
(1956) 10 MP CK 0002
In the Madhya Pradesh High Court

State of Madhya Bharat

APPELLANT

Vs

Mohanlal Motilal

RESPONDENT

Date of Decision : 23-10-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 165, 165A, 402, 409

Citation : AIR 1957 MP 58 : (1957) CriLJ 189

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Judgement

Nevaskar, J.—The only question involved In this appeal is whether the Prevention of Corruption Act No. II of 1947 was the law in force within the limits of Railway lands at Mandsaur during the period from November 1947 to May 1948.

2. The facts material for the purpose of this appeal are as follows:

Accused Mohanlal Motilal Paul, who was formerly employed as Sub-Permanent Way Inspector Western Railways Mandsaur was prosecuted along with one J. D. Bhatt for offences under Sections 6(2) read with Section 5 (1) (c) and (d) of Act No. II of 1947 referred to above and also u/s 420 read with Section 129(b) I.P.C. before the Special Judge Ratlam. After the preliminary inquiry Bhatt was discharged and a charge was framed against Mohanlal u/s 5(2) read with Section 5(1)(c) and (d) of the aforesaid Act No. II of 1947.

The trial then proceeded. Practically at the close of the trial by Notification No. 159(5) J. 480-4/ 52 dated 27-7-1953 published in the Madhya Bharat Government Gazette dated 30-7-1953 two Special Judges were appointed in Madhya Bharat one at Indore and the other at Gwalior to try the offences investigated by Delhi Special Police Establishment and since the present case was one of that sort it was transferred for trial to Special Judge Indore within the limits of whose jurisdiction it fell. Here on the application of Special Public Prosecutor charge u/s 409 Indian Penal Code was added to the earlier charge under the Prevention of Corruption Act.

3. On behalf of the accused, a petition was filed on 30-7-1954 whereby the jurisdiction of the Special Judge to try the case in question was challenged. It was contended by Mr. Deviprasad Bhargava the learned Counsel for the accused that the offences charged with are alleged to have been committed during the period from November 1947 to May 1948. One out of these is an offence under the Indian Penal Code. The place where the offences are alleged to have been committed is the Railway Station Mandsaur.

Railway lands at Mandsaur were retroceded to the former Gwalior State on 15-8-1947. After this retrocession, the British Indian Laws ceased to be in force in that area and the laws of former Gwalior State became applicable. Therefore neither the Prevention of Corruption Act No. II of 1947 nor Indian Penal Code were applicable or were in force in that area.

That Court therefore whose jurisdiction was confined to trial of cases under the Prevention of Corruption Act and the "Indian Penal Code could not try the case even assuming that on the facts on record any other offence under the Penal Law of Gwalior is said to have been committed,

4. This contention found favour with the learned Judge who held that the cases reported in Babu v. Parsram AIR 1954 Mp 78 (A) and K. N. N. Ayyangar v. State AIR 1954 MP 101 (B), had no application to the facts of this case. He distinguished the first case on the ground that although it was held in that case that where a territory is ceded by one sovereign to the other, law in force in the ceded territory continue to remain in force until altered or modified by the new sovereign, yet the present was not a case of cession. It was case of retrocession.

5. The latter case of K. N. N. Ayanger (B) was held to be inapplicable as the point raised and decided in that case was whether the Delhi Special Police establishment had jurisdiction to investigate the offences committed within the Railway lands at Mhow after the area was retroceded on 15-8-1947 to Holkar State.

6. In the present case according to the learned Judge the question of jurisdiction of Delhi Special Police establishment to investigate the offence is not challenged. What is challenged is the continuance of the Penal laws in question during the material period in the Railway lands at Mandsaur which alone would give him jurisdiction to try the case. He held upholding the defence contention that these penal laws were not in force at Mandsaur then. He therefore directed the proceedings to be closed against the accused.

7. In this appeal before us it was contended by the learned Government Advocate that the distinction sought to be drawn by the learned Special Judge between the case of cession of a territory and retrocession while considering the question of continuance of laws is without any substance. Retrocession is also a form of cession and the principle with regard to continuance of pre-existing laws in the absence of definite indication to the contrary by the new sovereign applies equally to the case of retrocession as to the case of cession.

