

Before Sir Shah Muhammad Sulaiman, Chief Justice,
Justice Sir Lal Gopal Mukerji and Mr. Justice King

EMPEROR v. BANS GOPAL*

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Ordinance—Prosecution started under Ordinance—Expiry of Ordinance before conclusion of trial—Whether prosecution can be continued after the expiry—Emergency Powers Ordinance (II of 1932), section 21—Special Powers Ordinance (X of 1932), section 17—General Clauses Act (X of 1897), sections 6, 30—Applicability to temporary Acts or Ordinances which expire automatically after a time—Criminal Law Amendment Act (XXIII of 1932), section 20—Criminal Procedure Code, sections 435, 439—Examining in revision, before conclusion of trial, whether the charge has been made out by the evidence.

In March, 1932, a prosecution was started against the accused, and the Magistrate framed two charges, one under section 17 of the Special Powers Ordinance (No. X of 1932) read with section 21 of the Emergency Powers Ordinance (No. II of 1932) and section 80(2) of the Special Powers Ordinance, and the other under section 17(2) of the Criminal Law Amendment Act, 1908. Upon the framing of the charges the accused went up in revision, first to the Sessions Judge and then to the High Court, and obtained a stay of proceedings pending decision of the revision. By the time the revision came up for final hearing, both the Ordinances had expired.

Held, by the Full Bench, that the prosecution under the first charge could not continue after the expiry of the Ordinances and must be quashed.

An offence committed against an Ordinance or a temporary Act must be prosecuted and punished before the Ordinance or the temporary Act expires; and as soon as the Ordinance or temporary Act expires any proceedings which are being taken against a person will *ipso facto* terminate, unless any specific provisions are enacted for the continuance of such proceedings.

Section 6, read with section 30, of the General Clauses Act of 1897 provides for the continuance of proceedings in cases where an Act or an Ordinance is repealed by a subsequent Act or Ordinance; it has no application where a temporary Act or Ordinance has automatically expired.

*Criminal Revision No. 709 of 1932, from an order of Ganga Prasad Verma, Sessions Judge of Fatehpur, dated the 21st of September, 1932.

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Section 20 of the Criminal Law Amendment Act, 1932, has made express provision for the continuance of trials in respect of offences under certain specified sections only of the Special Powers Ordinance (No. X of 1932); section 17 or section 80(2) of that Ordinance is not included amongst the sections so specified. The legislature must be deemed to have intended that trials for offences under those sections of the Ordinance which are not specified in section 20 of the Criminal Law Amendment Act of 1932 should not be continued.

Held, also, with regard to the second charge, that at the stage at which the trial had reached, i.e. when only the evidence for the prosecution had been recorded and the charge framed, it would be very undesirable and inappropriate for the High Court to examine the evidence and decide whether the offence charged had been made out or not.

Mr. S. N. Seth, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

SULAIMAN, C. J. :—This revision has been referred to a Full Bench by a Division Bench because it was considered that it involved an important question of law requiring an authoritative pronouncement.

It appears that after the promulgation of Ordinance No. II of 1932, called the Emergency Powers Ordinance, 1932, by the Governor-General, the same was extended to the United Provinces, and the Local Government extended its provisions to the districts of these provinces, including Fatehpur, on the 9th of January, 1932, and the power under section 4 of the Ordinance was delegated by the Local Government to the District Magistrate of Fatehpur some time before the 12th of January, 1932.

On the 12th of January, 1932, the District Magistrate of Fatehpur issued a notice, called an order, to the applicant, Babu Bans Gopal, under section 4 of the United Provinces Emergency Powers Ordinance No. II of 1932, prohibiting him from making any speech or instigating in any way non-payment of rents or attending any meeting and procession, and directing him to abstain from all acts conducive to lead to any kind of

disturbance or breach of public peace in Fatehpur district, and not to go outside the confines of the municipality without previous permission. This notice or order was served on the applicant on the 13th January, 1932.

On this very date, namely the 12th January, 1932, the Criminal Law Amendment Act, 1908, was extended to the United Provinces. This was followed by an order of the Local Government dated the 15th January, 1932, declaring the District Congress Committee of Fatehpur, among other bodies, to be an unlawful association within the meaning of the Criminal Law Amendment Act, 1908.

