

(1956) 02 RAJ CK 0003
In the Rajasthan High Court
Case No : Criminal Ref. No. 93 of 1953

State	Vs	APPELLANT
Babulal		RESPONDENT

Date of Decision : 17-02-1956

Acts Referred:

Constitution of India, 1950 — Article 212A, 246, 372, 372(1), 385
Police Act, 1861 — Section 46
Rajasthan Adaptation of Central Laws Ordinance, 1950 — Section 4

Citation : AIR 1957 Raj 28 : (1956) CriLJ 550 : (1957) RLW 52

Hon'ble Judges : K.N. Wanchoo, C.J; D.M. Bhandari, J

Bench : Division Bench

Advocate : M.M. Tiwari, for the Appellant; B.K. Bhargava, for the Respondent

Judgement

Wanchoo, C.J.—This is a reference by the Sub-Divisional Magistrate of Fatehpur u/s 432, Criminal P. C. The question raised before him was that the Police Act (5 of 1861) was not legally enforced in Rajasthan. He has, therefore, referred the question whether the Police Act (5 of 1861) is legally enforced in Rajasthan and is thus a valid piece of legislation in Rajasthan.

2. A preliminary objection has been taken on behalf of the State that the reference is invalid as the Sub-Divisional Magistrate has not said in so many words that his opinion is that the Act is not legally enforced and is not a valid piece of legislation so far as Rajasthan is concerned. There is no doubt that he has not said so in so many words, but a reading of his reference order shows that he was inclined that way and under these circumstances, we over-rule the preliminary objection.

3. The manner in which the Police Act (5 of 1861) came to be applied to Rajasthan is this : On 24-1-1950 the Rajasthan Adaptation of Central Laws Ordinance (4 of 1950) was promulgated by His Highness the Rajpramukh. A number of Central Acts were adapted to Rajasthan by virtue of Section 3 of the Ordinance read with the Schedule. The Police Act (5 of 1861) was, however, not

included in the Schedule when this Ordinance was passed.

Section 4 of the Ordinance gave power to the Rajpramukh by order notified in the Rajasthan Gazette, to add to, amend or vary the schedule to this Ordinance. Sub-sections (2) and (3) of Section 4 of this Ordinance provided what would be the effect of additions, amendments and variations in the Schedule. On 26-1-1950 the Constitution of India came into force in Rajasthan.

On 18-7-1950, the Rajpramukh purporting to act u/s 4 of the Rajasthan Adaptation of Central Laws Ordinance (4 of 1950) added the Police Act of 1861 in the Schedule to the Ordinance as No. 10A, with the notification that the second paragraph of Section 21 was omitted. The question that falls for consideration is whether by this notification the Police Act came into force from the date of the notification in Rajasthan.

4. The main argument on behalf of Babulal in this connection is that after the coming into force of the Constitution, Section 4 of the Rajasthan Adaptation of Central Laws Ordinance (4 of 1950) was impliedly repealed as the Constitution provided specifically the manner in which laws would be enacted in Part "B" States in Article 385 read with Article 212-A.

As in fact this notification of July, 1950 was enacting a law, it could not be done by virtue of the power conferred u/s 4 of the Ordinance and it could only be done in the manner provided Articles 385 and 212-A of the Constitution. There is, in our opinion, force in this argument that after the Constitution came into force, laws could only be enacted in the manner provided in Articles 385 and 212-A of the Constitution and could not be enacted by virtue of the power conferred by Section 4 of the Ordinance.

However if the matter stood there, it could be said that the Police Act of 1861 was not properly enacted and therefore could not be enforced in Rajasthan. But we find that the Police Act of 1861 is a piece of legislation which though in existence, does not come into force in any area by itself. It has to be brought into force by virtue of the provision of Section 46 of the Act. That section reads as follows:

"This Act shall not by its own operation take effect in any presidency, province, or place. But the State Government by an order to be published in the official Gazette may extend the whole or any part of this Act to any presidency, province or place and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such Presidency, State or place."

Thus the Police Act of 1861 can be brought into force by any State by means of a notification and it is open to the State making the notification to apply the whole of it or such part of it as it considers necessary to the whole State or part of it. Therefore, it was open to the State-of Rajasthan by means of a notification u/s 46 to apply the Police Act of 1861 to the whole of Rajasthan or to any part of it, leaving out such portion of the Act as it did not wish to apply.

5. It has been urged that "Police" appears as Item 2 of List 2 of Schedule 7 and is exclusively a State subject and therefore, the Central Government could not legislate with respect to Police-matters in view of Article 246 of the Constitution. That is undoubtedly so, so far as legislation after the coming into force of the Constitution is concerned. But this Act was on the statute book long before the Constitution came into force and was a law in force.

Under Article 372(1) of the Constitution all the laws in force, have been saved subject to other provisions of this Constitution. It is no one's case that the Police Act of 1861 is hit by any other provision of the Constitution. Explanation (1) of Article 372 also makes it clear that the term "law in force" includes Acts like this Police Act which though they may not be in operation either at all or in particular areas would still be a law in force.

Therefore, the Police Act of 1861 was a law in force when the Constitution came into force and it was saved by Article 372(1) even though "Police" is in the Constitution in the State list. The State Government, therefore, could bring the Police Act of 1861 into force by a notification u/s 46 of the Act.

6. Let us now turn to the Notification of July, 1950. The intention of that Notification is that the Police Act of 1861 shall come into force on the date of its publication in the Rajasthan Gazette which was 19-7-1950, in the whole of Rajasthan except for the second paragraph of Section 21. Such Notification could have been issued by the Rajpramukh u/s 46 of the Act and the Police Act would then be enforced in the whole of Rajasthan subject to the portions omitted.

The mistake that was made, therefore, was to use Section 4 of Ordinance No. 4 of 1950 in support of the notification instead of Section 46, Police Act of 1861. As however, the State Government had the power to bring the Police Act of 1861 into force by a mere notification and as a notification to that effect was issued on 19-7-1950 there is only a technical defect inasmuch as the notification says it is in pursuance of Section 4 of the Rajasthan Adaptation of Central Laws Ordinance (4 of 1950) instead of being in pursuance of Section 46, Police Act.

We have, however, to look to the substance of the matter and to the power of the State Government to bring the Act into force by a notification. The substance of the matter in this case is that the State Government intended to and actually did notify that the Police Act of 1861 would be enforced in Rajasthan from the date the notification was published and it could do so u/s 46 of the Act.

The mistake, therefore, that was made in referring to a wrong section of a wrong law, is in our opinion of no effect, so long as a notification of that kind bringing the Police Act into force could be issued by the State Government under the power it undoubtedly had under the Police Act itself. We are, therefore, of opinion, that the Police Act of 1861 is validly enforced in Rajasthan.

7. Let this answer be returned to the Magistrate concerned.