

(1951) 04 GUJ CK 0005

In the Gujarat High Court

Case No : Criminal Revision Application No. 54 of 1950

State

APPELLANT

Vs

Bhanka Gila and Another

RESPONDENT

Date of Decision : 17-04-1951

Acts Referred:

Bombay General Clauses Act, 1904 — Section 7
Criminal Procedure Code, 1898 (CrPC) — Section 403
General Clauses Act, 1897 — Section 6
Government of India Act, 1935 — Section 93
Saurashtra General Clauses Act, 1949 — Section 20, 4
Saurashtra General Clauses Ordinance, 1949 — Section 20, 3, 4, 5, 71

Citation : AIR 1951 Guj 67

Hon'ble Judges : Mohanlal Ujamshi Shah, C.J.; S.J. Chhatpar, J

Bench : Division Bench

Advocate : C.N. Shah, General, for the Appellant; S.C. Shah, for the Respondent

Judgement

Shah, C.J.—The opponents Bhanka Gila & Mavji Bhanka, who are father & son, were prosecuted before the First Class Mag., Palitana, for having let out a shop, situated in Palitana, to one Chunilal Amritlal without the permission of the authorities & in contravention of Sections 5 & 6 of Ordinance No. XXIII of 1948. At the hearing of the case the opponents contended that they had been acquitted by a competent; Ct. in Anr. case arising out of the same facts & that by virtue of Section 403, Cr.P.C., they could not be prosecuted again for the same offence. This plea was rejected by the Mag. & a revn. appln. filed by the opponents was also rejected by this Ct. The hearing of the case was thereafter resumed by the Mag., when an objection was taken against the continuance of the trial on the ground that the application of Ordinance No. XXIII of 1948 had been withdrawn from Palitana town in the meanwhile & that the proceedings must therefore be deemed to have determined. The said Ordinance was applied to Palitana town & other towns in Saurashtra in exercise of the powers contained in Section 4 thereof by a Notfn. dated 30-8-1948. This Notfn. was cancelled by a subsequent Notfn. dated 20-3-1950 & thereafter the Ordinance ceased to apply to Palitana as

from that date. The present offence is. alleged to have been committed on 4-2-1949, & the opponents were prosecuted on 30 3-1949, when the Ordinance was in force. The learned Mag. acquitted the opponents on the ground that Ordinance No. XXIII of 1948 was a temporary statute & that on the withdrawal of its operation from Palitana it must be deemed to have expired so far as Palitana was concerned, & that on such expiry pending proceedings came to an end & could not be continued. He also took the view that the withdrawal of the Ordinance did not amount to a repeal & the case was therefore not governed by Section 5, Saurashtra General Clauses Ordinance No. LXXI of 1949.

2. The State has not appealed against the acquittal, but the matter has come up before us on a report of the Registrar, which was made mainly because it was consd. that Ordinance No. XXIII of 1948 was repealed by a subsequent Ordinance No. LXXXII of 1949, which latter had provided for the continuance of legal proceedings instituted prior to the repealed Ordinance. That impression is, however, not correct & it is conceded by the Advocate General that Ordinance No. LXXXII of 1949 has not been brought into force. Hence the question of the present prosecution continuing despite the repeal of Ordinance No. XXIII of 1948 does not really arise & the proceedings will not be saved on that ground.

3. The learned Advocate General has, however, contended that Ordinance No. XXIII of 1948 was a permanent statute & not a temporary one & that the withdrawal of the Ordinance from Palitana town amounted to a repeal so far as Palitana was concerned & on such repeal the provisions of Section 5, Saurashtra General Clauses Ordinance No. LXXI of 1949 would apply so as to gave pending proceedings. It is urged that Ordinance No. XXIII of 1948 does not provide for its life or duration & is therefore a permanent Act. As stated by Craies on Statute Law--

Acts are also classified, by reference to their duration as temporary or perpetual. Temporary statutes are those on the operation of which some limit is put by Parliament. The Standing Orders of Parliament require a time clause to be inserted in such Acts, which usually provide that they shall expire at the end of the Session, after the time limit for their duration has run out. Perpetual Acts are those upon whose continuance no limitation of time is expressly named or necessarily to be understood. They are not perpetual in the sense of being irrevocable. Every Statute for which no time limit is fixed is thus called a perpetual Act & continues in force until it is repealed. If an Act contains a proviso that it is to continue in force only for a specified time then the Act is a temporary Act. (Edn. 4 p. 65 & pp. 345-346).

Then again:

A permanent, or perpetual Act, is one whose operation is not limited to a particular term of time but which continues in force until it is duly altered or repealed. A temporary Act; on the other hand, is one whose life or duration is fixed for a specified period of time at the moment of its enactment, & continues

in force, unless sooner repealed, until the expiration of the time fixed for its duration. (The Construction of Laws by Crawford, Section 71.)

