SUREME COURT OF INDIA

T. S. Baliah

Vs.

T. S. Rengachari

(V. Ramaswami, J.C. Shah and A.N. Grover JJ.)

12.12.1968

JUDGMENT

RAMASWAMI, J.

The appellant is a cinema actor and the present proceedings have arisen in respect of the Income Tax Returns filed by him for the assessment years 1958-59, 1959- 60, 1960-61 and 1961-62. In respect of the first three assessment years, the appellant was assessed to income-tax. Thereafter penalty proceedings had been instituted under s. 28 of the Income

Tax Act, 1922, hereinafter called the 1922 Act and penalties were imposed. In respect of the last assessment year, notice .has been issued to the appellant asking him to show cause why the penalty should not be imposed. The respondent filed four complaint petitions at the instance of the Inspecting Assistant Commissioner, Central Range, Madras in respect of the first three assessment years and at the instance of the Commissioner of Income Tax, Madras Central in respect of the fourth assessment year before the Chief Presidency Magistrate, Egmore, Madras charging the appellant with having committed offences under s. 52 of the 1922 Act and under s. 177 Indian Penal Code in the first three complaints and under s. 277 of the Indian Income Tax Act, 1961, hereinafter called the 1961 Act and under s. 177, Indian Penal Code in the fourth complaint petition. In substance the allegation of the first respondent was that the appellant had made a statement in the verification under the Income Tax Act which was false knowing it to be false, and he had wilfully omitted and deliberately suppressed the inclusion of certain sums of money in his Income Tax Returns with a view to evade lawful taxes due to the Government. The appellant filed four applications before the Chief Presidency Magistrate praying that the legality of the trial for both the offences should be tried as the -preliminary issue. This application was dismissed by the Chief Presidency Magistrate by a common order dated May 22, 1967, holding that the points of law raised by the appellant were such that they could be agitated in the course of the trial and therefore it was not necessary to give any finding on those points at that stage. Thereafter the appellant filed Criminal revision petitions in the Madras High Court against the orders of the Chief Presidency Magistrate. These petitions were dismissed by the Madras High Court by its order dated February 14, 1968.

These appeals have been brought by special leave from the order of the Madras High Court dated February 14, 1968 in Criminal Revisions Nos. 645 to 648 of 1967. It is necessary at this stage to set out the relevant provisions of the Indian Penal Code and of the 1922 Act. Section 177, Indian Penal Code states :

"177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; .....

Section 52 of the 1922 Act is to the following effect :

"52. False statement in declaration If a person makes a statement in a verification mentioned in section 19A or section 20A or section 21 or section 22 or sub-section (2) of section 26A or sub-section (3) of section 30, or sub-section (3) of section 33 or furnishes a certificate under sub-section (9) of section 18, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Section 53 reads as follows

"53. Prosecution to be at instance of Inspecting Assistant Commissioner.-(1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Inspecting Assistant Commissioner.

(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence."

As regards the criminal prosecution arising from the returns for the assessment years 1958-59, 1959-60 and 1960-61, it was contended on behalf of the appellant that the provision of s. 52 of the 1922 Act was a special provision in this behalf, so that there could be prosecution of the appellant only under that provision and not under s. 177, Indian Penal Code which was a general provision. It was said that in respect of the matters covered by s. 52 of the 1922 Act, the provisions of S. 177, Indian Penal Code should be taken to have been repealed by implication and therefore the prosecution of the appellant under s. 177, Indian Penal Code, as illegal. We are unable to accept this argument as correct. fore coming to the conclusion that there is a repeal by implication , the Court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment. It is therefore necessary in this connection to scrutinise the terms, and consider the true meaning and effect of the two enactments.) It was argued on behalf of the appellant that there was inconsistency between the provisions of s. 177, Indian Penal Code and of s. 52 of the 1922 Act. It was said that the differences -between the two enactments were as follows : (1) Section 177, Indian Penal Code, is non-compoundable, whereas the offence under s. 52 of the 1922 Act is compoundable with the permission of the Inspecting Assistant Commissioner by virtue of cl. (2) of s. 53 of the 1922 Act, (2) The prosecution under s. 177, Indian Penal Code can be instituted by any public servant under s. 195, Criminal Procedure Code, whereas the prosecution under s. 53 of the 1922 Act has to be instituted at the instance of the Inspecting Assistant Commissioner as provided under s. 53 (1) of the 1922 Act, (3) An offence under s. 177, Indian Penal Code is triable by the Presidency Magistrate, a Magistrate of the First Class or Second Class, whereas the offence under s. 52 of the 1922 Act cannot be tried by a Second Class Magistrate unless specially empowered by the Central Government, and (4) If penalty is levied under the 1922 Act in respect of certain matters, no

