SUPREME COURT OF INDIA

State of Rajasthan

Versus

Hat Singh & Ors.

8.1.2003

(R.C. Lahoti and Brijesh Kumar, JJ.)

Criminal Appeal Nos. 671-678 of 1987.

JUDGMENT

R.C. Lahoti, J. -

The Rajasthan Sati (Prevention) Ordinance 1987 was promulgated by the Governor of Rajasthan on 01.10.1987. The following Sections of the Ordinance are relevant for our purpose and hence are extracted and reproduced hereunder :-

2(b). "glorification", in relation to Sati, includes, among other things, the observance of any ceremony or the taking out of a procession in connection with the Sati or the creation of a trust or the collection of funds or the construction of a temple with a view to perpetuating the honour of, or to preserve the memory of the person committing Sati.

2(c). Sati means the burning or burying alive of any widow alongwith the body of her deceased husband or with any article, object or thing associated with the husband, irrespective of whether such burning is voluntary on the part of the widow or otherwise.

5. *Punishment for glorification of Sati* - Whoever does any act for the glorification of Sati shall be punishable with the imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

Part - III

Power of Collector and District Magistrate to prevent offences relating to Sati

6. *Power to prohibit certain acts* - (1) Where the Collector and District Magistrate is of the opinion that Sati is being or it about to be committed in any area, he may, by order, prohibit the doing of any act towards the commission of Sati in such areas and for such period as may be specified in the order.

(2) The Collector and District Magistrate may also, by order, prohibit the glorification in any manner of the commission of Sati by any person in any area or areas specified in the order.

(3) Whoever contravenes any order made under sub-section (1) of sub-section (2) shall,

if such contravention is not punishable under any other provisions of this Ordinance, be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

19. *Removal of doubts* - For the removal of doubts, it is hereby declared that nothing in this Ordinance shall affect any temple constructed for the glorification of Sati and in existence immediately before the commencement of this Ordinance or the continuance of any ceremonies in such temple in connection with such Sati.

2. The Ordinance was replaced by the Rajasthan Sati (Prevention) Act 1987 which received the assent of the President on 26th November, 1987. Sub-section (3) of Section 1 provides that it shall be deemed to have come into force on 1st October, 1987. The relevant provisions of the Act with which we are concerned remain the same as they were in the Ordinance excepting that the word `Act' has been replaced for the word `Ordinance' wherever it occurs.

3. In exercise of the powers conferred by Section 6(2) of the Ordinance, the Collector and District Magistrate, Jaipur issued the following order on 6th October 1987 :-

"In exercise of powers vested in me vide Section 6(2) of the Rajasthan Sati (Prevention) Ordinance, 1987, I, J.N. Gaur, Collector & District Magistrate, District Jaipur, Jaipur do hereby prohibit with immediate effect, the glorification of the commission of Sati in any manner in District Jaipur, by any person or Association of persons.

Issued on the 6th day of October 1987 under my hand and seal of my office.

(J.N. Gaur)

(Collector & District Magistrate)

Jaipur"

4. The Ordinance does not require the order of the Collector issued under Section 6(2) of the Ordinance to be published in the official gazette so as to be effective. Undisputedly, the order was not published in the official gazette. The manner in which the order was publicized can best be demonstrated by quoting from the judgment of the High Court :-

"311.....the Collector's order dated 06.10.1987 relating to Rajasthan Sati (Prevention) Ordinance, 1987 had been sent in the form of a press note for publication in local news papers on 07.10.1987. This news was published in Rajasthan Patrika, Rastra Doot, Nav Bharat Times, Nav Jyoti and some other newspapers on 07.10.1987. In addition to this, the news was broadcast by the Jaipur Station of All India Radio on 07.10.1987. That the Collector's order dated 06.10.1987 was broadcast by Jaipur Station of All India Radio on 07.10.1987 in Hindi at 7.10 PM and 8.05 in Rajasthan by Smt. Ujjwala and Shri Ved Vyas respectively is stated in a letter produced on 06.11.1987.

5. Three incidents took place leading to the registration of three offences pursuant to the F.I.Rs. recorded and registered at local police stations. On 08.10.1987, a mass rally was

organised which, according to the prosecution, contravened the prohibitory order issued by the Collector. F.I.R. No. 270 of 1987 was registered at Police Station Moti Doongri, Jaipur under Section 6(3) of the Ordinance in which Section 5 was also added later. On 20.10.1987, Hindi Dharam Raksha Samiti, Kotputli Branch, contravened the prohibitory order of the Collector at Kotputli. F.I.R. No. 238 of 1987 was registered at Police Station Kotputli. On 28.10.1987, Dharam Raksha Samiti demonstrated against the Ordinance and thereby contravened the Collector's prohibitory order. In that regard F.I.R. No. 451 of 1987 was registered on 30.10.1987 at Police Manakchowk. Several accused persons were arrested and investigation commenced. Some of the persons filed petitions from jail, which were treated by the High Court as petitions seeking the writ of Habeas Corpus. A few petitions were filed under Section 482 Cr.P.C. seeking quashing of the prosecution. All these petitions were taken up for consolidated hearing. Challenge was laid to the vires of the several provisions of the Ordinance and the Division Bench of the High Court was persuaded to examine the constitutional validity thereof, later replaced by and included in the Act. The cases before the Division Bench were argued from very many angles. For our purpose, it would suffice to sum up the following relevant findings :-

(1) Barring Section 19, the Ordinance and the Act are perfectly legal and constitutional.

