaration within thirty days from the commencement of part XIIA of the Rules or within such period as the Central Government by notification specify, to the administrator in the prescribed form, as to the quantity, description or other particulars of the gold owned by him, and Sub-rule (11) lays down that any person in possession or control of gold, not being ornaments shall be presumed, until the contrary is proved, to be the owner thereof, Such declaration had to be made before 28.2.1963. On 22.9.1965 a new Gold (Control) Act came into existence (Act 18 of 1965), which repealed part XIIA of 1962 of the Defence of India Rules. Section 43 reads as follows ;

43. (1) As from the commencement of this Act, the provisions of part XIIA of the Defence of India Rules, 1962, shall stand repealed and upon such repeal, Section 6 of the General Clauses Act, 1897, shall apply as if the said part were a Central Act. (2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act 1897, anything done or any action taken (including any application made to or any order made or licence issued by, the Gold Board, Administrator or other competent authority) under or in pursuance of the provisions of Part XIIA of the Defence of India Rules, 1962, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

On 10.1.1963 the emergency was withdrawn. Thereafter, the Gold (Control) Ordinance of 1968 was issued on 29.6.1968 and that Ordinance repealed part XIIA of the Rules by the provisions of the Ordinance. Section 117 reads as follows:

(1) As from the commencement of this Ordinance, the provisions of Part XIIA of the Defence of India Rules, 1962 shall stand repealed and upon such repeal, Section 6 of the General Clauses Act, 1897, shall apply as if the said part were a central Act,

(2) Notwithstanding the repeal made by Sub-section (1) but without prejudice to the application of Section 6 of the General Clauses Act, 1897, any notification, order, direction, appointment or declaration made or any notice, licence or certificate issued or permission, authorisation or exemption granted or any

confiscation adjudged or penalty or fine imposed or any forfeiture ordered or any other thing done or any other action taken under or in pursuance of the provisions of part XIIA of the Defence of India Rules, 1962, so far as it is not inconsistent with the provisions of this Ordinance be deemed to have been made, issued, granted adjudged, imposed, ordered, done or taken under the corresponding provisions of this Ordinance.

On 24.8.1968 the Gold (Control) Act, 1968, came into existence (Act 45 of 1968) and received the assent of the President on 1.9.1.968. By Section 116(1), the Gold (Control) Ordinance was repealed. Section 116(2) reads as follows:

Notwithstanding such repeal, anything done or any action taken, including any notification order or appointment made, direction given, notice, licence or certificate issued, permission, authorisation or exemption granted, confiscation adjudged, penalty or fine imposed, or forfeiture ordered, whether under the Gold (Control) Ordinance 1968 or part XIIA of the Defence of India Rules, 1962, shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made, given, issued, granted, adjudged, imposed or ordered as the case may be, under the corresponding provision of this Act, as if this Act had commenced on the 29th day of June, 1968,

7. It has been strongly urged by Mr. Lalnarain Sinha that cognizance was taken on 26 2.1968 during the period of void, and in view of the fact that the General Clauses Act did not apply and the Rules did not continue under the Gold (Control) Act, 1968, the prosecution did not survive. I am unable to accept this submission. There are no provisions under the Gold (Control) Act, 1968, which are in any way inconsistent with Rule 126(1) of the Rules. That being the position, the Rules must be deemed to be continuing in view of Section 6 of the General Clauses Act, 1897. I am supported in my view by a decision of the Supreme Court in Jayantilal Amrathlal Vs. The Union of India (UOI), . where their Lordships have held that the Gold (Control) Ordinance and the Rules were deemed as an act of parliament, and, therefore on the repeal of the Rules and the Gold (Control) Ordinance, the consequences mentioned in Section 6 of the General Clauses Act follow, irrespective of the fact that Section 6 is not mentioned in the provisions of the Ordinance or the Act. Their Lordships further held as follows:

In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question,

That being the position, the prosecution must be deemed to fee continuing. The decision which has been relied upon by Mr. Lalnarain Sinha in Firm Danmal v. (Firm) Babu Ram AIR 1936 Alld. Benares Bank Ltd. Vs. Shri Sri Prakasha

Bhagwan Das and Others, .and Abdul Majid Haji Mahomed Vs. P.R. Nayak, cannot be accepted as authorities on the face of the direct decision of the Supreme Court in Jayantilal Amrathlal Vs. The Union of India (UOI), where the point raised is fully covered by the aforesaid decision, which has also followed the previous decisions of the Supreme Court in State of Punjab v. Mohar Singh AIR 1955 S.C. 84 and T.S. Baliah Vs. T.S. Rengachari, . Thus, on a careful consideration of the points raised in this case, I find that there is no merit in this application, it is accordingly dismissed. Since the proceeding is pending since 1968 I further direct that the trial should be expedited. Let the lower court records be sent down at once.