

(1945) 03 AHC CK 0007
In the Allahabad High Court
Case No : Criminal Revision No. 14 of 1945

Nand-Kishore

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 09-03-1945

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 6

Citation : (1945) 03 AHC CK 0007

Hon'ble Judges : Eaul, J

Bench : Single Bench

Advocate : K.N. Tandon, for the Appellant; Nasirullah Beg, Assistant Government Advocate for Crown, for the Respondent

Final Decision : Dismissed

Judgement

Eaul, J.—This criminal revision application is directed against an order of the learned Sessions Judge, Unao, by which the applicant's conviction for an offence u/s 81 (4) of the Defence of India Rules by a Magistrate, first class, Unao, was maintained and the sentence of fine amounting to Is, 1,000 was reduced to Rs. 500 only. In default of payment of the fine the applicant was to undergo rigorous imprisonment for three months.

2. The facts material for the purposes of this revision petition are as follows :

By a notification No. M-7020/C.S.-120- 43, dated August 26, 1943, issued by the U. P. Government in exercise of powers conferred on them by the Central Government, Department of Industries and Civil Supplies, notification No. 34-Text- (15)143 dated July 23, 1943, a dealer in or pledgee of cloth was required to submit monthly information of his stock in a form attached -to the notification. A search was made in the petitioner's house on the 27th January, 1944. He was found in possession of stocks of cloth for which he had not submitted any return. He was tried and convicted for his failure to file a return by a Magistrate. He went in appeal to the Sessions Judge, Unao, with the result already stated. By

the present application he challenges the legality of the order passed by the learned Sessions Judge.

3. The charge against the petitioner ran thus :

That you on the 26th day of August, 1943, and thereafter up to 27th January, 1944, did not submit a return of the stock (of cloth) in your possession as a pledgee, also that you sold cloth In retail without obtaining a licence for the same and thereby committed an offence punishable u/s 81 (4) of the D. I. R

4. No question about that portion of the charge which related to the sale of cloth by the petitioner arises before me. As will appear from the judgment of the learned Sessions Judge the petitioner was no convicted in respect of that matter. The only question for consideration is whether his conviction for failure to file a return of the stock of cloth in his possession as a pledgee is legal.

5. As is already stated the petitioner's house was " searched on the 24th January, 1944. The sanction of the U. P. Government for prosecution of the petitioner, Nand Kishore, is dated 31st of March, 1934. Prosecution was subsequently started on receipt of information by the district authorities. It may be mentioned that the sanction accorded" . by the U. P. Government through Mr. A. D. Pandit, Deputy Secretary, Civil Supplies Department, (Ex. 6) was for the prosecution of Lala Nand Kishore of Mubariz Nagar for contravening the provisions of clause 19 of the Cotton Cloth and Yarn (control) Order, 1948, by not submitting the stock return required under notification No. M-7020/C.S.-120 43 dated August 26, 1943.

6. Two points were urged on behalf of the petitioner at the hearing-

(1) that the notification dated August 26, 1943, was superseded by another notification of the U. P. Government dated 31st December, 1943, and accordingly his prosecution in respect of an offence committed before that date, subsequent to 31st of December, 1948, was illegal, and

(2) that the prosecution had failed to prove that the notification for contravention of the provisions of which he was prosecuted was published in the manner prescribed.

7. In support of the first of these points reliance was placed on the provisions of Section 6 of the United Provinces General Clauses Act and it was argued that the notification of the 26th of August, 1943, having been superseded it should -be deemed never to have existed at all. The argument ignores the distinction between an Act or Order which is superseded by another and one which is altogether repealed. While "repeal" means to revoke by authority, to abrogate, to recall or dismiss: "supersede" applies to cases where the place of an Order or Act is taken by another or when- it is replaced by another Order or Act (see Chamber's English Dictionary). It is true that as stated by Tindal, C. J. in *Kay v. Goodwin* (1830) 6 Bing. 576.

8. The effect of repealing a statute is 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. Or, as it was held by Lord Penterden in *Surtees v. Ellison* 1829 6 B & C 750 :

It has long been established that, when an Act of Parliament Is "repealed, it must be considered (except as to transactions past and closed) as if it had never existed.

9. The effect of an Act or Order which is superseded is not to obliterate it altogether. An Act or Order is said to be superseded where a later enactment or order effects the same purposes as an earlier one by repetition of its terms or otherwise. The distinction between the two terms "repeal" and "supersession" will be dear from a reference to the memoranda pre fixed to the Bills presented practically every year for Statute Law Revision in England. To take an instance from one such Bill (see Statute Law Revision Act, 1908) the principles upon which the selection of enactments for inclusion in these Bills is made were thus stated in the memorandum prefixed to the Bill when introduced :

The first schedule is intended to comprise,. besides superfluous words of enactment, enactments which have ceased to be in force otherwise than by express specific repeal, or have by lapse of time or otherwise become unnecessary, and also "such parts of titles, preambles, recitals, and enacting words as are intended to be omitted in future editions of the status under the authority of the Bill.....

10. Then follows an enumeration of the classes of enactments which are considered as having ceased to be in force. Among them are

- (1) Expired Acts;
- (2) Spent Acts;
- (3) Acts repealed in general terms;
- (4) Acts virtually repealed;
- (5) Acts superseded (which term is explained as) where a later enactment effects" the same purposes as an earlier one by repetition of its terms or otherwise; and
- (6) Obsolete Acts.

(Craies on Statute Law, pages 301-2).

11. Thus it will be seen that different considerations apply to Acts falling under these categories The order of August 26, 1943, for the breach of which the petitioner was prosecuted, was never repealed, or in other words it was never obliterated altogether. On the other hand it continued to exist till Government decided to effect the same purpose as was contemplated by that order by

another order. There is nothing in the law which would justify the contention that after the supersession of that order no proceedings in respect of its breach could be commenced. The provisions of Section 6 of the U. P. General Clauses Act apply only to repealed Acts and not to Acts which are superseded by others. There is, as shown above, an essential distinction between an Act or Order which is repealed and one which is superseded. The first contention must, therefore, be rejected.

12. The second point relates to a question of fact and is concluded by the finding of the Court below. The evidence of Lalta Prasad fully establishes that the notification in question was duly published through the Tahsildar.

13. The result therefore is that the application is dismissed.