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Abdul Rehman Mahomed Yusuf v. *Mahomed Haji Ahmad Aghotwala*

Imam J.

In this appeal this Court can do what the High Court could have done. We accordingly allow the appeal and set aside the order of acquittal made by the Presidency Magistrate but, on the finding of the Presidency Magistrate that no offence of conspiracy or abetment arising therefrom had been established, we direct that the present complaint be dismissed. The respondent is accordingly discharged.

Appeal allowed.

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September 15.

JETHANAND BETAB

v.

THE STATE OF DELHI

(now Delhi Administration)

(SYED JAFER IMAM and K. SUBBA RAO, JJ.)

Repeal of Statute—Repealing and Amending Act, object of—Enactment making possession of wireless telegraphy apparatus without licence punishable—Amending Act introducing new section making possession of wireless transmitter without licence liable to heavier punishment—Repeal of Amending Act—Whether amendment introduced by it survives—Indian Wireless Telegraphy Act, 1933 (XVII of 1933), ss. 3, 6 and 6(1A)—Indian Wireless Telegraphy (Amendment) Act, 1949 (XXXI of 1949), s. 5—Repealing and Amending Act, 1952 (XLVIII of 1952), ss. 2 and 4—General Clauses Act, 1879 (X of 1879), s. 6A.

Section 3 of the Indian Wireless Telegraphy Act, 1933 provided that no person shall possess wireless telegraphy apparatus without a licence and s. 6 made such possession punishable. The Indian Wireless Telegraphy (Amendment) Act, 1949, introduced s. 6(1A) in the 1933 Act, which provided for a heavier sentence for possession of a wireless transmitter without a licence. The Repealing and Amending Act, 1952, repealed the whole of the Amendment Act of 1949, but by s. 4 provided that the repeal shall not affect any other enactment in which the repealed enactment had been applied, incorporated or referred to. The appellant was convicted under s. 6(1A) for being in possession of a wireless transmitter on July 31, 1953. He contended that s. 6(1A) had been repealed and his conviction and sentence thereunder could not be sustained.

Held, that s. 6(1A) was saved by s. 6A of the General Clauses Act, 1897, though s. 4 of the Repealing and Amending Act, 1952, did not save it.

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The object of the Repealing and Amending Act, 1952, was to strike out unnecessary Acts and to excise dead matter from the statute book.

Khuda Bux v. *Manager, Caledonian Press,* A.I.R. 1954 Cal. 484, referred to.

Section 4 of the Repealing and Amending Act, 1952, only saved other enactments in which the repealed enactment had been applied, incorporated or referred to. It had no application to the case of a later amending Act inserting a new provision in an earlier Act as it could not be said that the earlier Act applied, incorporated or referred to the Amending Act.

Secretary of State for India in Council v. *Hindusthan Co-operative Insurance Society, Ltd*, L.R. 58 I.A. 259, followed.

Mohinder Singh v. *Mst. Harbhajan Kaur,* I.L.R. 1955 Punj. 625 and *Darbara Singh* v. *Shrimati Karnail Kaur,* 61 P.L.R. 762, disapproved.

Section 6A of the General Clauses Act provided that when any Central Act repealed any enactment by which the text of any Central Act was amended then unless a different intention appeared the repeal would not affect such amendment. The word "text" in s. 6A was comprehensive enough to include the subject as well as the terminology used in a statute, and the insertion of s. 6(1A) in the 1933 Act was an amendment in the text. No different intention appeared either from the repealing Act or from the history of the legislation and s. 6A applied to the repeal of the Amendment Act, 1949.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 185 of 1957.

Appeal by special leave from the judgment and order dated the 6th December, 1955, of the Punjab High Court (Circuit Bench) at Delhi, in Criminal Revision No. 122-D of 1955, arising out of the judgment and order dated July 29, 1955, of the First Additional Sessions Judge, Delhi, in Cr. A. No. 367/55.

Mohan Behari Lal and *Eluri Udayarathnam,* for the appellant.

N. S. Bindra and *R. H. Dhebar,* for the respondent.

1959. September 15. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—This appeal by special leave is directed against the order of the High Court of Punjab (Circuit Bench), Delhi confirming the conviction of the appellant and the sentence passed on him by the

Magistrate, First Class, Delhi, under s. 6(1-A) of the Indian Wireless Telegraphy Act, 1933 (XVII of 1933) (hereinafter called "the Act").

Jethanand, the appellant herein, was prosecuted, along with another, in the Court of the Magistrate, First Class, Delhi, under s. 6(1-A) of the Act for possessing a wireless transmitter in contravention of the provisions of s. 3 of the Act, and was sentenced to six months rigorous imprisonment. On appeal, the learned First Additional Sessions Judge, Delhi, upheld the conviction but reduced the sentence to the period of imprisonment already undergone plus a fine of Rs. 500. On revision, the High Court confirmed both the conviction and the sentence. On an application filed for special leave, this Court gave the same, but limited it to the question of sentence.

