
(1990) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 503 of 1989

S. Ramachandra Reddy

APPELLANT

Vs

P.N. Ravindra Reddy and Another

RESPONDENT

Date of Decision : 06-06-1990

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 140, 221
Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2)

Citation : (1990) 2 APLJ 157 : (1991) CriLJ 1619

Hon'ble Judges : Bhaskara Rao, J

Bench : Single Bench

Advocate : M. Chandra Sekhar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. The twin questions to which this revision gives rise to are :

1. Whether the period prescribed for purposes of filing a complaint under S. 140 of the A.P. Gram Panchayats Act is repugnant to the one prescribed under S. 468 of the Code of Criminal Procedure so as to render the former provision void ? and

2. Whether it is the period of limitation prescribed under S. 140 of the Gram Panchayats Act or under S. 468 of the Code of Criminal Procedure that is applicable for offences under the A.P. Gram Panchayats Act ?

2. A complaint was filed under the provisions of the A.P. Gram Panchayats Act by the respondent against the petitioner herein alleging that the latter has failed to hand over the entire records of the Gram Panchayat, which constitutes an offence under S. 221(a) of the Gram Panchayats Act. The punishment for this offence as prescribed by S. 221(b) of the Act is only an imposition of fine. The submission of the petitioner is that the offence complained of being one punishable only with fine, the same ought to have been filed within; six months as per S. 468(2)(a), Cr.P.C., since that is the period of limitation prescribed by it. Inasmuch as the complaint was filed after expiry of six months, the contention

advanced on behalf of the petitioner is that the complaint is barred. On the other hand it is argued for the Ist respondent that S. 140 of the A.P. Gram Panchayats Act itself provides that no person shall be tried for any offence under the Act unless the complaint is filed within twelve months and since admittedly the complaint was filed within that period it is maintainable. It is further submitted that since the A.P. Gram Panchayats Act is a local law prescribing the period of limitation, the limitation prescribed by the Criminal Procedure Code is not applicable to the case on hand.

3. The A.P. Gram Panchayats Act, 1964 is a State Legislature and the subject is covered by item 5 of List II of the 7th Schedule of the Constitution of India, viz. State List. Criminal Procedure Code is covered by item 2 of List III (Concurrent List). Art. 246 states that the Parliament has got exclusive power to make laws in respect of any matters enumerated in List I (Union List) notwithstanding anything in Cls. (2) and (3) of the said Article. Clause (2) of Art. 246 empowers the Parliament to make laws in respect of subjects enumerated in List III notwithstanding anything in Clause (3) Clause (3) of the said Article empowers the State Legislature subject to Cls.(1) and (2) to make laws for such State or for any part thereof in regard to matters covered by List II. The distribution of the subjects is, thus, specifically earmarked prescribing the jurisdiction of the Parliament and the State Legislature. As noted supra, Gram Panchayats Act is one enumerated in List II and enacted by the State Legislature. Criminal Procedure Code is a Central enactment falling under List III. Criminal Procedure Code as also the Gram Panchayats Act, both prescribe the period of limitation, the former for the instant matter as "6" months and the latter as "12" months. This, at the first look, gives an impression that the provision (S. 140) prescribing the period of limitation in Gram Panchayats Act is repugnant to S. 468(2)(a), Cr.P.C. But a slight probe into the matter proves it otherwise.

4. Section 4, Cr.P.C., to the extent relevant, reads :

4. Trial of offences under the Indian Penal Code and other laws :

(1) xx xx xx xx xx xx

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for

the time being in force regulating the manner or place of investigation, inquiring into trying or otherwise dealing with such offences."

5. It is, thus, clear from S. 4(2), Cr.P.C., that in cases where the special or local law regulates or otherwise deals with such of fences it is such provisions in the special or local law that would prevail over the provisions of the Code of Criminal Procedure. In the instant case, the Gram Panchayats Act deals with the offences; thereunder by providing a period of "12" months as the period prescribed for purposes of limitation. Thus; though it does not by itself regulate the manner of

investigation, inquiry or trial, it deals otherwise with the offences by prescribing the period of limitation.

6. Further S. 5, Cr.P.C., is a saving provision which reads :

"5 Saving :- Nothing contained in this Code shall in the absence of a" specific provision to the contrary, affect any special or local law for the time being in force ..."

7. There is no provision in the Criminal Procedure Code specifically bars the prescription of limitation by any special or local law. Therefore, prescription of limitation by S. 140 of the Gram Panchayats Act cannot be said to be contrary to any of the provisions of the Criminal Procedure Code. No doubt, the period of limitation prescribed by S. 468(2-A), Cr.P.C., is "six" months as against "twelve" months prescribed by S. 140 of the Act. The period, thus, is only varying in, nature, but not contrary. Thus, S. 140 of the. Gram Panchayats Act is saved by a combined reading of Sections 4(2) and 5 of Cr.P.C. Further S. 468, Cr.P.C. is a general provision in regard to offenders in general whereas S. 140 of the Gram Panchayats Act is a special provision controlling the offences exclusively in relation to the Gram "Panchayats Act. Therefore, those two provisions do not operate in the same field and Sections 4(2) and 5 of Cr.P.C. permit S, 140 of the Gram Panchayats Act to prevail over S. 468. Cr.P.C.

