

Ram Chandra and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-06-1972

Reported in : 1972CriLJ1386; 1972()WLN228

Judge : S. Mehta, J.

Appellant : Ram Chandra and anr.

Respondent : State of Rajasthan

Judgement :

ORDER

S. Mehta, J.

1. The brief facts of this case are that on May 28, 1971 Sub-divisional Magistrate Parbatsar sent a report to the Station House Officer, Parbatsar to the effect that he had come to know that Ram Chandra and his son Suraj Narain of Jaipur had entertained 500 to 600 persons on May 27 and 28, 1971 against the provisions of the Rajasthan Guest Control Order, 1965 and, therefore, proceedings should be started against the guilty persons. On receipt of the above complaint the Station House Officer went to the spot and investigated the matter. He then submitted his report on May 29, 1971 requesting the court to take cognisance of the offence under Section 7/3 of the Essential Commodities Act read with Rule 3 of the Rajasthan Guest Control Order, 1965. On receipt of that report the Sub-Divisional Magistrate ordered to register the case under the aforesaid provisions of law and issued warrants of arrest against accused Ram Chandra and Suraj Narain on June 14, 1971. The petitioners went up in revision before the learned Sessions Judge Merta against the cognisance of the alleged crime having been taken by the Sub-Divisional Magistrate. Mr. S.C. Calla, Sessions Judge. Merta rejected the revision petition on October 12, 1971.

2. Aggrieved by the above order of learned Sessions Judge, Merta Ram Chandra and Suraj Narain have taken this revision petition before this court. The main contention of learned Counsel for the petitioners is that the Sessions Judge has gone wrong in not taking into consideration the fact that the Rajasthan Guest Control Order, 1965, was rescinded by the Government by their Notification No. 50, 29 dated September 9, 1971, published in the Rajasthan Gazette of the same date.

3. It is an admitted position that the Rajasthan Guest Control Order, 1965, published in the Rajasthan Gazette, extraordinary part IV, dated the 12th September, 1965, was a temporary enactment. There is also no controversy that temporary statute was rescinded by the State Government by its Notification No. S. O. 29 dated September 9, 1971. Further there is no dispute that in the above Notification no saving clause

has been inserted, providing that the cases which were pending on September 9, 1971 would remain unaffected.

4. As a general rule and unless it contains some special provision to the contrary after a temporary Act expires no proceedings can be taken upon it and it ceases to have any further effect, Therefore offences committed against temporary enactments have to be prosecuted and punished before the Act expires and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate. In this connection a reference is made to Craies on Statute Law. Fifth Edition pages 377 and 378. In *S Krishnan v. State of Madras* : [1951]2SCR621 it has been observed by his Lordship Patanjali Sastri J.:

This general rule in regard to a temporary statute is that in the absence of Special provision to the contrary proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires.

The matter also received consideration of a Full Bench of the Orissa high Court in *Krishna Chandra v. Sushila* : AIR1951Ori105 . In that case it was held:

After the expiry of a Statute in the absence of a provision to the contrary no proceedings can be taken on it and proceedings already taken ipso facto determine.

Likewise in a Full Bench decision of the Calcutta High Court reported in *Rabindra Nath v. Gour Mondal*. : AIR1957Cal274 (FB). It was laid down:

Ordinarily no action can be taken under a temporary statute after it has expired and all proceedings pending at the date of its expiry terminate automatically. But there may be provision to the contrary in the Act itself. And it has to be seen whether it contained any provisions indicating an intention that even after its expiry it would remain alive for certain purposes.

In another Full Bench decision of the same High Court in *Tarak Chandra v. Ratan Lal* : AIR1957Cal257 FB it has been observed:

The general rule is that unless it contains some special provision to the contrary a temporary Act ceases to have any further effect after it has expired. No proceedings can be taken under it any longer and proceedings already taken and pending terminate automatically as soon as it expires.

There is also a later decision of their Lordships of the Supreme Court reported in *Gopi Chand v. Delhi Administration* : 1959CriLJ782 . In that case his Lordship Gajendragadkar J. speaking for the Court observed:

Since the impugned Act does not contain an appropriate saving section the appellant would be entitled 'to contend that after the expiry of the Act the procedure laid down in it could no longer be invoked in the cases then Pending against the appellant.

Here as an illustration. I may also refer to a decision in *Wicks v. Director of Public Prosecutions*, 1947 AC 362. In that case an offence against the Defence General Regulations made under the Emergency Powers Defence Act. 1939. was committed during the currency of the Act and the offender was prosecuted and convicted after the expiry of the Act. A contention was raised before the House of Lords on behalf of

the offender that his prosecution and conviction were invalid because at the relevant time the temporary Act had ceased to exist. That plea was rejected in view of the provisions of Section 11 Sub-section (3) of the Act. That sub-section had provided that the expiry of the Act would not affect the operation thereof as respects things previously done or omitted to have been done. The authorities relating to expiry of temporary statutes are few in number in England. Apart from Wicks' case 1947 A.C. 362 Supra there is another citation reported in Spenser v. Hooton 1920 37 TLR 280 and R. v. Ellis: Ex parte Amalgamated Engineering Union 1921 125 LT 397. In both these authorities it has been held that a special jurisdiction conferred by certain temporary statutes ceases absolutely on their expiry to the detriment of the pending proceedings.

5. In the present case the Notification No. S. O. 29 dated September 9, 1971, rescinding the Rajasthan Guest Control Order, 1965 does not contain an appropriate saving clause and, therefore the accused are well within their right to contend that after the expiry of the Rajasthan Guest Control Order, 1965, the procedure laid down in it would no longer be invoked in the case then pending against them. Such being the settled law the petitioners Ram Chandra and Surai Narain cannot now be prosecuted under the relevant provisions of the Rajasthan Guest Control Order, 1965.

6. I accordingly accept this revision petition and quash the order of learned Sub-Divisional Magistrate Parbatsar dated June 14, 1971, as also that of learned Sessions Judge, Merta dated October 12, 1971. The accused stand discharged. They are on bail and they need not surrender to it.

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