

The State of Bombay

Vs

Salat Pragji Karamsi

Criminal Appeal No. 33 of 1955

(N. H. Bhagwati, Syed Jafar Imam, B. Jagannath Das, P. Govinda menon, J. L. Kapur JJ)

07.03.1957

JUDGMENT

KAPUR J. -

Two important questions arise for decision in this case of a small magnitude and the State has filed this appeal not for the purpose of obtaining a conviction but because of the importance of the questions raised and implications of the judgment of the Judicial Commissioner. The respondent was convicted of an offence under s. 12(a) of the Bombay Prevention of Gambling Act (Act IV of 1887 hereinafter termed the Bombay Act) as applied to Kutch and was sentenced to a fine of Rs. 50 or in default simple imprisonment from 15 days and forfeiture of the amounts recovered from the respondent at the time of the commission of the offence. He took a revision to the Judicial Commissioner of Kutch, who held that the Act under which the respondent had been convicted had not been validly extended to and was not in force in the State of Kutch. It is the correctness of this decision which was been canvassed before us.

There was sufficient evidence against the respondent which was accepted by the trying magistrate; and if the Act was validly extended to and was in operation in the State of kutch, his conviction by the learned magistrate was correct and his acquittal by the learned Judicial Commissioner erroneous.

On June 7, 1951, the respondent, it was alleged committed the offence he was charged with. He was convicted by the magistrate on July 26, 1951, and his revision to the Sessions Judge was dismissed. He then took a revision to the Judicial Commissioner of Kutch who allowed his petition on June 30, 1954, and granted a certificate under Arts. 132(1) and 134(1) of the Constitution.

Kutch before 1948 was what was called an Indian State. The Maharao of Kutch handed over the governance of the State to the Dominion of India on June 1, 1948 and thus the whole administration of the State passed to be Dominion and it became a Centrally administered area. On July 31, 1949, the then Central Government issued under s. 4 of the Extra Provincial Jurisdiction Act (Act XLVII of 1947), an order called the Kutch (Application of Laws) Order, 1949. Under cl. 3 of this order certain enactments were applied to Kutch with effect from the date of the commencement of the order. One of these enactments was the Bombay Act. Clauses 4 and 6 of this order are important and may be quoted;

4. "Except as otherwise specifically provided in the first schedule to this order the enactments applied by this order shall be construed as if references therein to the authorities and territories mentioned in the first column of the table hereunder printed were references to the authorities and territories, respectively, mentioned opposite

thereto in the second column of the said table.

TABLE1. Provincial Government, Governor The Chief Commissioner of or Chief Controlling Revenue Kutch. Authority.2. Government The Central Government or the Chief Commissioner, as the context may require.3. High Court Court of the Judicial Commissioner, Kutch.4. Provinces of India, any Province Kutch or any part thereof. of India or any part thereof.5. The Province or Presidency Kutch or any part thereof. of Bombay or any part thereof.##

6. "Any Court may construe the provisions of any enactment, rule, regulation, general order or bye-law applied to Kutch or any part thereof by this order, with such modifications not affecting the substance as may be necessary or proper in the circumstances."

On August 1, 1949, Kutch became a Chief Commissioner's province under the States Merger (Chief Commissioner's Provinces) Order, 1949. Clause 2(1)(c) of this order is as follows :

"As from the appointed day, the parts of States specified in the Second Schedule to this order shall be administered in all respects as if they were a Chief Commissioner's Province, and shall be known as Chief Commissioner's Province of Kutch."

The Second Schedule gives the parts of the pre-1947 Indian States which were to comprise the Chief Commissioner's Province of Kutch. Under cl. 4 of this Order all laws which were in force including orders made under s. 4 of the Extra Provincial Jurisdiction Act of 1947, were to continue in force until replaced.

On January 1, 1950, Merged States, Laws Act (Act LIX of 1949), came into force. By this Act certain Central Acts were extended to the province of Kutch including the General Clauses Act (Act X of 1897). On January 26, 1950, the Constitution of India came into force and Adaptation of Laws Order, 1950, was promulgated the same day. Clause 4(1) of this order provides :

"Whenever an expression mentioned in column 1 of the table hereunder printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in an (existing Central or Provincial Laws) whether an Act, Ordinance or Regulation mentioned in the Schedule to this Order or not, then, unless that expression is by this order expressly directed to be otherwise adapted or modified, or to stand unmodified, or to be omitted, there shall be substituted therefor the expression set opposite to it in column 2 of the said Table, and there shall also be made in any sentence in which the expression occurs such consequential amendments as the rules of grammar may require."

