

PETITIONER:
STATE OF MADHYA PRADESH AND ORS.

Vs.

RESPONDENT:
RAMESHWAR RATHOD

DATE OF JUDGMENT 10/07/1990

BENCH:
MUKHARJI, SABYASACHI (CJ)
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MUKHARJI, SABYASACHI (CJ)
SAIKIA, K.N. (J)

CITATION:
1990 AIR 1849 1990 SCR (3) 263
1990 SCC (4) 21 JT 1990 (3) 298
1990 SCALE (2) 88

ACT:

Essential Commodities Act, 1955: Section 6A--Whether prospective or retrospective.

Code of Criminal Procedure, 1898/1973: Sections 516A and 523/451 and 457--Whether criminal court has jurisdiction to return vehicle seized by police under Essential Commodities Act, 1955 pending final decision of criminal case.

Interpretation of Statutes: Rule of construction--Provision in statute normally prospective--Could be retrospective depending on nature of statute and purpose of provision.

HEADNOTE:

The respondent's truck was seized by the police on 10th December, 1974 for alleged contravention of the provisions of the Essential Commodities Act, 1955 on the night of 15th March, 1972. The respondent filed applications before the High Court for quashing the orders of the Judicial Magistrate First Class and the Sessions Judge rejecting his request for the return of the vehicle on furnishing security and also for quashing the order of the Collector and restraining him from proceeding further in pursuance of notice issued by him under Section 6B of the Act for confiscation of the vehicle or directing the District Judicial Magistrate to dispose of his application in accordance with law.

Allowing the applications and directing the return of the vehicle, the High Court held that Section 6A of the Act, as amended by Section 4 of the Amendment-Act, 1974 was only prospective and that the Criminal Court had jurisdiction to entertain applications under Section 523 read with 516A of the Criminal Procedure Code, for the return of the vehicle seized by the police pending final decision of the criminal case.

Dismissing the appeal by the State, this Court,

HELD: 1.1 The normal rule of construction is that a provision in a statute is prospective but not retrospective. However, in the case of statutes which are merely declaratory or which relate to only matters of

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procedure or of evidence, it may have retrospective effect if there are indications to that effect or the manifest purpose compels one to construe the Act as such. [265G-H]

1.2 The High Court examined Section 4 of the Essential Commodities (Amendment) Act, 1974 alongwith Section 6A of the Principal Act and came to the conclusion that there was no retrospective effect. Not only that there were no specific words to indicate the provisions of retrospective effect, but the positive provisions of sub-section (2) of Section 1 were to the effect that the amendment must be deemed to have come into effect on a particular date. The High Court was, therefore, right in holding that Section 4 of the Amendment Act, 1974 was only prospective and not retrospective. [266B-C]

In the instant case, the contravention of the provisions of the Act is alleged to have occurred on 15th March, 1972, whereas the vehicle was seized on 15th December, 1974. Therefore, the provisions of Section 6A of the Essential Commodities Act, 1955 as it stood on 15th March, 1972 only were applicable to the present case and Section 4 of the Amendment Act, 1974 could not be applied as the Act was not in force on the date of offence. [266D]

2. Normally, under the Criminal Procedure Code, the Criminal Courts of the country have the jurisdiction and the ouster of the ordinary criminal court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. In view of the language used and in the context in which this language has been used, the High Court was right in coming to the conclusion that the Criminal Court retained jurisdiction and was not completely ousted of the jurisdiction. [266H; 267A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 679 of 1978.

From the Judgment and Order dated 30.9. 1976 of the Madhya Pradesh High Court in Misc. Petition No. 63 of 1976. S.K. Agnihotri for the Appellants. Nemo for the Respondent.

The Judgment of the Court was delivered by
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SABYASACHI MUKHARJI, CJ. This is an appeal by special leave from the judgment and order of the High Court of Madhya Pradesh, dated 30th September, 1976 in Miscellaneous Petition No. 63 of 1976.

