APPELLATE CRIMINAL

Before Bhandari, C.J. and Chopra, J.

THE STATE,—*Appellant*

versus

N. B. HANKINS,—*Respondents*

Criminal Appeal No. 11-D of 1956.

1957

April 3rd

General Clauses Act (X of 1897)—Section 3(8) and—Government of India Act 1935—Section 94—Notification issued by Chief Commissioner in 1942—Whether issued on behalf of the Central Government—General Clauses Act (X of 1897)—Section 24—Scope of—Cinematograph Act (II of 1918)—Section 9—Notification issued under, in 1942—Whether inconsistent with Cinematograph Act (XXXVII of 1952).

Held, that a notification issued by the Chief Commissioner of Delhi under section 9 of the Cinematograph Act 1918, cannot be said to be inconsistent with the provisions of the Cinematograph Act of 1952.

As the expression "Central Government" in relation to anything done before the Constitution, means the Governor-General or Governor-General in Council, it is obvious that the notification issued by the Chief Commissioner in the year 1942 must be deemed to have been issued by the Central Government, for section 94 of the Government of India Act, 1935, declares that a Chief Commissioner's Province shall be administered by the Governor-General acting to such extent as he thinks fit through a Chief Commissioner to be appointed by him.

Held, that section 24 of the General Clauses Act, 1897, accords statutory recognition to the general principle that if a statute is replaced and re-enacted in the same or substantially the same terms, the re-enactment neutralises the previous repeal and the provisions of the repealed Act which are so re-enacted continue in force without interruption. If, however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as repeal of the provisions of

the repealed Act which are changed by and are repugnant to the repealing Act. The inconsistency which the law contemplates should be such a positive repugnancy between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together.

State appeal from the order of Shri Gopal Saran Das, Magistrate 1st Class, Delhi, dated 14th March, 1956, acquitting the respondent.

BISHAMBAR DAYAL, for Appellant.

GURBACHAN SINGH and D. K. KAPUR, for Respondent.

JUDGMENT

Bhandari, C. J.

BHANDARI, C.J.—This appeal under section 417 of the Code of Criminal Procedure raises the question whether a certain notification issued by the Chief Commissioner of Delhi in the year 1942 is consistent with the provisions of the Cinematograph Act, 1952.

One Mr. N.B. Hankins, proprietor of a cinema, was prosecuted under section 14 of the Cinematograph Act, 1952, on the ground that on the 15th July, 1955, he had exhibited a film known as "Aar Paar" at the military depot at Shakurbasti for the entertainment of troops without obtaining a licence in this behalf. The learned Magistrate was of the opinion that it was inequitable that the respondent should be prosecuted and that no action should be taken against the military authorities, who were in-charge of the grounds and who had allowed the military depot to be used in contravention of the provisions of the statute. He accordingly dismissed the case and ordered the acquittal of the respondent. The State Government is dissatisfied with the order of the learned Magistrate and the question for this Court is whether the learned Magistrate has come to a correct determination in point of law.

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Section 9 of the Cinematograph Act, 1918, was in the following terms:—

"The Provincial Government may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Act or of any rule made thereunder."

On the 16th September, 1942, the Chief Commissioner of Delhi, issued a notification under section 9 of the Act of 1918, by which he directed that subject to certain conditions mentioned therein all cinematograph exhibitions given exclusively for military personnel in accordance with the arrangements approved by the military authorities shall be exempt from the provisions of the said Act. The Act of 1918 was repealed by the Cinematograph Act, 1952, which re-enacted most of the provisions of the earlier Act. Section 17 concerning exemptions was worded as follows:—

17. The Central Government may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this part or of any rules made thereunder."

The first point for decision in the present case is whether the notification issued by the Chief Commissioner of Delhi under the Act of 1918 continues to be in force under the Act of 1952. The answer to this question is furnished by section 24 of the General Clauses Act, which is in the following terms:—

"24. Where any Central Act * * * is, after the commencement of this Act, repealed

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> and re-enacted with or without modification, then, unless it is otherwise expressly provided, any * * notification * * issued under the repealed Act. * * * * * * shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been * * * issued under the provisions so re-enacted, unless and until it is superseded by any * * notification * * * issued under the provisions so re-enacted * * * ."

This section accords statutory recognition to the general principle that if a statute is repealed and re-enacted in the same or substantially the same terms, the re-enactment neutralises the previous repeal and the provisions of the repealed Act which are so re-enacted continue in force without interruption. If, however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by and are repugnant to the repealing Act. The inconsistency which the law contemplates should be such a positive repugnancy between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together.

Mr. Bishambar Dayal, who appears for the State, contends that there is an irreconcilable conflict between section 9 of the Act of 1918 and section 17 of the Act of 1952, for whereas the earlier Act vests the power of granting exemptions in the Provincial Government the later Act vests such power in the Central Government. There is no reasonable hypothesis under which the mutually contradictory provisions of these two statutes can be construed as co-existing. It is accordingly argued that the notification

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of 1942, which was issued under the Act of 1918 is clearly inconsistent with the Act of 1952, for the exemptions authorised by it were granted not by the Central Government but by the Chief Commissioner of Delhi.

But, what was the capacity in which the Chief Commissioner was acting when he granted the exemptions in the year 1942? Was he acting on behalf of the Central Government or on behalf of the Provincial Government or on his own behalf as Chief Commissioner of Delhi? The answer appears to be furnished by the provisions of section 3(8) of the General Clauses Act, 1897, according to which the expression "Central Government", shall—

(a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General in Council as the case may be; and

(b) in relation to anything done or to be done after the commencement of the Constitution mean the President; and shall include—

(i) * * * * * *

(ii) in relation to the administration of a Part C State, the Chief Commissioner or Lieutenant-Governor or Government of a neighbouring State or other "authority acting within the scope of the authority given to him or under Article 239 or Article 243 of the Constitution, as the case may be."

As the expression "Central Government" in relation to anything done before the Constitution means the Governor-General or Governor-General in Council, it is obvious that the notification of 1942 must be

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deemed to have been issued by the Central Government, for section 94 of the Government of India Act, 1935, declares that a Chief Commissioner's Province shall be administered by the Governor-General acting to such extent as he thinks fit through a Chief Commissioner to be appointed by him. If the notification must be deemed to have been issued by the Central Government it cannot be said to be inconsistent with the Act of 1952.

For these reasons I am of the opinion that the trial Court was justified in ordering the acquittal of the respondent even though it arrived at its conclusion by an erroneous process of reasoning. I would uphold the order of the trial Court and dismiss the appeal. Ordered accordingly.

Chopra, J.

CHOPRA, J.—I agree.

APPELLATE CIVIL

Before Bishan Narain, J.

PUNJAB STATE,—*Appellant*

versus

SHRI MOJI RAM,—*Respondent*

First Appeal from Order No. 111 of 1955.

1957

April, 11th

Arbitration Act (X of 1940)—Section 34—Step in proceedings—Meaning of—Application for adjournment without authority of defendant and on the ground of non-receipt of a copy of the plaint—Whether constitutes a step in proceedings—Silence of the defendant on receipt of notice from the plaintiff—Whether affects applicability of section 34 and indicates his unwillingness to get dispute decided by arbitration—Proper time to take action under section 34 indicated—Arbitration agreement—Construction of, to determine if disputes covered by it—Rules stated.

Held, that whether a particular application to Court amounts to a step in proceedings depends on the circumstances in each case and no absolute test can be laid down