The necessary portions of the table are :

#Province (except where it occurs in any expression mentioned above)
StateProvincial..... StateProvinces (except where it occurs in any expression mentioned above). States##

Clauses 15 and 16 in (Part III)-Supplementary, are as follows :-

15. "Save as is otherwise provided by this Order, all powers which under any law in

force in India or any part thereof were, immediately before the appointed day, vested in or exercisable by any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question."

16. "Subject to the provisions of this Order any reference by whatever form of words in any existing law to any existing law to any authority competent at the date of the passing of that law to exercise any powers or authorities, or to discharge any functions, in any part of India Shall, where a corresponding new authority has been constituted by or under the Constitution, have effect until duly repealed or amended as if it were a reference to that new authority."

On November 28, 1950 the Chief Commissioner of Kutch issued the following notification :

"In exercise of the powers vested in him under section 1 of the Bombay Prevention of Gambling Act, 1887 (IV of 1887) as applied to Kutch by the Kutch (Application of Laws) Order, 1949 the Chief Commissioner has been pleased to order that all the provisions of the said Act shall come into force throughout the whole of Kutch with immediate effect."

On a consideration of all the Acts and Orders as well as the abovementioned Adaptation of Laws Order, of 1950, the learned Judicial Commissioner was of the opinion that "all such powers vested in or exercisable by any other person or authority before 26-1-1950 ceased to be so vested or exercisable by that person or authority", and, therefore, only the President, whether exercising the powers himself or through the Chief Commissioner, could exercise the powers of a State Government and the Chief Commissioner himself could not. His finding therefore was that the Chief Commissioner could not issue the above notification of November 28, 1950.

In its appeal against the Order of acquittal by the learned Judicial Commissioner, the State has raised two questions :

(1) that the Bombay Act had been validly extended to and was in force in the whole of Kutch because of the Kutch (Application of Laws) Order, 1949 and thus any contravention of that Act became punishable under the Act, and

(2) That even if the Bombay Act was not thus extended to Kutch, the Act became applicable to the State of Kutch by the issuing of the notification of November 28, 1950, and therefore, the respondent was rightly convicted and the conviction was wrongly set aside by the learned judicial Commissioner.

In order to decide the first contention we have to see what is the effect of the various provisions of the Acts and Orders above referred to. In cl. 4 of the Kutch (Application of Laws) Order, 1949, the words used are 'shall be construed as if reference therein....' In our opinion all that these words mean is 'shall be read as' and if that is how these words are understood then wherever in the Bombay Act the words 'Provincial Government' are used they have to be read as the Chief Commissioner of Kutch; the word Government has to be read as the "Chief Commissioner of Kutch"; and the Province or the "Presidency of Bombay" as "Kutch or any part thereof". If the Bombay Act is so read, then at the time when the Constitution came into force the words Provincial Government or Government or Province or Presidency of Bombay were no longer in the Act which had become

applicable to the State of Kutch. On the other hand, the words there must be taken to be Chief Commissioner of Kutch, and Kutch or any part thereof, respectively. The fallacy in the learned Judicial Commissioner's judgment lies in this that due effect was not given to these words which had become substituted, but emphasis was laid on the words 'shall be construed as' as if these words had been used for the purposes of interpretation of the different words in the Bombay Act rather than implying substitution of the corresponding words. In this view of the matter cl. 2(1)(c) of the States Merger (Chief Commissioners' Provinces) Order, 1949 which provided for the administration of the State of Kutch as if it was a Chief Commissioner's Province, would not affect the position nor would the extension of the General Clauses Act under the Merged States' Laws Act. Clause 4 of the Adaptation of Laws Order, 1950 only substituted in place of the words Province, Provincial and Provinces the words State or States, wherever they occurred in any existing law, and the effect of cls. 15 and 16 of that order was the continuance of the powers vested in the authorities in whom they had previously been vested. The position which therefore emerges on a combined reading of these various clauses is that in Bombay Act, as applied to Kutch, the words 'Presidency of Bombay' were to be replaced by the words 'Kutch or any part thereof' and the 'Provincial Government' by the 'Chief Commissioner of Kutch' and the powers which had been given to the different authorities under the different Acts were to continue to remain in the person or persons in whom they were already vested. As the powers had been vested in that Chief Commissioner under the provisions of these various Acts and Orders, they continued to remain so vested and the General Clauses Act did not have any operational effect on these various words which were used in the Bombay Act as modified and applied to Kutch.