One Madan Mohan was arrested at a public meeting, which was being held at Bindki in the district of Fatehpur on the 21st January, 1932, and a document, Ex. D, is said to have been recovered from his person. This purported to bear the signature of the accused Bans Gopal and was addressed to a person named Sheo Shankar but bore no date. In consequence of the discovery of this document the accused, Babu Bans Gopal, was arrested and ultimately prosecuted. The case before the Magistrate came up about March, 1932, and was going on when Ordinance No. II of 1932 expired on the 3rd of July, 1932. Before the expiry of this Ordinance, Ordinance No. X of 1932 came into force on the 30th June, 1932.

After recording the evidence for the prosecution the Magistrate framed two charges against the accused,—one under section 17 of Ordinance X of 1932 read with section 21 of Ordinance II of 1932 and section 80(2) of Ordinance X of 1932, charging him that in spite of having been ordered to abstain from all acts conducive to lead to any kind of disturbance or breach of public peace, he committed such an act by sending the letter, Ex. D, in which he encouraged disobedience of orders of lawful authority, etc. The second charge is that the accused assisted in the management of an unlawful

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association, namely the "District Congress Committee of Fatehpur", and encouraged disobedience of orders of lawful authority, etc., by writing the letter Ex. D and committed an offence under section 17, sub-section (2) of the Criminal Law Amendment Act, 1908.

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The accused was called upon to enter upon his defence after the framing of the charge, but before leading any evidence in defence he went up in revision to the Sessions Judge who declined to interfere. He then came up to this Court and applied for a stay of the criminal proceedings. The revision was admitted and the proceedings were stayed and have remained stayed for all this time.

Two main points are urged in this revision before us. The first is that no charge could be framed under Ordinance No. II of 1932 after the said Ordinance had expired, and the second is that there is no legal evidence on the record to show that the District Congress Committee of Fatehpur existed on the material dates and that accordingly no charge could be framed. There was another point taken that section 80(2)(c) of Ordinance No. X of 1932 was *ultra vires* of the Governor-General of India inasmuch as in effect it extended the period of six months during which the previous Ordinance could have remained in force, but this ground has not been pressed before us.

In my opinion there is considerable force in the first contention. According to the English law, as a general rule, unless there is some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it and it ceases to have any further effect. It would follow that an offence committed against a temporary Act must 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 (see Craies on Statute Law, 3rd edition, page 342). A distinction also seems to have been drawn between an Act which is repealed

and a temporary Act which expires, but this difficulty was removed to a considerable extent by the passing of the Interpretation Act of 1889. In England there is also the Acts of Parliament Expiration Act, 1808, which to some extent meets the difficulty caused by an offence being committed between the expiration of a previous Act and the coming into force of the new Act, which professedly continues the operation of the first Act.

Similar to the provision of section 38 of the English Interpretation Act we have section 6 of the General Clauses Act, 1897, under which when an Act repeals any previous enactment the repeal does not revive anything not in force or existing at the time of the repeal; or affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or 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. Section 30 of the General Clauses Act, as subsequently amended, now makes the Act applicable not only to the Acts of the Governor-General, but also to the Ordinances made and promulgated by the Governor-General under the Government of India Act. Thus the General Clauses Act would certainly be applicable to the two Ordinances in question, but section 6 is applicable to a case where a previous Ordinance has been "repealed" by a subsequent Ordinance or by a subsequent Act and would not necessarily apply to a case where a temporary Ordinance automatically expires after the period during which it

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is in operation is over. It follows that although section 30 makes the Act applicable to the Ordinances, section 6 has no application to such temporary Ordinances. Section 6 lays down that a penalty already incurred is not to be affected by the subsequent Act and that the penalty may be imposed as if no repealing Act had been passed. Obviously this section has no reference to the order of a competent court which has already enforced a temporary Ordinance which is subsequently repealed. Once a person has been convicted and sentenced it is altogether immaterial whether an Act on which the order of the court was based expires or is subsequently repealed. The continuance of the punishment is not in consequence of the operation of section 6 any longer, but is by virtue of the order of a competent court though it was based on the Act before it was repealed.

The learned Assistant Government Advocate has relied on the case of *Jogendra Chandra Ray v. Superintendent, Dum Dum Special Jail* (1) in which a Bench of the Calcutta High Court, at page 747, thought that although the provisions of section 6 of the General Clauses Act do not apply in terms to the case of a temporary statute the term of which has expired, it may reasonably be contended that they merely give statutory expression to a rule of construction which was already in existence and which applied with equal force to statutes that had been expressly repealed and to temporary statutes the terms of which had expired. In that case the question was whether an accused person, who was undergoing a sentence of imprisonment in consequence of his conviction under an Ordinance which had subsequently expired, should be let off. It seems that the point was not argued before the Bench that the continuance of the sentence was a result of the order of the court and not of the applicability of section 6 of the General Clauses Act.