He further relied upon the case reported in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, which approved the principle laid down in the case reported in *Mayor of Lyons v. East Indian Co* 1 MIA 175 (D) that when a new territory is acquired by conquest or cession and that territory had a custom of law in force then that law continues to operate until it is changed by the new sovereign who had acquired that territory.

8. It was therefore urged that the Prevention of Corruption Act which was in force in the Railway lands at Mandsaur prior to its retrocession continued as if the Ruler of the former Gwalior State who was the sovereign during the material period or any legislature set up by him had not changed the same.

9. It was further contended that the case reported in *Randhira v. The State* AIR 1954 MP 83 (E), did not affect the question of jurisdiction as what was decided in that case was that in as much as the jurisdiction of the Special Judge appointed u/s 6, Criminal Law Amendment Act was confined to the trial of offences under Sections 161, 165, 165A, Penal Code (Act No. 45 of 1860) or Sub-section (2) of Section 5, Prevention of Corruption Act 1947, and not of offences under the Penal Code as adapted in Madhya Bharat, an accused person could not be tried or convicted by the said Special Judge.

In case, according to the learned Counsel, Prevention of Corruption Act 1947, is held to be applicable in that area then the jurisdiction of the Special Judge to try the accused for that offence cannot be questioned. Learned Government Advocate further referred to the decision reported in AIR 1954 MP. 78 (A), and contended that that case clearly shows that even an expression "cease to be in force" was insufficient to discontinue the preexisting law in the absence of positive repeal of the same. In this case according to him the Gwalior Rules did not specifically repeal the Prevention of Corruption Act. Reliance was also placed upon the case reported in AIR 1954 MP. 101 (B), wherein it was decided that an officer of Delhi Police Establishment could investigate an offence committed within the Railway lands at Mhow which is situated in Madhya Bharat.

10. The learned Government Advocate then referred to Maxwell's Interpretation of Statutes Pages 170,172 and 176 and contended that although the Gwalior Rules extended the application of Gwalior Penal Code to the area in question from 15-8-1947 yet this even did not bring about the repeal of a Special law like the Prevention of Corruption Act as the object of the Special Law Was different. It was intended to make more effective provisions for prevention of corruption amongst the servants of the Crown (English) although the general law contained in Sections of the Indian Penal Code was already there.

In these circumstances mere application of law like the Gwalior Penal Code could not have the effect of repealing the Special Law viz. Prevention of Corruption Act.

11. On the other hand, Mr. Devi Prasad Bhargava who appeared for the accused contended that the principle laid down in *Ranadhir's* case (E) referred to above is correct and that as long as that stands the Special Judge had no jurisdiction to

try the accused for an offence u/s 409, I. P. C, as that was not the law in force at the material time. What applied then was the Gwalior Penal Code, Section 402 whereof was similar to Section 409 I. P. C.

The similarity of offences, however, did not empower the Special Judge to try offences except those mentioned in Section 6. The jurisdiction of the Special Judge will solely depend, according to the learned Counsel, upon the consideration whether the Prevention of Corruption Act, 1947 was applicable to the Railway lands at Mandsaur during the material period.

12. He referred to ordinance No. 3 of Samvat 2004 issued by the Ruler of Gwalior State on 13-8-1947 i.e., just before the retrocession of Railway lands specified in schedule B to the ordinance and urged, that having regard to the wordings of the ordinance contained in paras 2, 3 and 5 all preexisting British Indian Laws in force in that area except those mentioned in schedule were repealed and replaced by the laws in force in Gwalior State and extension of enactments in force in the Indian Dominion as defined in the Indian Independence Act, 1947 or any part of the said dominion could only be extended by means of a notification to that effect. There was no notification of that sort extending the Prevention of Corruption Act, 1947 to the area in question.

13. According to the learned Counsel this was not a case of implied repeal but express repeal.

14. Now in order to arrive at our conclusion upon the question whether the Special Judge has jurisdiction in this case we must ascertain whether the accused could be held to have committed any of the offences mentioned in Section 6 Criminal Law Amendment Act 1952.

15. Section 6 of the Act referred to above is as follows:

Power to appoint Special Judge,-(1) The State Government may, by notification in the official Gazette appoint as many special Judges as may be necessary for such area or areas as may be specified in the Notification to try the following offences, namely:

(a) an offence punishable u/s 161, Section 165 or Section 165A of the Indian Penal Code (Act XLV of 1860) or Sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (II of 1947)

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special judge under this Act unless he is, or has been, a sessions judge or an additional sessions judge or an assistant Sessions Judge under the Code of Criminal Procedure, 1898 (Act V of 1898).