Learned Counsel raised before us the following contentions: (1) s. 6(1-A) of the Act was repealed, and, therefore, neither the conviction nor the sentence thereunder could be sustained; and (2) if s. 6(1-A) of the Act was repealed, this Court in limiting the appeal to the question of sentence only went wrong, for, if that section was not on the statute book at the time of the alleged commission of the offence, not only the sentence but also the conviction thereunder would be bad. Both the contentions raised turn upon the same point. The different steps in the argument may be stated thus: In the Act XVII of 1933, as it originally stood, there was no specific provision making the possession of wireless transmitter an offence. By the Indian Wireless Telegraphy (Amendment) Act, 1949 (XXXI of 1949) (hereinafter called the "1949 Act"), s. 6(1-A) was inserted in the Act, whereunder the possession of a wireless transmitter was constituted a separate offence. The amending Act was repealed by the Repealing and Amending Act, 1952 (XLVIII of 1952) (hereinafter called the "1952 Act"), with the result that on the date of the alleged commission of the offence the said section was not on the statute book. If that was the legal position, the limitation on the leave granted by this Court would result in an

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anomaly, namely, that the conviction would stand but the sentence would be quashed. The argument so presented appears to be plausible, but, in our view, not sound.

There is a real justification for this Court limiting the scope of the special leave. The High Court by mistake cited in its judgment the provisions of s. 6(1) of the Act instead of s. 6(1-A) thereof. If the conviction was under s. 6(1), the maximum sentence permissible on the first offence thereunder was only fine which may extend to Rs. 100. Presumably on the assumption that the conviction could be sustained under s. 6(1), even if s. 6(1-A) was not on the statute book—there may be justification for this view, as the words "wireless telegraphy apparatus" in s. 6(1) are comprehensive enough to take in "wireless telegraphy transmitter"—this Court gave leave limited to the question of sentence. The inconsistency, if any, was the result of the appellant's presentation of his case at that stage, and he cannot now be allowed to take advantage of his default to enlarge the scope of the appeal.

That apart, there are no merits in the contention. At the outset it would be convenient to read the relevant provisions of the three Acts:

The Indian Wireless Telegraphy Act, 1933.

S. 3: Save as provided by section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

S. 6(1): Whoever possesses any wireless telegraphy apparatus in contravention of the provisions of section 3 shall be punished in the case of the first offence, with fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupess.

The Indian Wireless Telegraphy (Amendment) Act, 1949.

S. 5. Amendment of section 6, Act XVII of 1933. In section 6 of the said Act,—

* * *

(ii) after sub-section (1), the following sub-section shall be inserted, namely :—

"(1A) whoever possesses any wireless transmitter in contravention of the provisions of section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both."

REPEALING AND AMENDING ACT, 1952.

S. 2: The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

The First Schedule

Year (1)	No. (2)	Short title (3)	Extent of repeal (4)
1949	XXXI	The Indian Wireless Telegraphy (Amendment) Act, 1949.	The whole

S. 4: The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

* * *

The substance of the aforesaid provisions may be stated thus: The Act of 1949 inserted s. 6 (1-A) in the Act of 1933. The 1949 Act was repealed by the 1952 Act, but the latter Act saved the operation of other enactments in which the repealed enactment has been applied, incorporated or referred to. The first question that arises for consideration is whether the amendments inserted by the 1949 Act in the 1933 Act were saved by reason of s. 4 of the 1952 Act.

The general object of a repealing and amending Act is stated in Halsbury's Laws of England, 2nd Edition, Vol. 31, at p. 563, thus:

"A statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisos."

In *Khuda Bux* v. *Manager, Caledonian Press* (1), Chakravartti, C.J., neatly brings out the purpose and

(1) A.I.R. 1954 Cal. 484.

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scope of such Acts. The learned Chief Justice says at p. 486:

> "Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts, which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care, . . .".

It is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose.

The next question is whether s. 4 of the Act of 1952 saved the operation of the amendments that had been inserted in the Act of 1933 by the repealed Act. The relevant part of s. 4 only saved other enactments in which the repealed enactments have been applied, incorporated or referred to. Can it be said that the amendments are covered by the language of the crucial words in s. 4 of the Act of 1952, namely, "applied, incorporated or referred to". We think not. Section 4 of the said Act is designed to provide for a different situation, namely, the repeal of an earlier Act which has been applied, incorporated or referred to in a later Act. Under that section the repeal of the earlier Act does not affect the subsequent Act. The said principle has been succinctly stated in Maxwell on Interpretation of Statutes, 10th Edition, page 406:

> "Where the provisions of one statute are, by reference, incorporated in another and the earlier

statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of the second enactment."

So too, in Craies on Statute Law, 3rd Edition, the sama idea is expressed in the following words, at p. 349:

"Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case the "rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second".

The Judicial Committee in *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society, Ltd.*(1) endorsed the said principle and restated the same, at p. 267, thus:

"This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India. The section runs: "The repeal by this Act of any enactment shall not affect any Act..... in which such enactment has been applied, incorporated or referred to." The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."