(2) Section 19 of the Ordinance and the Act are unconstitutional and declared void and struck down.

(3) The Ordinance and the Act are not violative of the freedom of religion under Articles 25 and 26 of the Constitution.

(4) The prohibitory order issued by the Collector on 06.10.1987, was not duly published. If the prohibitory order would have been published in the Official Gazette, it would have amounted to publication. However, the Ordinance or the Act does not insist on such publication. It could have been published in a manner other than by way of publication in the Official Gazette. The evidence that has been produced before the High Court goes to show that although radio bulletins broadcast and newspapers carried news about some prohibitory order having been issued by the Collector, the fact remains that the prohibitory order of the Collector was not as such published in any of the newspapers nor read out in the news bulletins. Therefore, the prohibitory order cannot be said to have been promulgated. In the opinion of the High Court, in the absence of the prohibitory order dated 06.10.1987 having been published in accordance with law, the same could not have been enforced and no one could be prosecuted for the alleged defiance or violation of the prohibitory order issued by the Collector.

6. Yet another important finding arrived at by the High Court is that the provisions of Sections 5 and 6 are overlapping. Both the provisions aim at declaring glorification of Sati as an offence making the same punishable with imprisonment. Once a prohibitory order has been issued under Section 6(2), the provisions of Section 5 merge into the provisions of Section 6 and thereafter a person can be held liable for commission of an offence only by reference to sub-section (3) of the Section 6 as having contravened an order made either under sub-section (1) or sub-section (2). Inasmuch as, in the opinion of the High Court, the prohibitory order of the Collector was not published in accordance with law, the prosecution under Section 6(3) was not maintainable, and,

therefore, could not be proceeded with. All the prosecutions were, therefore, directed to be quashed.

7. Before this Court none of the parties has made any submissions regarding the constitutional validity of Section 19 of the Act and, therefore, we are not called upon to express any opinion thereon. The only submission made before this Court on behalf of the appellant State was that the High Court was not right in forming an opinion that Sections 5 and 6 are overlapping and, therefore, once a prohibitory order has been made by the Collector under sub-section (1) or (2) of Section 6, then Section 5 ceases to apply. We find force in the submission of the learned counsel for the State.

8. Article 20(2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once. To attract applicability of Article 20(2) there must be a second prosecution and punishment for the same offence for which the accused has been prosecuted and punished previously. A subsequent trial or a prosecution and punishment are not barred if the ingredients of the two offences are distinct.

9. The rule against double jeopardy is stated in the maxim *nemo debt bis vexari pro una et eadem causa.* It is a significant basic rule of Criminal Law that no man shall be put in jeopardy twice for one and the same offence. The rule provides foundation for the plea of *autrefois acquit* and *autrefois convict.* The manifestation of this rule is to be found contained in Section 26 of the General Clauses Act, 1987, Section 300 of the Code of Criminal Procedure, 1973 and Section 71 of the Indian Penal Code. Section 26 of the General Clauses Act provides - "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* (emphasis supplied)." Section 300 of the Cr.P.C. provides, inter alia, - "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the *same offence*, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221 or for which he might have been convicted under sub-section (2) thereof (emphasis supplied)." Both the provisions employ the expression "same offence".

Section 71 of Indian Penal Code provides -

"Where anything which is an offence is made-up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

10. Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which

tries him could award for any one of such offences.

11. The leading Indian authority in which the rule against double jeopardy came to be dealt with and interpreted by reference to Article 20(2) of the Constitution is the Constitution Bench decision in ***Maqbul Hussain v. State of Bombay, AIR 1953 SC 325.*** If the offences are distinct, there is no question of the rule as to double jeopardy being extended and applied. In ***State of Bombay v. S.L. Apte & Another, AIR 1961 SC 578,*** the Constitution Bench held that the trial and conviction of the accused under Section 409 Indian Penal Code did not bar the trial and conviction for an offence under Section 105 of Insurance Act because the two were distinct offences constituted or made up of different ingredients though the allegations in the two complaints made against the accused may be substantially the same. In ***Om Prakash Gupta v. State of UP, AIR 1957 SC 458*** and ***The State of Madhya Pradesh v. Veereshwar Rao, AIR 1957 SC 592,*** it was held that prosecution and conviction or acquittal under Section 409 of Indian Penal Code do not debar the accused being tried on a charge under Section 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content. In ***Roshan Lal & Ors. v. State of Punjab, AIR 1965 SC 1413,*** the accused had caused disappearance of the evidence of two offences under Sections 330 and 348 Indian Penal Code and, therefore, he was alleged to have committed two separate offences under Section 201 Indian Penal Code. It was held that neither Section 71 Indian Penal Code nor Section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted for two sets of offences under Section 201 Indian Panel Code though it would be appropriate not to pass two separate sentences.

