State of Punjab

Vs

Mohar Singh

Criminal Appeal No. 61 of 1953

(B. K. Mukherjea, B. Jagannath Das, Vivian Bose JJ)

20.10.1954

JUDGMENT

MUKHERJEA J. -

This appeal, which has come before us, on a certificate granted by the High Court of the State of Punjab at Simla, under article 134(1)(c) of the Constitution, raises a short point of law. On the 3rd of March, 1948, an Ordinance (being Ordinance No. VII of 1948) was promulgated by the Governor of East Punjab, under section 88 of the Government of India Act, 1935, making provisions for the registration of land claims of the East Punjab refugees. On the 17th March, 1948, the respondent, Mohar Singh, who purports to be a refugee from West Pakistan, filed a claim in accordance with the provision of this Ordinance, stating therein, that he had lands measuring 104 kanals situated within the district of Mianwali in West Punjab. On the 1st of April, 1948, this Ordinance was repealed and Act XII of 1948 (hereinafter called 'the Act') was passed by the East Punjab Legislature re-enacting all the provisions of the repealed Ordinance. The claim filed by the respondent was investigated in due course and it was found, after enquiry, that the statement made by him was absolutely false and that as a matter of fact there was no land belonging to him in West Pakistan. Upon this, a prosecution was started against him on the 13th of May, 1950, under section 7 of the Act, which makes it an offence for any person to submit, with regard to his claim under the Act, any information which is false. The accused was tried by S. Jaspal Singh, Magistrate, First Class, Jullundur, before whom he confessed his guilt and pleaded for mercy. The trying Magistrate by his order dated the 20th of July, 1951, convicted the respondent under section 7 of the Act and sentenced him to imprisonment till the rising of the Court and a fine of Rs. 120, in default of which he was to suffer rigorous imprisonment for one month.

The District Magistrate of Jullundur considered the sentence to be inadequate and referred the case to the High Court at Simla under section 438 of the Criminal Procedure Code with a recommendation that a deterrent sentence might be imposed upon the accused. The matter first came up before a single Judge of that Court and a preliminary point was raised on behalf of the respondent that it was not within the competence of the trying Magistrate to convict him at all under the provisions of the Act, as the offence was committed against the Ordinance before the Act came into force and the prosecution was started long after the Ordinance had come to an end. Having regard to the diversity of judicial opinion on the point, the single Judge referred the case for decision by a Division Bench. The learned Judges constituting the Division Bench accepted the contention raised on behalf of the respondent, and by their judgment, dated the 7th of August, 1952, set aside the conviction of the respondent and the sentence imposed upon him under section 7 of the Act. It is against this judgment that the present appeal has been taken to this Court by the State of Punjab.

It is not disputed that the respondent did summit, with regard to the claim filed by him under the provisions of the Ordinance, an information which was false and that such act was punishable as an offence under section 7 of the Ordinance. The Ordinance however was repealed soon after the filing of the claim and was substituted by the Act which incorporated all the provisions of the Ordinance. The High Court in deciding the case in favour of the respondent proceeded on the ground that as Act XII of 1948 was not in existence at the date when the claim was filed by the respondent, he could not possibly be convicted of an offence under a law which was not in force at the time of the commission of the offence. The State Government attempted to meet this argument by invoking the provisions of section 6 of the General Clauses Act which is in the same terms as section 4 of the Punjab General Clauses Act. Section 6 of the General Clauses Act lays down the effect of the repeal of an enactment. The section runs thus :

> "6. Where this Act or any Central Act or regulation made after made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -
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> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
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> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
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> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

On the strength of this provision in the General Clauses Act it was contended on behalf of the State that the repeal of the Ordinance could not in any way affect the liability already incurred by the respondent, in respect of an offence, committed against the provisions of the Ordinance and any penalty or punishment consequent thereon.

The learned Judges of the High Court negatived this contention by holding that section 6 of the General Clauses Act could be attracted only when an Act or regulation is repealed simpliciter but not when, as in the present case, the repeal is followed by re-enactment. The Repealing Act, it is pointed out, reproduces the provisions of the Ordinance in their entirety, but it nowhere provides that offences committed, when the Ordinance was in force, could be punished after its repeal. The language of section 11 of the Act, which contains its saving provisions, does not, it is said, indicate that a criminal liability incurred when the Ordinance was in force would continue after it came to an end. It is the propriety of this view that has been challenged before us in this appeal.

It is not disputed that in the present case the prosecution was started against the respondent under section 7 of the Act and not under the corresponding provision of the Ordinance. The offence was committed at a time when the Act was not in force and obviously no man could be prosecuted or punished under a law which came into existence subsequent to the commission of the offence. But this by itself might not raise any serious difficulty, for the Court would have ample authority to alter the conviction of the accused, under the Act, to one under the Ordinance which contained the identical provision, provided he could be prosecuted and punished under the Ordinance after it was repealed, and this is the material point that requires consideration in this case.

Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law (Vide Craies on Statute Law, 5th edn., page 323). A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to created a vested right (Vide Crawford on Statutory Construction, page 599-600). To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. Later on, to dispense with the necessity of having to insert a saving clause on each occasion, section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as section 38(2) of the Interpretation Act of England.