It is, therefore, manifest that s. 4 of the 1952 Act has no application to a case of a later amending Act inserting new provisions in an earlier Act, for, where an earlier Act is amended by a later Act, it cannot be said that the earlier Act applies, incorporates or refers to the amending Act. The earlier Act cannot incorporate the later Act, but can only be amended by it. We cannot, therefore, agree with the view expressed by the Punjab High Court in *Mohinder Singh* v. *Mst.*

(1) L.R. 58 I.A. 259.

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Harbhajan Kaur (1) and in *Darbara Singh* v. *Shrimati Karnail Kaur* (2) that s. 4 of the Repealing and Amending Act of 1952 applies to a case of repeal of an amending Act.

This legal position does not really help the appellant, for the case on hand directly falls within the four corners of s. 6-A of the General Clauses Act, 1897 (X of 1897). The above section reads:

> "Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

As, by the amending Act of 1949, the text of the Act XVII of 1933, was amended by the insertion of 6 (1-A) therein, the repeal of the amending Act by the 1952 Act did not affect the continuance of the amendment made by the enactment so repealed. It is said that for the application of s. 6-A of the General Clauses Act, the text of any enactment should have been amended; but in the present case the insertion of s. 6 (1-A) was not a textual amendment but a substantial one. The text of an enactment, the argument proceeds, is the phraseology or the terminology used in the Act, but not the content of that Act. This argument, if we may say so, is more subtle than sound. The word "text", in its dictionary meaning, means "subject or theme". When an enactment amends the text of another, it amends the subject or theme of it, though sometimes it may expunge unnecessary words without altering the subject. We must, therefore, hold that the word "text" is comprehensive enough to take in the subject as well as the terminology used in a statute.

Another escape from the operation of s. 6-A of the General Clauses Act is sought to be effected on the basis of the words "unless a different intention

(1) I.L.R. 1955 Punj. 625. (2) 61 P.L.R. 762.

appears". The repealing Act does not indicate any intention different from that envisaged by the said section. Indeed, the object of the said Act is not to give it any legislative effect but to excise dead matter from the statute book. The learned Counsel placed before us the historical background of the amending Act with a view to establish that the intention of the legislature in passing the said Act was to expurgate s. 6 (1-A) from the statute as it was redundant and unnecessary. It is said that the Indian Telegraph Act, 1885 (XIII of 1885) provided for the offence covered by s. 6 (1-A), and, therefore, the legislature though, by the Act of 1948, inserted the said section in the Act of 1933, removed it in the year 1952 as the said amendment was unnecessary and redundant. There is no foundation for this argument, and the entire premises is wrong. Section 20 of Act XIII of 1885 reads;

> *S. 20 (1)*: If any person establishes, maintains or works a telegraph within India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph with imprisoment which may extend to three years, or with fine, or with both, and in any other case, with a fine which may extend to one thousand rupees.

Though the words are comprehensive enough to take in a wireless transmitter, the section does not prohibit the possession of a wireless apparatus. As the Act only gave power to control the establishment, maintenance and working of wireless apparatus, in practice it was found that the detection of unlicenced apparatus and the successful prosecution of the offenders were difficult, with the result that the State was losing revenue. To remove this defect, Act XVII of 1933 was passed to prohibit the possession without licence of a wireless apparatus. Under s. 6, the penalty for such illegal possession of a wireless telegraphy apparatus was made an offence, but the sentence prescribed was rather lenient. Subsequently, the legislature thought that the possession of a wireless transmitter

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was a graver offence; sometimes involving the security of the State, and so an amendment was introduced in 1949 constituting the possession of such apparatus a graver offence and imposing a more severe punishment. Therefore, it cannot be said that s. 6(1-A), inserted in the Act XVII of 1933 by the amending Act of 1949, is either covered by the provisions of the Indian Telegraph Act, 1885, or a surplusage not serving any definite purpose. Even from the history of the legislation we find it not possible to say that it disclosed an intention different from that envisaged in s. 6-A of the General Clauses Act.

For the aforesaid reasons, we hold that s. 6(1-A) of the Act continued to be on the statute book even after the amending Act of 1949 was repealed by Act XLVIII of 1952, and that it was in force when the offence was committed by the appellant.

The appeal fails and is dismissed.

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September 15.

CHIMANLAL PREMCHAND

v.

THE STATE OF BOMBAY

(SYED JAFER IMAM and K. SUBBA RAO, JJ.)

Agricultural produce—Packed or pressed—If loses identity—State Government—Powers to make rule for regulation of business and condition of trading—Bombay Agricultural Produce Market Act, 1939 (Bom. 22 of 1939), ss. 2 and 26—Bombay Agricultural Produce Market Rules 1941, r. 65.

The appellant as a trader made purchases of full pressed cotton bales in the market area of Broach without requisite licence from the market committee, thereby contravening the provisions of r. 65(1) of the Bombay Agricultural Produce Market Rule 1941. The appellant, *inter alia*, contended that the Act and Rules passed thereunder did not apply to pressed cotton which having been pressed into bales had lost its identity and was no more an agricultural produce and that r. 65 was *ultra vires* inasmuch as its provisions were in excess of the rule making power of the State Government.

Held, that an agricultural produce by being packed in containers or pressed into bales does not in any way change its essential character, and continues to be an agricultural produce,