prosecution can be instituted by virtue of the provisions under s. 28 (4) of the 1922 Act in respect of the same matters, whereas there is no such bar under s. 177 Indian Penal Code. In our opinion, these differences do not support the argument that there is any repugnancy or inconsistency between the two statutes. The provisions enacted in s. 52 of the 1922 Act do not after the nature or quality of the offence enacted in s. 177, Indian Penal Code, but it merely provides a new course of procedure for what was already an offence. In a case of this description the new statute is regarded not as superseding, nor repealing by implication the previous law, but as cumulative.) For instance, it was held in R. v. Robinson(-') that s. 10 of the Poor Relief Act, 1691 (c. 11), in imposing a penalty of pound 51 recoverable summarily, on parish officers who refused to receive a pauper removed to their parish by an order of justices, was to leave those officers still liable to indictment for the common law offence of disobeying the order which the justices had authority to make under the Poor Relief Act, 1662 (c. 12). In cases such as these, it is to be presumed that the legislature knew that the offence was punishable by indictment, and that, as it did not in express terms abolish the common law proceedings, it intended, that the two remedies should coexist. In R. v. Hopkins,(2) where the Metropolitan Police Act, 1839 (c. 47), by one section (s. 57) empowered a magistrate to impose a penalty of not more than 40s. for an offence, and by another section (s. 77) empowered him, if the penalty was not paid, to commit the offender to prison for a month, and a later statute [Metropolitan Police Act, 1864 (c. 55), s. (1)] repealed section 57 and substituted for it one empowering the magistrate to impose the same penalty or to commit to prison for not more than three days, it was held by the Queen's Bench that this did not impliedly repeal s. 77, but that it was competent for the magistrate to sentence an offender to pay a penalty of (1) [1750] 2 Burr. 800, 803. (2) [1893] 1 Q.B. 621. 40s. and in default of payment to be imprisoned for a month. The principle of these decisions applies to the present case and having regard to the terms and language of the two enactments, we are of opinion that there is no repugnancy or inconsistency and the two enactments-can stand together and they must therefore be treated as cumulative in effect. We are of the opinion that the doctrine of implied repeal cannot be applied in the circumstances of this case and that the argument of the appellant on this point must be rejected.

We pass on to consider the next question argued on behalf of the appellant, viz., whether by reason of the repeal of the 1922 Act by the 1961 Act, the prosecutions in respect of the prior proceedings under the 1922 Act were not saved and therefore the prosecution under s. 52 of the 1922 Act was not sustainable. Section 297(1) of the 1961 Act expressly repeals the 1922 Act. Clause (2) of s. 297 provides that the matters expressly referred to in cls. (a) to (m) are saved notwithstanding the repeal of the 1922 Act. It was contended on behalf of the appellant that under cl. (2) (a) to (m) of s. 297 of the 1961 Act the prosecution in respect of proceedings pending at the commencement of the 1961 Act was not expressly saved and therefore it must be presumed that Parliament had not intended to save prosecutions in respect of proceedings pending at the commencement of the 1961 Act. In our opinion, there is no justification for this argument. Section 6 of the General Clauses Act reads as follows -

