

REVISIONAL CRIMINAL.

Before Falshaw and Kapur, JJ.

PURAN MAL,—Convict-Petitioner.

versus

THE STATE,—Respondent.

1953

May, 4th

Criminal Revision No. 523 of 1952.

Prevention of Corruption Act (II of 1947)—Section 5 as amended by Section 4 of the Prevention of Corruption (Second Amendment) Act (LIX of 1952)—Whether retroactive—Conviction before the Amending Act—Not valid—Amending Act coming into force during the pendency of appeal—Whether conviction can be sustained—Interpretation of Statutes—Statute, whether retroactive or prospective only—Rule to determine.

The petitioner, a public servant, was convicted of an offence under section 409, Indian Penal Code which was illegal as section 409, Indian Penal Code, had been repealed *protanto* by section 5 of the Prevention of Corruption Act, 1947. On 12th August, 1952, the Prevention of Corruption (Second Amendment) Act, was enacted, section 4 of which provided that the provisions of section 5 of the Prevention of Corruption Act, 1947, "shall be in addition to, and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him." The petitioner had been convicted by the Magistrate on 31st March, 1952, and the appellate court maintained the conviction but reduced the sentence on 14th May, 1952. The question arose whether the Amending Act (LIX of 1952) was retroactive

and whether the petitioner's conviction could be maintained under the Amending Act.

Held, that the Prevention of Corruption (Second Amendment) Act, 1952, was prospective and not retrospective and the conviction of the petitioner could not be sustained under the Amending Act.

Held, that it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

State v. Gurcharan Singh (1), referred to; *Re Athlumney* (2), *Rex v. Oliver* (3), *Buckman v. Button* (4), relied on; *Lachmeshwar Prasad Shukul and others v. Keshwar Lal Chaudhri and others* (5), held inapplicable.

Petition under Section 439 of Criminal Procedure Code, for revision of the order of Shri D. R. Pahwa, 2nd Additional Sessions Judge, Delhi, dated the 14th May, 1952, modifying that of Mr. G. L. Mittal, Magistrate 1st Class, Delhi, dated the 31st March, 1952, convicting the petitioner.

M. L. SETHI, for Petitioner.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT.

Kapur, J.

KAPUR, J. This is a reference made by my learned brother Soni, J. by his order, dated the 13th of October, 1952, and the point for determination is whether amendment of section 5 of the Prevention of Corruption Act (Act II of 1947), which was made by section 4 of the Prevention of Corruption (Second Amendment) Act, 1952, and enacted on the 12th of August, 1952, has retrospective effect.

The offence which the petitioner is alleged to have committed consisted in the fact that he embezzled Rs. 247-11-3 which he had drawn for an electricity bill, dated the 2nd of June, 1950, and which was shown in the cash book on the 8th of September, 1950, as having been paid but was in

(1) 53 P.L.R. 198

(2) (1898) 2 Q.B. 551

(3) (1944) 1 K.B. 68

(4) (1943) K.B. 405

(5) 1940 F.C.R. 84

fact not paid by him. The case was instituted in the Court on the 19th of July, 1951. Before this a judgment of this Court which is reported as *State v. Gurcharan Singh* (1), held that section 5(1)(c) of the Prevention of Corruption Act (Act II of 1947) had *pro tanto* repealed section 409, Indian Penal Code, in regard to public servants. This judgment was given on the 5th of December, 1950, and had been published in the Punjab Law Reporter, some time before the institution of the proceedings against the petitioner.

Puran Mal
v.
The State
—
Kapur, J.

By the Second Amendment Act, LIX of 1952, which was made in the Prevention of Corruption Act, the following amendment was made by section 4 of the Act of 1952—

“5(4). The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.”

The question to be determined is whether this subsection is retroactive in its operation. As I read the section it appears to me to be prospective and not retrospective. The second portion says, “and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.” The statutes, such as the one before us, are usually not retroactive. According to Maxwell's Interpretation of Statutes page 221, it is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Wright, J., said in *re Athlumney* (2)—

“No rule of construction is more firmly established than this; that a retrospective operation is not to be given to a

(1) 53 P.L.R. 198

(2) (1898) 2 Q.B. 551-552

Puran Mal
v.
The State
—
Kapur, J.

statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

Quite recently in *Rex v. Oliver* (1), the Court of Appeal had to interpret a regulation which was in the following words—

"Any person guilty of an offence against this regulation being a breach of the control or an offence referred to in para, (IB) or (IC) of this regulation, shall be liable * * * (b) on conviction on indictment to certain penalties."

Viscount Caldecote, C. J., delivering the judgment of the Court said at page 75—

"The contention on behalf of the appellant was that, although the words 'any person guilty of an offence' are capable of including a person who has committed an offence before the making of the order, yet the words are not so clear as to require this construction necessarily to be placed on them, and that, therefore, they ought not to be held to operate retroactively."

The learned Lord Chief Justice, approved of the judgment of the Divisional Court in *Buckman v. Button* (2).

The learned Assistant Advocate-General Mr. Chawla, submitted that the words "be instituted against him" are retroactive, but in order to give that interpretation we shall have to add the words "be or has been instituted" and I do not think it is a case of *casus omissus*.

(1) (1944) 1 K.B. 68

(2) (1943) K.B. 405

Mr. Chawla, then referred to a judgment of the Federal Court in *Lachmeshwar Prasad Shukul and others v. Keshwar Lal Chaudhuri and others* (1), and submitted that this Court should take into account the new legislative enactment and uphold the conviction. He contends that as this Act has come into force during the pendency of the proceedings and as the proceedings in this Court are a rehearing he can take advantage of the new legislative enactment. The case that he has relied upon was of a different nature. Certain appellants before the Federal Court sought to claim the benefits of section 7 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, which had come into force during the pendency of the appeal in the High Court. No doubt their Lordships held that appeal was a rehearing and that it was the duty of the Court to administer the law of the land "at the date when the Court is administering it", but in that case also section 7 of the Money-Lenders Act of 1939 had in terms been made retrospective and it was for that reason that it was allowed to be taken advantage of by the appellants. *Lachmeshwar Prasad Shukul's Case* (1), therefore, can be of no assistance to the State. In this view of the matter I do not think that the legislature has provided for any retroactive validation of proceedings taken under section 409, Indian Penal Code, which section this Court had held to be *pro tanto* repealed because of section 5(1)(c) of the Prevention of Corruption Act (Act II 1947).

I would, therefore, allow this petition, set aside the order of conviction and make the rule absolute. The bail bonds shall stand cancelled.

FALSHAW, J.—I agree.

Falshaw, J.

Puran Mal
v.
The State
—
Kapur, J.