8. It is relevant at this juncture to quote a passage from B. B. Mitra's Commentary on the Code of Criminal Procedure, which reads :

"The Tamil Nadu District Municipalities, Act, 1920 is a special Act and therefore, though the offence u/s 199 read with 317 of the said Act is punishable with fine only, the limitation of 12 months under proviso to S. 347 of the said Act will prevail over the limitation of 6 months provided u/s 468(a) of the Code."

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10. It is relevant to notice that Section 53 of the Madras District Police Act, 1859 provided a period of limitation for purposes of prosecution. This prescription was challenged as having been repugnant to Section 468, Cr.P.C. Deciding this question, our High Court in Meeriah v. State of A.P. (1978) 2 Andh WR 166 : (1977 Cri LJ NOC 258) held :

"Section 53 of the Madras District Police Act, 1859 is a special provision in regard to police officers while Section 468 of the Criminal Procedure Code of 1973 is a general provision in regard to offenders in general. Therefore first these two sections do not operate in the same field or area and do not overlap and secondly the provision of Section 53 of the Madras District Police Act, 1859, which is a special provision, must prevail over the general law enacted in Section 468 of the Code of Criminal Procedure, 1973".

11. Thus, the provision in the State Law prescribing the period of limitation is held to prevail over Section 468, Cr.P.C.

12. The Foreign Exchange Regulation Act has prescribed an authority, different from the one under the Code of Criminal Procedure, for purposes of investigation into the offences thereunder. This prescription when challenged before the Supreme Court in State, by Nilratan Sircar, Enforcement Officer Vs. Lakshmi Narain Ram Niwas, , it was held after referring to Section 4(2) of the present Cr.P.C. (then Section 5) (Para 14) :

"The Foreign Exchange Regulation Act is a Special Act and it provides u/s 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Direct or of Enforcement. The provision of the Code of Criminal Procedure therefore will not apply to such investigation by him."

In Rohtas Vs. State of Haryana and Another, the Haryana Children Act was under challenge. In that the S.C. held (para 7) :

"S. 5 carves out a clear exception to the provisions of the trial of an offence under any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force. The Haryana Children Act was in force when the Code of 1973 was passed and, therefore, the Haryana Act far from being inconsistent with S. 5 of the Code of 1973 appears to be fully protected by the provisions of S. 5 of the Code of 1973".

13. The situation is exactly similar to the one on hand, in that the Municipalities Act has also prescribed a period of limitation, viz., 12 months, and that is held to prevail over S. 468(2)(a), Cr.P.C.

14. It is relevant to notice that S. 53 of the Madras District Police Act, 1859 provided a period of limitation for purposes of prosecution. This prescription was challenged as having been repugnant to S. 468, Cr.P.C. Deciding this question, our High Court in Meeriah v. State of A.P. (1978) 2 Andh WR 166 : (1977 Cri LJ NOC 258) held :

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17. Dealing with the specific provisions enacted in a special law, it was held in *Frank Dalton, Larkins v. State* 1985 Cri LJ 377 (Delhi) (at p. 381) :

"Sub-s. (2) of S. 4 contains a statutory recognition of the principle that a special law creating offences may also create special " procedure for dealing with them. In other words, the special law creating any special " procedure would not be invalid as being : inconsistent with the provisions of the Code. However, there can be no manner of doubt " that where an enactment provides a special procedure only for some matters, its provisions must apply in regard to those matters and the provisions of the Code will apply to the matters on which the special law is silent."

18. The A.P. Gram Panchayats Act, when viewed in the light of this decision, is a special local law and prescribes the period of limitation for the offences complained thereof and therefore the provision so prescribing the period shall not be affected by the Provisions of Cr.P.C.

19. It is apposite to also notice the meaning of the words "otherwise dealing with" occurring in S. 4(2) of the Code of Criminal Procedure. Firstly the Strouds's Judicial Dictionary (fifth edition) provides the meaning of the word "otherwise" as under :

"(11) A provisions in a private (borough) Improvement Act that nothing therein contained should affect any right which the corporation might have "under the Municipal Corporation Acts, or otherwise" was not confined to Acts similar in kind to the Municipal Corporation Acts, but extended to all Acts (*Taylor v. Oldham Corpn.* (1876) 4 Ch.D. 395)".

So much so, the words "otherwise dealing with" are given the meaning : "(39) "Otherwise dealing with" (*Supreme Courts Act 1981* (C. 154) S. 37(3)), "otherwise deal with" (*Matrimonial Causes Act, 1973* , (c. 18) S. 37(2)(a). These words are to be given a wide meaning and are not to be construed as ejusdem generis with the preceding."removing from the jurisdiction) (*z. Ltd. v. A-Z and AALL* (1982) 2 WLR 288)."