The distinguishing feature between a perpetual Act & a temporary Act therefore appears to be that whereas the former continues in operation until it is repealed, the latter expires by efflux of time.

4. Mr. Shah for the opponents has contended that the fixation of the (sic) duration is not sole criterion for determines (sic) a statute is temporary or perpetual & that (sic) absence of it a statute could be treated (sic) in the temporary statute if there are indications (sic) itself to show that it is a temporary statute, (sic) further that the purpose of enacting the statute should be consd. for as certain whether it is permanent or temporary; & in support of this contention he has relied on *The Crown v. Haveli* AIR 1949 Lah. 191. That was a case relating to the Punjab Disturbed Areas Act which was passed by the Governor of the Punjab acting u/s 93 of the Govt. of India Act, 1935, & it was held that the Act was essentially a temporary statute in so far as it was a Governor's Act u/s 93 which expressly limited the operation of the Act in point of time to certain specified period. It was there conceded that a temporary statute was one whose operation is limited in point of time, & though other grounds too were consd. for reaching the same conclusion, the principal reason for holding that it was a temporary statute appears to be that if duration was limited to a fixed period of time. The preamble to the Act was refd. to in support of the argument that it was a temporary statute, since it proved that its effect was to be limited to the period for which portions of the Punjab continued to be in a disturbed state. Similarly the provisions of the Act by which the application of the Act to certain areas & the withdrawal thereof from such areas was left to the Provincial Executive to decide, were also taken into account, but these were ancillary considerations. Now the preamble to Ordinance XXIII says that it was being enacted because a need had arisen for securing residential buildings, offices, shops, godowns, etc. & leasing them on account of the influx of displaced persona, & as a result of the establishment the Saurashtra State. However, these are not circumstances comparable to those in the Punjab case, where the emergency was of an exceptional character & was not to last for any length of time. The Ordinance was not enacted merely on account of the necessity arising from the arrival of displaced persons, but it -was enacted also for the purpose of securing residential accommodation etc. for the requirements of the State itself; & these requirements were not of a mere temporary character. The emergency here was not treated as of a temporary character, & that explains why no time limit for the duration of the Ordinance was prescribed. No doubt by Section 4 it was left to the Govt. to extend the application of the Ordinance to certain areas. The Ordinance does not itself provide for the withdrawal, of the application, but by virtue of Section 20, Saurashtra General Clauses Act, Ordinance No. LXXI of 1949 the power to extend includes the power to rescind a notfn., & the Saurashtra Govt. had thus power to withdraw the application of the Ordinance from certain areas; but these powers do not necessarily imply that the Ordinance

itself was a temporary statute. It may be interesting to note that a somewhat similar statute, viz., the Bombay Land Requisition Act, 1948, which empowers the Bombay State to requisition buildings & land, prescribes the (sic) the Act u/s 3 thereof. The absence of the (sic) any limit in Ordinance No. (sic) before, indicates that the Ordinance No. XXIII or any (sic) be a temporary statute. (sic) Ordinance was not a (sic) expired so far as Palitana was concerned. Therefore, the pending proceedings would not be determined on that account & if the matter has rested there, they could have been continued against the opponents.

5. However taking Ordinance No. XXIII of 1948 as a permanent statute, in order that the pending proceedings could be saved Anr. condition is necessary, viz. that the statute should be repealed by an Act of the Legislature. Section 5, Saurashtra General Clauses Ordinance No. LXXI of 1949, which is equivalent to Section 6, General Clauses Act, 1897, & Section 7, Bombay General Clauses Act, 1904, lays down that where the said Ordinance, or any Saurashtra Ordinance made after the commencement of the Ordinance repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears the repeal shall not affect any penalty incurred in respect of any offence committed against the repealed enactment, nor any legal, proceeding in respect of any such penalty & any legal proceeding already instituted may be continued as if the repealing Ordinance had not been framed. Therefore the pending prosecution would be saved provided (the) Ordinance No. XXIII of 1948 was repealed by Anr. Ordinance & not otherwise. A "repeal" signifies the abrogation of one statute by Anr. (Law Lexicon of British India by Ramanatha Iyer, p. 1110). Repeal is the abrogation of a statute or part of a statute by a subsequent statute (Byrne's Law Dictionary, Order 761). The application of Ordinance XXIII of 1948 has been withdrawn from Palitana by a simple Notfn. of the State Govt. in which the State Legislature has no hand or part & it is evident that such a withdrawal cannot be regarded as being in any sense a repeal. Therefore, Ordinance No. XXIII of 1948 must be taken as not having been repealed so far as Palitana town is concerned, & the result is that the pending proceedings cannot be saved by anything contained in Ordinance No. LXXI of 1949. It follows that the prosecution of the opponents cannot be continued after the withdrawal of Ordinance XXIII from Palitana town. The order of acquittal passed by the learned Mag. is correct for these reasons & does not call for interference in revn. Accordingly this appln. is dismissed.

Chhatpar J.

6. I agree.