12. The offences under Section 5, under Section 6(1) read with Section 6(3) and Section 6(2) read with Section 6(3) are three distinct offences. They are not the same offences. This is clear from a bare reading of Sections 5 and 6. While Section 5 makes the commission of an act an offence and punishes the same; the provisions of Section 6 are preventive in nature and make provision for punishing contravention of prohibitory order as to make the prevention effective. Commission of Sati may or may not have taken place and may not actually take place (after the issuance of prohibitory order), yet the prohibitory order under sub-section (1) or (2) of Section 6 can be issued. Section 5 punishes "any act for the glorification of Sati". The words `glorification' and `Sati' are both defined in the Act. What is prohibited by the Collector and District Magistrate under Section 6(1) is "any act towards the commission of Sati" subject to his forming an opinion that Sati is being committed or is about to be committed. The prohibition is against abatement of Sati or doing of any act, which would aid or facilitate the commission of Sati. On such prohibitory order being promulgated, its contravention would be punishable under Section 6(3) with regard to the fact whether Sat is committed or not and whether such act amounts to glorification of Sati or not. Under Section 6(2), the Collector and District Magistrate may prohibit "the glorification in any manner" of the commission of Sati. The expression `the glorification in any manner' carries a wider connotation than the expression `the glorification of Sati' as employed in Section 5. In case of prosecution under Section 6(2) read with Section 6(3), what would be punishable is such defiance or contravention of the order of the Collector and District Magistrate, as has the effect of the glorification in any manner of the commission of Sati. In distinction therewith, it is actual doing of an act for the glorification of Sati which is made punishable under Section 5. The Legislature in its

wisdom thought fit to enact Section 5, worded very widely, contemplating cognizance post happening and also enact Section 6 which aims at prevention in anticipation of happening. The object sought to be achieved by enacting Section 6 is to empower the Collector and District Magistrate to take preventive action by prohibiting certain acts and enable cognizance being taken and prosecution being launched even before commission of Sati or glorification of Sati has actually taken place. Thus the sense, import and content of the offence under Section 5 are different from the one under Section 6(3).

13. The gist of the offence under Section 5 is the commission of an act, which amounts to glorification of Sati. It is the commission of act by itself, which is made punishable on account of the same having been declared and defined as an offence by Section 5 of the Ordinance/Act. The gist of theoffence under Section 6 of the Ordinance/Act is the contravention of the prohibitory order issued by the Collector and District Magistrate. Section 5 punishes the glorification of Sati. Section 6 punishes the contravention of prohibitory order issued by the Collector and District Magistrate, which is a punishment for the defiance of the lawful authority of the State to enforce law and order in the society. What is punished under Section 5 is the criminal intention for glorification of Sati; what is punishable under Section 6 is the criminal intention to violate or defy the prohibitory order issued by the lawful authority. We do not agree with the High Court that the ingredients of the offences contemplated by Section 5 and Section 6(3) are the same or that they necessarily and in all cases overlap or that prosecution and punishment for the offences under Sections 5 and 6(3) - both are violative of Article 20(2) of the Constitution or of the rule against double jeopardy.

14. We are, therefore, of the opinion that in a given case, same set of facts may give rise to an offence punishable under Section 5 and Section 6(3) both. There is nothing unconstitutional or illegal about it. So also an act which is alleged to be an offence under Section 6(3) of the Act and if for any reason prosecution under Section 6(3) does not end in conviction, if the ingredients of offence under Section 5 are made out, may still be liable to be punished under Section 5 of the Act. We, therefore do not agree with the High Court to the extent to which it has been held that once a prohibitory order under sub-section (1) or (2) has been issued, then a criminal act done after the promulgation of the prohibitory order can be punished only under Section 6(3) and in spite of prosecution under Section 6(3) failing, on the same set of facts the person proceeded against cannot be held punishable under Section 5 of the Act although the ingredient of Section 5 are fully made out.

15. The appeal is allowed. The judgment of the High Court is set aside. The prosecution shall proceed against the accused persons consistently with the observations made hereinabove. In view of the delay which has already taken place, it is directed that the trial Court shall give precedence to the present case and try to conclude the proceedings as expeditiously as possible preferably within a period of six months from the date of first appearance of the accused persons before it pursuant to this order.

Appeal allowed.