

(1978) 06 CAL CK 0029

Calcutta High Court

Case No: Criminal Revision No. 133 of 1978

Henry Ali Hoc

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 5, 1978

Acts Referred:

- Constitution of India, 1950 - Article 254(1), 254(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 262, 263, 264, 265, 29
- General Clauses Act, 1897 - Section 6
- Interpretation Act, 1889 - Section 38(2)
- Penal Code, 1860 (IPC) - Section 320
- Prevention of Food Adulteration (Amendment) Act, 1976 - Section 12
- Prevention of Food Adulteration Act, 1954 - Section 13, 16, 16(1), 16(1A), 16A

Citation: (1978) 2 ILR (Cal) 546

Hon'ble Judges: S.C. Majumdar, J; Borooah, J

Bench: Division Bench

Advocate: Balai Chandra Ray and Alope Kumar Sen Gupta, for the Appellant; J.N. Ghosh, Pradip Kumar Ghosh for Corporation of Calcutta, B.N. Mitra, Public Prosecutor, A.K. Goswami for State, Nalin Chandra Banerjee and Dilip Kumar Dutta for Interveners, for the Respondent

Judgement

Borooah, J.

On the basis of a complaint filed on September 24, 1975, by the opposite party No. 2, a Food Inspector of the Corporation of Calcutta, the Petitioners along with M/s. Chungwah Restaurant of No. 13A Chittaranjan Avenue, are being prosecuted in the Court of the Senior Municipal Magistrate, Calcutta, in Case No. 232-D of 1975 u/s 16(1)(a) of the Prevention of Food Adulteration Act, 1954, as amended by Act XLIX of 1964 read with Section 7 of the said Act on the allegations that they had stored/exposed for sale and/or used "Hyacinth"s ground white peeper (compound)

with fried rice powder" for the purpose of manufacturing/preparing different articles of food and which was adulterated and misbranded as the sample seized by the said opposite party on August 16, 1965, was found on analysis by the Public Analyst to contain no rice powder but wheat powder.

2. After the learned Magistrate had taken cognizance an objection was raised by the Prosecution that as the alleged offence was committed after the Prevention of Adulteration of Food, Drugs and Cosmetics (W.B. Amendment) Act, 1973, (hereinafter referred to as State Act) had come into force prescribing upto life imprisonment as punishment for the offence, the case should be committed to Court of Sessions. The learned Magistrate by an order dated June 16, 1977, over-ruled the objection, but subsequently on December 27, 1977, on his attention being drawn to a decision of A.K. Sen J. in the case of Bansidhari Manna v. The State of West Bengal 1977 C.H.N. 745 in spite of the objection raised on behalf of the Petitioners that he could not reverse his earlier order, the learned Magistrate held that the case was exclusively tried by the Court of Sessions. This order has been impugned in this Rule.

3. The question which arises for determination in this case and the other cases which have been listed for analogous hearing is whether a prosecution launched under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter the Principal Act) after the State Act had become applicable to West Bengal after the assent of the President was first published in the Calcutta Gazette Extra-ordinary on April 29, 1974 and which had not been concluded, would continue to be governed by the Principal Act as amended by the State Act after the Prevention of Food Adulteration (Amendment) Act, 1976, (hereinafter the Central Amendment Act) came into force on April 1, 1976.

4. In support of this Rule we have heard the submission of Mr. Balai Chandra Ray. Other learned Advocates, who are appearing in cases pending before us where the identical question of law is involved, have been permitted to intervene. Mr. Ray has argued that the Central Amendment Act is an amendment of the Principal Act and not an amendment of the State Act. By the Central Amendment Act, Parliament has made a law which Parliament was competent to enact in connection with matters enumerated in the concurrent list. Section 6 of the State Act being entirely repugnant to the Central Amendment Act, the effect of such repugnancy under Article 254(1) of the Constitution is that the State Act would become void with the enforcement of the Central Amendment Act on April 1, 1976 and under Article 254(2) of the Constitution it would cease to have any manner of application as the Central Amendment Act is a later statute. Mr. Ray had then submitted that the word "void" appearing in Article 254(1) of the Constitution is not synonymous with the word "repeal" and when a transaction is void, it becomes non-existent from its very inception and there is a ban against its recognition. Mr. Ray further argued that the decision of A.K. Sen J. in the case of Bansidhari Manna v. The State of West Bengal

(Supra) was not correct and the learned Judge did not notice that the Central Amendment Act clearly expressed a contrary intention against the continued operation of the State Act after April 1, 1976.