So understood, s. 1 of the Bombay Act would read as follows :-

"This Act may be cited as the Bombay Prevention of Gambling Act, 1887. All or any of its provisions may be extended from time to time by the Chief Commissioner of Kutch by an order published in the "Official Gazette" to any local area in Kutch or any part thereof."

The Chief Commissioner of Kutch may, from time to time, by an order published as aforesaid, cancel or vary any order made by it under this section".

The portion of this section viz.,

"It extends to the city of Bombay, to the Island of Salsette, to all Railways and railway Station houses without the said city and island and to all places not more than three miles distant from any part of such station houses respectively"

would not continue in the Act as applied to Kutch because these parts are not in the State of "Kutch or any part thereof" and cl. 6 of the Kutch (Application of Laws) Order, 1949 would come into operation for the purpose.

It was then contended that by the mere application of the Bombay Act to Kutch it became operative and came into force in the whole of Kutch. This argument suffers from the infirmity that in its application to Kutch s. 1 of the Bombay Act would have to be excluded which would be an incorrect way of looking at the question. The true position is that the whole of the Act including amended s. 1 as given above, became applicable to Kutch and therefore a notification was necessary before it could be brought into force in any part of Kutch. It was applied to Kutch, its provisions were not in operation before the notification; and in our opinion, the judgment of Baxi J. C. in

Agaria Osman Alarakhya v. The Kutch State [A.I.R. (1951) Kutch 9] which has been followed in the case now before us, to the extent that it dealt with the necessity of a notification under s. 1 of the Bombay Act, was correctly decided; and therefore, the first contention raised by counsel for the appellant is unsustainable and we hold that without a notification, the Bombay Act, could not be held to have been validly applied to the State of Kutch.

This brings us to the second question, i.e., the validity of the notification issued on November 28, 1950. The learned Judicial Commissioner held :

"The Chief Commissioner of a Part C State can act to such extent as he is authorised by the President to do. These being the provisions of the Constitution, the Bombay Act must be construed with the adaptation that the rule of construction mentioned in Kutch (Application of Laws) Order, 1949 is deleted. Hence, even if substitution of expression as mentioned in para 4 of the Adaptation of Laws Order, 1950 is not made, the rule of construction mentioned in the Kutch (Application of Laws) Order, 1949 for construing the expression 'Provincial Government' as the 'Chief Commissioner, Kutch' does not survive :

Article 239 of the Constitution relates to administration of Part C States and provides :

"Subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner of a Lieutenant-Governor to be appointed by him....."

This Article has been relied upon for urging that in a Part C State, the administration had to be carried on by the President acting through a Chief Commissioner. But this does not take away the powers of the Chief Commissioner given to him under any other Statute or Order. The Chief Commissioner of Kutch under s. 1 of the Bombay Act, had the power to issue notifications making that Act operative in Kutch or any part of Kutch and those powers were not affected by Art. 239 of the Constitution particularly because of cl. 15 of the Adaptation of Laws Order, 1950, which preserved these powers of the Chief Commissioner. Therefore the notification issued by the Chief Commissioner on November 28, 1950 was valid and issued under legal authority; and the Act came into force in the parts to which the notification made it so applicable. We have therefore, come to the conclusion that the learned Judge was in error in holding that the notification was not a valid one and in so far as that was the basis of the acquittal of the accused, the judgment under appeal must be set aside.

In the result the appeal of the State is allowed, the judgment of the learned Judicial Commissioner acquitting the respondent is set aside and that of the learned Magistrate sentencing him to a fine of Rs. 50 and sentence in default and of forfeiture restored.

Appeal allowed.

</html