16. It is thus clear by reference to Clause (a) that the Special Judge could try offences under Sections 161, 165 and 165A of the Indian Penal Code (Act No. 45

of 1860) or Sub-section (2) of Section 5 of Prevention of Corruption Act (II of 1947). The other clauses being irrelevant in this case.

17. Therefore, what we have to find is whether the accused can be said to have committed any of the aforesaid offences referred to above during the material period i.e. November, 1947 to May 1948.

18. The only offence alleged against the accused out of the aforesaid offences is one u/s 5(2) of the Prevention of Corruption Act and therefore the question of jurisdiction of the Special Judge will depend upon the circumstances whether the accused can at all be held guilty of that offence.

19. The prosecution case is that he can be so held guilty on proof of facts material to that offence as that was the law in force in the Railway lands at Mandsaur during the material period when he is said to have committed acts constituting that offence. While the case of the accused is that the said law viz. Prevention of Corruption Act II of 1947 was not in force in that area during the material period.

20. It is not disputed that prior to retrocession of Railway lands at Mandsaur on 15-8-1947 the said Act No. II of 1947 was in force in that area. The question which then arises for consideration is whether there are reasons to hold that it came to an end in that area by anything validly done thereafter prior to November, 1947 and that this state of affairs was not altered till May 1948.

21. The answer to this question considerably depends upon:

(i) The general principles with regard to repeals in the cases of cession or retrocession of a territory.

(ii) The interpretation to be placed upon the Ordinance No. 3 Samvat 2004 issued under the authority of the Ruler of erstwhile Gwalior State.

22. As regards (i) the leading case upon the subject is the one reported in 1 M I A 175 (D), it is held in that case:

It is agreed, on all hands, that a Foreign settlement, obtained in an inhabited Country, by conquest, or by cession from another Power, stands in a different relation to the present question, from a settlement made by colonizing; that is peopling an uninhabited Country.

In the latter case it is said that the subject of the Crown carry with them the laws of England, there being, of course, no *lex loci*. In the former case, it is allowed, that the law of the Country continues until the Crown, or the legislature, change it.

23. These observations of Privy Council were approved of by their Lordships of the Supreme Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, they observe as follows:

In the normal course and in the absence of any attempts to introduce uniform

legislation throughout the State the pre-existing laws of various component States would continue to be in force on the well accepted principle laid down in 1 M I. A. 175 (D).

24. It therefore follows from the above quoted observations of the Privy Council and those of the Supreme Court that ordinarily:

1. The pre-existing state of law in a ceded territory would continue until the new sovereign or legislature changed it, and

2. Where the new sovereign expresses his intention to introduce uniform legislation throughout the state then that intention will prevail.

25. The will of the new sovereign to change the pre-existing law in a ceded territory will have the effect of repealing the said law and the principles applicable to the case of repeal will be applicable in such cases.

26. While applying these principles culled from the aforesaid decision of the Supreme Court we must bear in mind certain broad principles bearing on the question of repeal.

27. Maxwell in his work on Interpretation of Statutes says at page 170:

But repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason, It is a reasonable presumption that the legislature did not intend to keep really contradictory enactments on the Statute-book, or, on the other hand, to effect so important a measure as the repeal of law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted unless it be inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention.

At page 176 it is laid down that:

It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one, that is, one directed towards a special object or a special class of objects.

A general later law does not abrogate an earlier special one by mere implication. "Ganeralia specialibus non derogant" or, in other words, "where there are general words in a later Act which are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.

In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act. Having already given its attention to the particular subject and provided for

it, the legislature is reasonably presumed not to intend to alter that special provisions by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act.

In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one."

28. Similar observations are to be found in Craies on Statute law at pages 337 and 339.

At page 337 it is said:

Where two acts are inconsistent or repugnant the later will be read as having impliedly repealed the earlier. The Court leans against implying a repeal, "unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied.

And at page 339:

Where a new Act is couched in general affirmative language, and the previous law can well stand with it, and if the language used in the later Act is all in the affirmative. There is nothing to say that the previous law shall be repealed, and therefore the old law and the new law shall stand together.