5. Mr. Nalin Chandra Banerjee has also submitted that the provisions of the Central Amendment Act and in particular Section 13, which has inserted a new section, viz. Section 16A, after Section 16 of the Principal Act, rules out the applicability of Section 6 of the General Clauses Act and establishes beyond doubt that the Central Amendment Act is retrospective and that the rights acquired and the liabilities incurred under the State Act are neither preserved nor protected.

6. Mr. Dilip Kumar Dutta submitted that after the passing of the Central Amendment Act the State Act must be deemed to be impliedly repealed and it must accordingly be considered to be a law that never existed except for the purpose of actions which were commenced, prosecuted and concluded whilst it was an existing law. Mr. Dutta has also submitted that the concept of retrospective operation of the Central Amendment Act need not be invoked as the Central Amendment Act contained enough indications of a contrary intention not to save any proceeding initiated under the State Act.

7. Mr. J.N. Ghosh, appearing on behalf of the Corporation of Calcutta, has submitted that the proceedings under the Principal Act as amended by the State Act, when instituted, were in accordance with law and a proceeding which was legal at its inception, cannot become void after the repeal of the State Act in the absence of any specific provision to that effect in the repealing Act.

8. Mr. Pradip Kumar Ghosh, also appearing on behalf of the Corporation of Calcutta, submitted that the words "void" and "void ab initio" are two different expressions. Void means prospectively void and void ab initio mean void from its very inception, or in other words, retrospectively void; the word "void" as used in Article 254(1) of the Constitution conveys the meaning that it would be unenforceable from the relevant date. Mr. Ghosh further argued that a repugnant law can no longer be enforced from the date it becomes repugnant, but it is not ab initio void and does not become non est or non-existent and continues to be good law even after the date of repugnancy. Mr. Ghosh also submitted that applying the doctrine of implied repeal and relying on the language of Article 254(1) of the Constitution, the conclusion that seems to be inescapable is that the West Bengal Act became inoperative with the coming into force of the Central Amendment Act, but if the offence was committed between April 29, 1974 and April 1, 1976, the West Bengal Act would remain valid and the prosecution and trial would be governed and punishment would be imposed under the provisions of the State Act.

9. Mr. Biren Mitra, the Public Prosecutor, appearing on behalf of the State, has argued on completely different lines. According to his submission, "cosmetics" being an item neither in the State nor in the concurrent list of the Seventh Schedule

of the Constitution, the State Act is beyond the legislative powers of the State Legislature and as such, is ultra vires the Constitution. We do not agree with Mr. Mitra's submission but refrain from entering into a detailed discussion as no useful purpose will be served because of the view we are taking in this case.

10. "Adulteration of food stuffs and other goods" being an entry in the Concurrent List of the Seventh Schedule of the Constitution, once the Presidential assent was obtained and published on April 29, 1974, the Principal Act stood modified by the State Act in its application to West Bengal by virtue of Article 254(2) of the Constitution. Even after the coming into force of the State Act, Parliament had the right by virtue of the proviso to Article 254(2) of the Constitution to enact any law with respect to the same subject-matter.

11. By the Central Amendment Act, Parliament further amended the provisions of the Principal Act. Although in the Central Amendment Act there is no reference whatsoever to the State Act, it cannot be disputed that the two Acts are in respect of the same subject-matter and cover the same field and that being so, the provisions of the Central Amendment Act, which is a later legislation, will prevail over the provisions of the State Act which shall be deemed to be impliedly repealed. In this connection, the decision of the Supreme Court in the case of [Zaverbhai Amaidas Vs. The State of Bombay](#), may be referred to.

12. The next question that has to be determined is what would be the effect of such repeal on the pending proceedings under the Principal Act as amended by the State Act.

13. According to the Supreme Court, in the case of [Deep Chand Vs. The State of Uttar Pradesh and Others](#), and the [State of Orissa Vs. M.A. Tulloch and Co.](#), in the case of implied repeal of a statute by a Central Act, Section 6 of the General Clauses Act is attracted. But on a reading of Section 6 of the said Act it is clear that the condition precedent to the application of the provisions of the aforesaid section is the non-appearance of a contrary intention in the repealing Act. Therefore, it has to be ascertained whether any contrary intention appears in the Central Amendment Act.