The respondent was the owner of a truck which was seized by the Police Sorwa on 10th December, 1974 for alleged contravention of the provisions of the Essential Commodities Act, 1955 (hereinafter called 'the Act') in connection with Crime No. 42 of 1972. The respondent made applications under Articles 226 and 227 of the Constitution of India, to the High Court to quash the orders of the Judicial Magistrate First Class, Alirajpur and the Sessions Judge, Jhabua respectively rejecting his request for the return of the vehicle on furnishing security and to quash the order of the District Collector and restrain him from proceeding further in pursuance of the notice issued by him under Section 68 of the Act for confiscation of the vehicle and ask for return of the vehicle, or in the alternative to direct the District Judicial Magistrate to dispose of the application in accordance with law

The High Court after setting out the facts addressed itself to three questions, namely, (1) whether Section 6A of the Essential Commodities Act as amended by the Amendment Act No. 30 of 1974 was prospective or retrospective? (2)

whether in the facts and circumstances, the criminal Court had jurisdiction to entertain an application under section 523 read with section 516A of the Criminal Procedure Code for the return of the vehicle seized by the Police pending final decision of the criminal case? and (3) whether the respondent was entitled on the merits for the return of the vehicle as prayed for?

On the first question, the High Court was of the view that it was a fundamental rule of law that no Statute should be construed to have a retrospective operation unless such a construction appeared very clearly in the terms of the Act, or arose by necessary implication, direct or indirect. The High Court referred to several decisions which it is not necessary for us to refer to. It is well settled that the normal rule of construction is that a provision in a statute is prospective but not retrospective, however, in the case of statutes which are merely declaratory or which relate to only matters of procedure or of evidence, it may have retrospective effect if there are indications to that effect or the manifest purpose compels one to construe the Act as such.

On an examination of the statute and the provisions referred to herein, the High Court found that there was no retroactivity. We are

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of the opinion that for the reasons given by the High Court, it is difficult to accept the position that there was no retroactivity. Indeed, Mr Deshpande appearing for the appellant did not seriously challenge this finding of the High Court. There is no dispute in this case that the contravention of the provisions of the Act is alleged to have taken place in the instant case on the night of 15th March, 1972. The vehicle was seized on 10th December, 1974. The High Court examined Section 4 of the Amendment Act, along with Section 6A of the Principal Act and came to the conclusion that there was no retrospective effect. We are of the opinion that the High Court was right in holding that Section 4 of the Amendment Act, 1974 was only prospective and not retrospective. Not only that there were no specific words to indicate the provisions of retrospective effect, but the positive provisions of sub-section (2) of section 1 were to the effect that the amendment must be deemed to have come in effect on a particular date, is a pointer and that puts the matter beyond doubt. The provisions of section 6A as it stood on 15th March, 1972 only were applicable to the present case and section 4 of the Amendment Act, 1974 could not, therefore, be applied as the Act was not in force on the date of offence. The challenge to the High Court order on this aspect cannot, therefore, be entertained.

It was next contended by the respondent before the High Court that the Criminal Court was empowered under section 7 of the Act to confiscate the vehicle after due and proper inquiry and therefore the proceedings by the District Collector under section 6A and Section 6B of the Act should be quashed. Reliance was placed on several decisions and authorities. Our attention was drawn to the decision of the Mysore High Court in the case of *The State v. Abdul Rasheed*, AIR [1967] Mysore 231; *Sri Bharat Mahey & Ors. v. The State of U. P. & Ors.*, [1975] CrL. L.J 890 as well as the decision of the learned Single Judge in *State of M.P. v. Basant Kumar*, [1972] J.L.J Short Note No. 99. On a consideration of the relevant authorities, the High Court came to the conclusion that the criminal Court had jurisdiction to deal with the matter. Mr. Deshpande sought to argue that in view of the enactment of the provisions of Section 6A as well as

section 7 of the Act, it cannot be held that the criminal Court continued to retain jurisdiction. He submitted that in view of the enactment of these provisions, it would be useless to hold that the criminal Court continued to retain jurisdiction, otherwise the very purpose of enacting section 6A read with section 7 would be defeated. We are, however, unable to accept this contention because normally under the Criminal Procedure Code, the Criminal Courts of the country have the jurisdiction and the ouster of

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the ordinary criminal Court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act., In view of the language used and in the context in which this language has been used, we are of the opinion that the High Court was right in coming to the conclusion that the Criminal Court retained jurisdiction and was not completely ousted of the jurisdiction. In that view of the matter, the High Court was therefore right in passing the order under consideration and in the facts and circumstances of the case to return the vehicle to the respondent on furnishing the security In the premise the appeal must fail and is dismissed. There win, however, be no order as to costs.

N.P.V.

Appeal dismissed.

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