29. Thus the principles which flow from these above quoted observations are that:

1. Repeal by implication is not favoured and that the Court will lean against implied repeal.
2. General Act should be construed as not repealing a particular one that is one directed towards a special object or class of objects and more particularly so when the new Act is couched in affirmative language & the two can stand together.
3. Where there is something in the nature of a later general law which makes it unlikely that an exception was intended as regards the special Act then the general law will be taken to have re-pealed the special one.

30. With these principles in view, we shall now proceed to examine the language of Ordinance No. 3 of Samvat 2004 dated 13-8-1947.

Whereas with effect from the 15th of August, 1947, His Highness the Maharaja Scindia has full and exclusive power, authority and jurisdiction of every kind over the Lands lying within the State which are occupied by the Railway specified in the Schedule "B" annexed hereto (including the land occupied by Stations, by

out-buildings and for other Railway purposes) and over all persons and things whatsoever within the said lands.

And whereas it is expedient to provide for the application of the Laws in force in the said Lands, and for the extension of other enactments thereto, His Highness, Maharaja, Mukhtar-ul-Mulk, Azim-ul-Iqtidar, Rafi-Ush-shan, Wala-Shikoh, Mohata--shim-ul-Dauran, Umdat-ul-Urnra, Maharajadiraj Hisan-us-Saltanat, Lieut-General, Sir Jiwaji Rao Scindia Alijah Bahadur Shrinath Mansur-i-Zamam, Fidwi Hazrat Malik Muazzam. Rafi-ud-Darjit Ing-listan, G.C.S.I., G.C.I.E., has been pleased to promulgate the following Ordinance:

(1) (i) This Ordinance may be called "The Railway Lands Ordinance, Gwalior State, Samvat, 2004."

(ii) It shall come into force from the 15th day of August, 1947.

(iii) It shall extend to the lands mentioned in Schedule "B" annexed hereto.

(2) Subject to the provisions of Section 3, all enactments in force on the 15th of August 1947 in Gwalior State and all Notifications, Orders, Rules, Forms or By-Laws issued, made or prescribed under such enactments shall extend to the said lands.

(3) The enactments specified in Schedule "(A)" and all Notifications, Orders, Rules Forms or By-Laws issued, made or prescribed under those enactments, which immediately before the commencement of this Ordinance were in force in or prescribed for the said Lands, shall until they are withdrawn by Notification in the Gwalior Government, Gazette continue to be in force in the Lands specified in Schedule "B".

Provided that notwithstanding any provision in the said enactments specified in Schedule A, the Civil and Criminal jurisdiction shall be with the Civil and Criminal Courts of the Gwalior State.

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5. The Government may by notification in the official Gazette extend with such restrictions and modifications as it thinks fit, to the said lands or any part thereof, any enactment which is in force In the Indian Dominion (as defined in the Indian Independence Act of 1947) or any part of the said Dominion on the date of such notification.

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31. The preamble to the ordinance indicates that His Highness Maharaja Scindia assumed full and exclusive power, authority and jurisdiction of every kind over the Railway Lands lying within the State which are occupied by the Railway, specified in Schedule "B" thereto and over all persons and things whatsoever within the said lands from 15-8-1947.

32. The preamble further indicates that the ordinance was designed to provide

for the application of laws in force in the newly acquired territory and for extension of the Indian Railways Act, the Indian Telegraph Act and the Indian Post Office Act together with all notifications, Orders, Rules Forms or By-laws issued, or prescribed under those enactments.

33. With this object in view, it provided by Section 2 that subject to the provision of Sections 3 all enactments in force on 15-8-1947 in Gwalior State and all Notifications, Orders, Rules Forms or Bylaws issued, made or prescribed under such enactments be extended to these lands,

34. Section 3 provided for extension of the Indian Railways Act, the Indian Post Office Act and the Indian Telegraph Act together with Notifications, orders, Rules, By-laws thereunder to the said lands.

35. On the wordings of these two Sections provision contained in Section 3 was intended to be an exception to what is provided in Section 2, The continuance of these three enactments was also not intended to be a permanent feature but was to last until their withdrawal by the issue of Notifications in the Gwalior Government Gazette.