When an offence is committed under a temporary Ordinance, which is subsequently repealed before the accused has been committed, there is obviously considerable difficulty in convicting him even if a subsequent Ordinance incorporates that very offence, provided there is no provision therein for the continuance of previous proceedings. He cannot be convicted under the relevant section of the old Ordinance because at the time the court is to pass its order that Ordinance has ceased to exist. He cannot be convicted under the corresponding section of the new Ordinance because no offence was committed while this Ordinance has been in force. It is to avoid such an anomaly that there is a practice to have a clause in the new Ordinance which would ensure the continuance of proceedings already taken under the previous Ordinance. It is noteworthy that in section 80(2)(c) of Ordinance No. X of 1932 express provision was made that the new Ordinance shall operate to confer a power to continue a trial or proceeding under any provision of any of the Ordinances, specified in sub-section (1), which was pending at the time of the expiry of the said Ordinances, as if such trial or proceeding were a trial or proceeding begun under the corresponding section of the new Ordinance. This provision was quite general and would have kept alive all legal proceedings and trials started under any of the sections of the former Ordinance. But when this latter Ordinance was about to expire the Governor-General did not issue a fresh Ordinance embodying any provision similar to section 80(2)(c). In place of it the Criminal Law Amendment Act No. XXIII of 1932 was passed which contained a somewhat similar provision in its section 20, but that provision was very much restricted in its scope and it laid down that any person accused of the commission of an offence punishable under certain specified sections of Chapter VI of the Special Powers Ordinance of 1932 (No. X) may, notwithstanding the expiry of the said Ordinance, be tried and punished as if such offence were punishable

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under or by reason of the corresponding enactment of the new Act. It is to be noted that there was no reference to any of the other sections of the Special Powers Ordinance.

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The first charge is in respect of an offence committed under section 17 of Ordinance No. X of 1932 read with section 21 of Ordinance II of 1932 and section 80(2)(c) of Ordinance X of 1932, which are not sections in chapter VI referred to in section 20 of the Criminal Law Amendment Act. It is, therefore, clear that although the legislature has specifically provided that trials under the specified sections should be continued, the Act is silent as regards trials under any of the other sections.

The legislature must be presumed to be aware that section 6 of the General Clauses Act was inapplicable to Ordinances which expire automatically, and so trials under those Ordinances would not have been protected by section 6. It was thought fit to provide that trials under certain specified sections should be continued and completed in spite of the fact that the Special Powers Ordinance has expired. The necessary implication is that the ordinary rule, which makes it impossible to convict a person under a section of an Ordinance or a temporary Act which has expired, prevails as regards sections not specified in section 20 of the Criminal Law Amendment Act. It necessarily follows that it is impossible now to proceed with the trial of the accused so far as charges framed under such sections of the Ordinance of 1932 are concerned.

As regards the second point urged in revision it is contended that there is really no legal evidence on the record to show that the District Congress Committee in fact exists. No affidavit has been filed before us, and it is highly inappropriate at this stage to examine the evidence and decide whether there is any legal evidence at all.

The learned advocate for the accused has urged that inasmuch as after the declaration that the District

Congress Committee of Fatehpur was an illegal body there is no presumption that the accused, or for the matter of that, any other member of that body continued to be a member, it must be presumed that the District Congress Committee has ceased to exist, and, without positive proof that it is continuing, no prosecution can go on. It is unnecessary to decide this point in this case, but I wish to guard myself against being understood to hold that in the absence of such positive proof there is presumption that a body which has been declared by Government to be illegal has in fact ceased to exist. I would, therefore, allow this revision in part and quash the criminal proceedings so far as the first charge is concerned, but not interfere with regard to the second charge.

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MUKERJI, J. :—The facts of the case have been stated at length by the learned CHIEF JUSTICE and it is not necessary for me to state them again. Briefly, the applicant before us was charged before a Magistrate at Fatehpur under two heads. The first charge against him was that having written a letter, bearing no date, between 16th January, 1932, and 26th January, 1932, at Fatehpur, he disobeyed a certain direction given to him by an order dated the 12th January, 1932, by the District Magistrate of Fatehpur. It is said that by writing that letter the applicant contravened the law as laid down in section 21 of Ordinance II of 1932 and section 17 of Ordinance X of 1932.

The second charge against the applicant was that by writing the aforesaid letter he committed an offence under section 17(2) of the Indian Criminal Law Amendment Act, XIV of 1908.