14. As to how a repealing statute should be assessed to ascertain whether the consequences of Section 6 of the General Clauses Act would be attracted or whether the intention to the contrary appears therein, has been laid down by the Supreme Court in the case of *State of Punjab v. Mohar Singh Pratap Singh* AIR 1955 S.C. 84. The Supreme Court in the said case observed as follows:

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.

15. In the light of the aforesaid principles we have to examine the provisions of the Central Amendment Act to ascertain whether it manifests an intention contrary to the further continued operation of the State Act. That a contrary intention does appear will be apparent from the following discussion.

16. Section 6(ii) of the State Act provided punishment upto life imprisonment by making necessary changes in Sub-section (1) of Section 16 of the Principal Act. This could result in undue harshness especially in case of a simple or technical adulteration. The Central Amendment Act brought about a change in this position and graded and nationalised the punishment according to the severity of the offence. For instance, under the proviso to Section 16(1A)(ii), as inserted in the Principal Act by Section 12 of the Central Amendment Act, if an article of food or an adulterant when consumed by any person was likely to cause his death, or was likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code, the punishment would be for a term which would not be less than three years but which could extend to a term of life and with fine which shall not be less than five thousand rupees.

17. The new Section 16A which was added to the Principal Act by Section 13 of the Central Amendment Act, provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under Sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the Code, as far as may be, shall apply to such trial. This new Section 16A brought about a radical change in the forum of trial. Instead of having to face a Sessions trial, when the West Bengal Act was in force, the hardship on an accused was ameliorated to a considerable extent by making it possible for offences coming u/s 16(1) to be tried summarily after the coming into force of the Central Amendment Act. This, in our view, clearly evidences a contrary intention.

18. That it was the intention of Parliament that the operation of the State Act should not be continued could also be gathered from the following.

19. The State Act did not amend, repeal or make any reference to Section 21 of the Principal Act. The said section reads as follows:

Notwithstanding anything contained in Section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for a Presidency Magistrate or any Magistrate of the First Class to pass any sentence authorised by this Act in excess of his powers u/s 32 of the Code.

20. The effect of this section on the Principal Act as amended by the State Act would be that a Magistrate would be empowered to pass a sentence of imprisonment for life. This has been corrected by Section 19 of the Central Amendment Act which has substituted a new Section 21 in the Principal Act and which is in the following terms:

Notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for any Metropolitan Magistrate or any Judicial Magistrate of the First Class to pass any sentence authorised by this Act, except a sentence of imprisonment for life or for a term exceeding six years, in excess of his powers under the said section.

21. In the Central Amendment Act there was no provision corresponding to Section 6(iv) of the State Act which added a new Section 19A to the Principal Act shifting the burden of proof on a person from whom an article of food has been seized to establish it is not adulterated or misbranded.

22. It is thus clear from the aforesaid discussion that it was the intention of Parliament by enacting the Central Amendment Act to discontinue further operation of the State Act, as the provisions in the former Act are incompatible with the provisions of the State Act.

23. A repealed statute and the consequences following there from can be kept alive in the absence of a saving clause in the repealing statute by virtue of Section 6 of the General Clauses Act. Where the provisions of Section 6 of the said Act does not apply due to manifestation of a contrary intention in the repealing statute, the repealed statute shall be deemed to have been obliterated from the statute book for all intents and purposes. As the Supreme Court observed in the aforesaid case of the State of Punjab v. Mohar Singh Pratap Singh (Supra):

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 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 create a vested right, vide Crawford on Statutory Constitution, pp. 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 occasions, 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.

24. For the aforesaid reasons the views expressed by A.K. Sen J. in the case of *Bansidhari Manna v. The State of West Bengal* (Supra) that a contrary intention does not appear in Central Amendment Act and the consequences which, according to the learned Judge, followed by such non-application cannot be accepted.

25. In the result, we must hold that after the Prevention of Food Adulteration (Amendment) Act, 1976, came into force on April 1, 1976, all proceedings which were pending under the Principal Act as amended by the State Act and had not been concluded would cease to be governed by the said Acts and would come under the provisions of the Principal Act as amended by the Central Amendment Act. Therefore, in the instant case, the order of the learned Magistrate holding that the case is triable by the Court of Sessions is not in accordance with law and we direct that the learned Magistrate should try the case himself under the provisions of the Principal Act as amended by the Central Amendment Act. Rule made absolute.

S.C. Majumdar, J.

26. I agree.