36. By Section 5, power was conferred upon the Government by Notification in official Gazette to extend with such restrictions and modifications as it things fit to this newly acquired territory any enactment which is in force in the Indian Dominion (as defined in the Indian Independence Act of 1947) or any part of such Dominion on the date of such Notification.

37. It appears from the entire scheme of the ordinance that the Maharaja Scindia with perfect comprehension of his power. authority and jurisdiction was anxious to bring about legislative homogeniety between his pre-existing territories and the newly acquired territories.

With that idea he extended all his laws to the new territory. Exception made in Section 3 with regard to the three Acts was evidently in pursuance of the standstill agreement and applied equally to his preexisting territories as it related to the subject of "transit and communication". The exception was to operate until denounced. Power was delegated by him, by Section 5 of the ordinance to the Government to extend with such restrictions and modification as the latter thought fit to the newly acquired Railway Lands any enactment which is in force in the Indian Dominion by means of a notification.

38. The ordinance was a stop-gap arrangement. The new sovereign made provision for extension of laws covered by stand-still agreement. As regards extension of other laws of the Indian Dominion further examination must have been considered necessary with respect to such a requirement. The power was therefore delegated to the Government to extend such laws of the Indian Dominion (as defined in the Indian Independence Act of 1947) as the circumstances of particular case may require.

39. This provision in Section 5 may indicate that all the pre-existing system of

the Laws in force in the Indian Dominion were not intended to operate side by side with the system of Gwalior laws and no intention can be reasonably attributed to the new sovereign to modify the law of the old system to the extent of repugnancy.

40. Even if Section 5 cannot be used to give rise to such an inference the general object of the ordinance as indicated in the preamble and the anxiety of the new sovereign to bring about complete cohesion in the matter of application of laws of his state and to establish homogeneity in that respect give sufficient ground for the view that the pre-existing system of laws was sought to be replaced by the new sovereign by the laws of his own territories with such savings of the pre-existing laws as were then thought necessary. Apart from the three enactments of the Indian Dominion on the subject of "transit and communication" dealt with by the stand-still agreement the validity of instruments executed in the ceded territory under the pre-existing stamp provisions was saved and the same validity was conferred upon them as if they had been executed within that state and had been stamped according to the law of that State.

41. There is therefore in this case a clear attempt to establish uniformity and homogeneity in the matter of application of laws of the State and the general presumption, with regard to continuance of laws of ceded territory until altered, is displaced in this case by the terms of the ordinance.

42. There is no doubt no specific section expressly repealing all the pre-existing British Indian Laws but if one were to assume that the two systems of laws were intended to operate side by side and the applicability of each were to be decided on consideration of repugnancy it would mean that the ordinance had brought about the very state of things which it sought to avoid.

43. In my opinion exactly in order to avoid such a situation that the power was delegated to the government to introduce such of the laws of the Indian Dominion and with such alterations and modifications as may be judged proper so as not to give rise to any conflict.

44. In this view of the matter, the general principles with regard to repeal by implication cannot be called in aid to support the validity of the Prevention of Corruption Act 1947 in the Railway Lands at Mandsaur during the material period.

45. The learned Government Advocate relied Upon the decision of this Court in AIR 1954 Mp. 78 (A), but that case is distinguishable. In that case although by the Ordinance of the Governor General all laws in force immediately before the appointment had ceased to be in force before the appointed day and all laws in force in the absorbing unit had come into force from that date yet by the very Act of the absorbing state particular Panchayat Act and the Panchayat working thereunder were restored to their initial status until the establishment of the Panchayats under the Act and this was not done till the case had been decided.

46. It is not suggested in this case that the Ruler of Gwalior or the Government

of that State in pursuance of power u/s 5 extended Prevention of Corruption Act 1947 at any time during the material period to the Railway Lands at Mandsaur.

47. For these reasons I am not persuaded to hold that the Special Judge had Jurisdiction to try the case.

48. The appeal therefore does not deserve to succeed. It is accordingly dismissed.

49. I may make it clear that neither the decision of this Court nor that of the Special Judge should be construed to mean anything more than, the fact that the Special Judge had no jurisdiction to try the case either u/s 5(2) of the Prevention of Corruption Act or u/s 409 Indian Penal Code.

Samvatsar, J.

50. I agree.