"6. Effect of repeal.-Where this Act or any Central Act or Regulation 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-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liabililty acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The principle of this section is that unless a different intention appears in the repealing Act, any legal proceeding can be in stituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in s. 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute. 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 the Court 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 question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General Clauses Act therefore will be applicable 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 statute and the mere absence of a saving clause is by itself not material. In other words, the provisions of s. 6 of the General Clauses Act, will apply to a case of repeal even if there is a simultaneous re-enactment unless a contrary intention can be gathered from the new statute. Having examined the provisions of cl. (2) of s. 297 of the 1961 Act we are of the opinion -that it is not the intention of Parliament to take away the right of instituting prosecution in respect of proceedings which are pending at the commencement of the Act. It is true that there is no express subclause in s. 297 (2) of the 1961 Act which provides for the continuation of such proceedings but our concluded opinion is that Parliament did not intend s. 297(2) of the 1961 Act to be completely exhaustive and in regard to such matters as are not expressly saved by s. 297(2) of the 1961 Act the provisions of s. 6 (e) of the General Clauses Act will apply. It follows therefore in the present case that under s. 6 of the General Clauses Act a legal proceeding in respect of an offence committed under the 1922 Act may be instituted even after the repeal of the 1922 Act by the 1961 Act and punishment may be imposed as if the repealing Act had not been passed On behalf of the appellant reliance was placed on the decision of this Court in Kalawati Devi Harlalka v. C.I.T. West Bengal(1) in which there is an observation that "s. 6 of the General Clauses Act will not apply because s. 297(2) evidences an intention to the contrary and S. 297 (2) was meant to provide as far as possible for all contingencies which may arise out of the repeal of the 1922 Act". But this observation in Kalawati Devi Harlalka v. C.I.T. West Bengal(1) has been explained and interpreted by this Court in a subsequent case-The III Income-tax Officer, Mangalore v. Sri N. Damodar Bhat (2) wherein it was pointed out that the ratio of the decision in Kalawati Devi Harlalka v. C.I.T. West Bengal(1) was that "s. 6 of the General Clauses Act will not apply in respect of those matters where Parliament had clearly expressed its intention to the contrary

by making detailed provisions for similar matters mentioned in that section". As we have already pointed out, Parliament had not made any detailed provision for the institution of prosecutions in respect of proceedings which Were pending at the commencement of the 1961 Act. It follows therefore that the provisions of s. 6 of the General Clauses Act are applicable in the present case and the prosecution of the appellant under s. 52 of the 1922 Act is legally valid.

We proceed to consider the next question arising in this case, viz., whether the appellant can be prosecuted both under s. 177, Indian Penal Code and s. 52 of the 1922 Act at the same time. It was argued on behalf of the appellant that in view of the provisions of s. 26 of the General Clauses Act (Act 10 of 1897) the appellant can be prosecuted either under s. 52 of the 1922 Act or under s. 177, Indian Penal Code and not under both the sections at the same time. We are unable to accept this argument as correct Section 26 of the General Clauses Act states

"26. Provision as to offences punishable under two or more enactments-Where an act or omission constitutes an offence under two or more enactments, then the, offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that (1) [1967] 3 S.C.R. 833. (2) [1969] 2 S.C.R. 29. where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. We accordingly reject the argument of the appellant on this aspect of the case.

It was then contended on behalf of the appellant that the prosecution is illegal as complaint petition was required to be filed by the_ Inspecting Assistant Commissioner under the 1922 Act. In our opinion, there is no substance in this argument. Section 53 of the 1922 Act only requires that a person shall not be proceeded against for an offence under s. 51 or s. 52 of the 1922 Act "except at the instance of the Inspecting Assistant Commissioner". It is not disputed in the present case that the respondent has filed complaint petitions on the authority of the Inspecting Assistant Commissioner. There is no statutory requirement that the complaint petition itself must be filed by the Inspecting Assistant Commissioner. The clause "at his instance" in s. 53 of the 1922 Act only means "on his authority" and it is therefore sufficient compliance of the statutory requirement if the complaint petition is filed by the respondent on being authorised by the Inspecting Assistant Commissioner. It was also said in the course of argument that it was open to the Income Tax Officer to prosecute the appellant either under s. 177, Indian Penal Code or under s. 52 of the 1922 Act and the choice of prosecution was left to the arbitrary and unguided discretion of the Income Tax Officer and therefore there was a violation of the guarantee under Art. 14 of the Constitution. We do not consider there is any substance in this argument. The offence provided for in s. 52 of the 1922 Act is an offence specially constituted and the prosecution for that offence requires the sanction of the Inspecting Assistant Commissioner. No prosecution also can take place if penalty has been imposed under s. 28 of the 1922 Act. The institution of a complaint under s. 52 of the 1922 Act is therefore circumscribed by sufficient safeguards and we do not consider that there is any violation of the guarantee under Art. 14 of the Constitution.

Lastly it was pointed out that penalties have been already imposed on the appellant in respect of the

first three assessment years and that there can therefore be no prosecution of the appellant under s. 52 of the 1922 Act. Reference was made to s. 28(4) of the 1922 Act which states that "no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section". There is however no sufficient material before us to determine sup.C.I./69-6 this point. We therefore consider that the point should be left open and the appellant may urge the argument before the trying magistrate at the time of the commencement of the trial.

Subject to this observation, we dismiss these appeals. R.K.P.S. Appeals dismissed.