The Magistrate has not yet decided the case, but as soon as the charge was framed the applicant went before the Sessions Judge with an application to revise the proceedings. The learned Sessions Judge having

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refused to interfere, the applicant came up before this Court and the matter has ultimately come before a Full Bench, having regard to the importance of the question raised.

Mukerji, J.

The first and the most important point for decision is whether the prosecution should now continue, having regard to the fact that both the Ordinances II and X of 1932 have expired. The contention for the applicant is that the trial is now impossible, having regard to the present state of the law.

Section 6 of the General Clauses Act of 1897 does not apply to Ordinances which have expired by lapse of time. Section 6 read with section 30 of the General Clauses Act applies to Acts and Ordinances which have been repealed. That is not the case here. No Ordinance has been repealed, the Ordinances mentioned have expired by lapse of time. Thus by virtue of section 6 of the General Clauses Act the trial cannot be continued.

Act XXIII of 1932, which received the assent of the Governor-General on 19th December, 1932, has taken to some extent the place of the expired Ordinances. This contains a provision that in respect of certain offences specified in section 20, notwithstanding the expiry of the Ordinance X of 1932 (which permitted the trial of offences committed under earlier Ordinances after their expiry), trial may be continued and the accused person may be punished. But this section 20 makes no mention of an offence under section 21 of Ordinance No. II of 1932 or section 17 of Ordinance No. X of 1932. It follows that the legislature never meant that trials for offences committed under the provisions of law other than those mentioned in section 20 of Act XXIII of 1932 should be continued.

In this view the trial on charge No. 1 of the applicant should not be continued.

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Mukerji, J.

On the second charge we have been told that there is no evidence on the record sufficient for a conviction of the applicant. Although this Court has very great powers in respect of criminal trials, it has never been deemed desirable that the High Court should sift evidence and arrive at a conclusion one way or the other as to whether an offence has been committed or not, where the Magistrate has not yet pronounced his opinion on the facts and no appeal has been heard by the Sessions Judge. On this ground I would decline to interfere with the trial of the applicant on charge No. 2. I would not express any opinion as to the correctness or otherwise of a Bombay case, *Emperor v. Shripad Ramchandra Jog* (1), cited by the learned counsel for the applicant. It may lay down a good law, it may lay down a bad law, it may be applicable to the facts of the case or it may not be applicable,—the question not arising before us I have not considered the situation.

I entirely agree with the order proposed to be passed by the learned CHIEF JUSTICE.

KING, J.:—I also agree. The first charge against the applicant is in respect of an offence under section 21 of Ordinance No. II of 1932, read with section 17 of Ordinance X of 1932. As both these Ordinances have now expired, the question is whether the trial can proceed on the basis of this charge. Section 6 of the General Clauses Act, 1897, does not apply because the Ordinances in question have not been repealed but have expired automatically. Section 20 of the Criminal Law Amendment Act of 1932 has made express provision for the continuance of trials in respect of offences under certain specified sections of Ordinance No. X of 1932, but section 17 of that Ordinance is not included amongst the sections specified. In my opinion this is conclusive as showing the intention of the legislature

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that trials for offences under certain sections of Ordinance X of 1932 should be continued notwithstanding the expiration of that Ordinance, but that trials for offences under other sections of that Ordinance, which are not specified, should not be continued. The maxim of interpretation, "*Expressio unius est exclusio alterius*" is clearly applicable. We must take it that the legislature intended that the trial of offences under section 17 of Ordinance X should not be continued.

As regards the second charge I think it is unnecessary, and indeed improper, to express any opinion at the present stage. It remains to be seen whether the accused can be proved to have assisted in the management of an unlawful association, and I express no opinion on that point.

BY THE COURT:—This revision is allowed in part and the prosecution under the first charge is quashed without interfering with the trial under the second charge.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Justice Sir Lal Gopal Mukerji*

RAM SINGH (PLAINTIFF) *v.* DEO NARAIN AND OTHERS
(DEFENDANTS)*

Pre-emption—Joint Hindu family—Sale by adult members—Whether a minor member entitled to pre-empt—Consent—Estoppel—Questioning validity of the sale in pre-emption suit.

On a sale of joint family property by the adult members of a joint Hindu family a minor member of the family brought a suit to pre-empt the sale. *Held*, that the suit did not lie; the principle of estoppel applied to the suit, inasmuch as a person in the position of a vendor could not pre-empt his own sale.

*Second Appeal No. 897 of 1930, from a decree of Ruo Kishen Agha, Additional Subordinate Judge of Allahabad, dated the 24th of January, 1930, confirming a decree of Hardeo Singh, Munsif of East Allahabad, dated the 29th of April, 1929.

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