Under section 30 of the General Clauses Act, which corresponds to section 27 of the Punjab Act, the provisions of the Act are applicable to Ordinances as well. Of course, the consequences laid down in section 6 of the Act will apply only when a statute or regulation having the force of statute is actually repealed. It has no application when a statute, which is of a temporary nature, automatically expires by efflux of time. The Ordinance in the present case was undoubtedly a temporary statute but it is admitted that the period during which it was to continue had not expired when the Repealing Act was passed. The repeal therefore was an effective one which would normally attract the operation of section 6 of the General Clauses Act. The controversy thus narrows down to the short point as to whether the fact of the repeal of the Ordinance being followed by re-enactment would make the provision of section 6 of the General Clauses Act inapplicable to the present case.

The High Court, in support of the view that it took, placed great reliance upon certain observations of Sulaiman C.J. in Danmal Parshotamdas v. Baburam ((1935) I.L.R. 58 All 495). The question raised in that case was whether a suit by an unregistered firm against a third party, after coming into force of section 69 of the Partnership Act, would be barred by that section in spite of the saving clause contained in section 74(b) of the Act. The Chief Justice felt some doubts on the point and was inclined to hold that section 74(b) would operate to save the suit although the right sought to be enforced by it had accrued prior to the commencement of the Act; but eventually he agreed with his colleague and held that section 69 would bar the suit. While discussing the provision of section 74(2) of the partnership Act, in course of his judgment, the learned Chief Justice referred by way of analogy to section 6(e) of the General Clauses Act and observed as follows at page 504 :

> "It seems that section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right, previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, section 6(e) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself."

These observations could not undoubtedly rank higher than mere obiter dictum for they were not at

all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman C.J. the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the Legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, section 6 of the General Clauses Act will undoubtedly be attracted. But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the Legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.

The offence committed by the respondent consisted in filing a false claim. The claim was filed in accordance with the provision of section 4 of the Ordinance and under section 7 of the Ordinance, any false information in regard to a claim was a punishable offence. The High Court is certainly right in holding that section 11 of the Act does not make the claim filed under the Ordinance a claim under the Act so as to attract the operation of section 7. Section 11 of the Act is in the following terms :

> "The East Punjab Refugees (Registration of Land Claims) Ordinance No. VII of 1948 is hereby repealed and any rules made, notifications issued, anything done, any action taken in exercise of the powers conferred by or under the said Ordinance shall be deemed to have been made, issued, done or taken in exercise of the powers conferred by, or under this Act as if this Act had come into force on 3rd day of March, 1948."

We agree with the High Court that the expression "anything done" occurring in the section does not mean or include an act done by person in contravention of the provisions of the Ordinance. What the section contemplates and keeps alive are rules notifications or other official acts done in exercise of the powers conferred by or under the Ordinance and these powers are mentioned in several sections of the Act. But although the lodging of the claim does not come within the purview of section 11 of the Act, we are of opinion that the proviso to section 4 of the Act clearly shows that a claim filed under the Ordinance would be treated as one filed under the Act with all the consequences attached thereto. Section 4 of the Act provides for the registration of land claims. The first sub-section lays down how the claim is to be filed. The proviso attached to it then says that "a refugee who has previously submitted a claim under Ordinance VII of 1948 to any other authority competent to register such claim shall not submit another claim in respect of the same land to the Registering Officer." Such claim would be reckoned and registered as a claim under the Act and

once it is so treated the incidents and corollaries attached to the filing of a claim, as laid down in the Act, must necessarily follow. The truth or falsity of the claim has to be investigated in the usual way and if it is found that the information given by the claimant is false, he can certainly be punished in the manner laid down in sections 7 and 8 of the Act. If we are to hold that the penal provision contained in the Act cannot be attracted in case of a claim filed under the Ordinance, the results will be anomalous and even if on the strength of a false claim a refugee has succeeded in getting an allotment in his favour, such allotment could not be cancelled under section 8 of the Act. We think that the provisions of sections 4, 7 and 8 make it apparent that it was not the intention of the Legislature that the rights and liabilities in respect of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this is sufficient for holding that the present case would attract the operation of section 6 of the General Clauses Act. It may be pointed out that section 11 of the Act is somewhat clumsily worded and it does not make use of expression which are generally used in saving clauses appended to repealing statutes; but as has been said above the point for our consideration is whether the Act evinces an intention which is inconsistent with the continuance of rights and liabilities accrued or incurred under the Ordinance and in our opinion this question has to be answered in the negative.

The Advocate-General of Punjab has drawn our attention to certain American authorities which hold that in case of simultaneous repeal and re-enactment, the re-enactment is to be considered as reaffirmation of the old law and the provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly. It appears that judicial opinion upon in America on this point is not quite uniform and we do not consider it necessary to express any opinion upon it. The provisions of section 6 of the General Clauses Act will, in our opinion, apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. The result is that the appeal is allowed and the judgment of the High Court set aside. The Advocate-General does not press for enhancement of sentence passed on the respondent. Consequently it is unnecessary for the High Court to hear the reference made to it by the District Magistrate, Jullundur any further. The sentence already passed upon the respondent by the trying Magistrate shall stand and if the fine of Rs. 120 has not already been paid, it shall be paid now. In default, the respondent shall suffer rigorous imprisonment for one month.

Appeal allowed.

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