20. Therefore, the prescription of the period of limitation by the Gram Panchayats Act though not similar to regulating the manner or place of investigation, inquiring into or trying, still by virtue of the enabling words "otherwise dealing with" occurring in Section 4, Cr.P.C. the same is permissible and protected by the said provision.

21. A few more decisions on the question of repugnancy in the background of Art. 254 of the Constitution which renders the provisions of law made by the State Legislature void in the event of any of the provisions being repugnant to

any provision of law made by the Parliament, are brought to my notice.

22. In *Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Da Fonseca and Others*, the question to the extent relevant is, whether the prescription of the period of limitation by the Portuguese Civil Code is repugnant to the provisions of Limitation Act. Dealing with this, the Supreme Court held (paras 12, 13 and 14) :

"Assuming that the Portuguese Civil Code which was continued by Parliament to be in force in the Union Territory of Goa, Daman and Diu was a law made by the Legislature of a State, without doubt the provisions of the Civil Code, unless they were saved by S. 29(2) of the Limitation Act, were repugnant to the provisions of the Limitation Act, 1963. If, however, the provisions of the Portuguese Civil Code were saved by S. 29(2) then there could be no question of any repugnancy. There is only one general law of Limitation for the entire country and it is the Limitation Act, 1963. All other laws prescribing periods of limitation are either special or local laws. If S. 32 and S. 29(2) of the Limitation Act, 1963 are read together, it becomes clear that the only law of Limitation that is repealed is the Limitation Act, 1908, and all other laws dealing with limitation, special or local, are saved and are to be read into the Limitation Act, 1963. The body of the provisions in the Portuguese Civil Code dealing with the subject of Limitation of suits, etc. is "local law" within the meaning of S. 29(2) of the Limitation Act, 1963. These provisions have to be read into the Limitation Act, 1963, as if the Schedule to the Limitation Act is amended *mutatis mutandis*"

22A. Equally S. 4, Cr.P.C. wherein the words "otherwise dealing with" are incorporated saves S. 140 of the A.P. Gram Panchayats Act, which is a local law, and therefore the provisions in S. 140 of the Act have to be read into the Code of Criminal Procedure as having been amended *mutatis mutandis*.

23. The next decision is that of the Kerala High Court. R. 3 of the Kerala Pranchayat (Trial of Offences by Magistrates) Rules, 1964 provided that a Second Class Magistrate alone would be competent to take cognizance of a panchayat offence. This rule was challenged on the ground of repugnancy to the provisions of S. 190, Cr.P.C. Dealing with this question In the *In Re: State of Kerala, P. Komu and Mammooty*, , the Kerala High Court held that by virtue of S. 5(2) of the Cr.P.C. (equivalent to S. 4(2) of the present Cr.P.C) permitting the matter and place of trial by the Local Law, the rule prescribing the class of Magistrate to try the offences under the Panchayat Act is protected and accordingly the Criminal Procedure Code yields to the provisions in the said rule.

24. The Supreme Court in *Raghubir Vs. State of Haryana*, had to deal with the quesation of repugnancy in view of the Harayana Children Act (State legislation), providing for the trial, conviction and punishment of the delinquent children for offences including those punishable with death or imprisonment for life. Testing this question in the back ground of the provisions of the Cr.P.C., the Supreme Court held (paras 7 and 9) :

"The Harayana Children Act came into force on March, 1. 1974 while the Criminal Procedure Code 1973 came into force on April, 1974.

S. 27 of the Criminal Procedure Code of not "a specific provision to the contrary" within the meaning of S. 5 of the Code; the intention of the Parliament was not to exclude the trial of delinquent children for offences punishable with death or imprisonment for life, in as much as S. 27 does not contain any expression to the effect "notwithstanding anything contained in any Children Act passed by any State Legislature". Parliament certainly was not unaware of the existence of the Harayana Children Act coming into force a month earlier or the Central Children Act coming into force nearly fourteen years earlier. What S. 27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specifically empowered under the Children Act, 1960. It is an enabling provision, and has not affected the Harayana Children Act in the trial of delinquent children for offences punishable with death or imprisonment for life."

25. In view of the above, it is to be concluded that the period of limitation prescribed by S. 140 of the Andhra Pradesh Gram Panchayats Act is not repugnant to S. 468(2)(a), Cr.P.C. in as much as S. 4(2) read with S. 5 of Cr.P.C. protects the same and accordingly Art. 254 of the Constitution is not attracted. Accordingly question No. I is to be answered in the negative. The second question is simply consequential in nature. In view of the finding that S. 140 of the Andhra Pradesh Gram Panchayats Act is not repugnant to S. 468(2)(a), Cr.P.C. it is S. 140 of the Act that is applicable for offences under the Andhra Pradesh Gram Panchayats Act.

26. In the result, the revision is dismissed.

27. Revision dismissed.