

PETITIONER:
NEEL & NIRENJAN MAJUMDAR

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT 23/05/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2066 1973 SCR (1) 675
1972 SCC (2) 668

ACT:
General Clauses Act, 1897-Ss. F, 24-Effect of-Arms Act, 1959 repealing and re-enacting Arms Act, 1878-Notification issued under latter Act, if continue under the 1959 Act-Arms Act, 1959--s. 2(1)--(c) Sword, if 'arms'-West Bengal (Prevention of Violent Activities) Act, 1970, S. 3(2)(d).

HEADNOTE:
The combined effect of section 6 and 24 of the General Clauses Act is that a notification of 1923 issued under section 15 of the Arms Act, 1878 prohibiting the acquisition, possession or carrying of arms other than fire arms without a licence, not only continued to operate but has to be deemed to have been enacted under the Arms Act, 1959, which repealed and re-enacted the provisions of the earlier Act. The 1959 Act nowhere contains an intention to the contrary signifying that the operation of the repealed Act or of a notification issued thereunder was not to continue. [678C-F]

A sword is arms within the meaning of the definition of arms' in section 2(1)(c) of the Arms Act, 1959. In the present case though the offence of being in possession and carrying a sword without licence took place after the commencement of the new Act of 1959, the notification issued under the Act of 1878 was in force, by virtue of section 24 of the General Clauses Act, on the date of the alleged offence. The offence thus fell under the arms Act, 1959, and that being so, the acts set out in the grounds of detention served on the petitioner were covered by clause (d) of section 3(2) of the West Bengal (Prevention of Violent Activities) Act, 1970. [677D-H; 678G-H; 679F]

JUDGMENT:
ORIGINAL JURISDICTION: Writ Petition No. 77 of 1972.
Under Article 32 of the Constitution of India for a writ in the nature of habeas corpus.
S. K. Dhingra, for the petitioner.
Dilip Sinha and G. S. Chatterjee, for the respondent.
The Judgment of the Court was delivered by
Shelat, J. The District Magistrate, Howrah passed on June

12, 1971 the impugned order of detention under sub-s. (1) read with sub-s. (3) of s. 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 directing the petitioner's detention thereunder. The order stated that the District Magistrate was satisfied that it was necessary to do so in order to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order. On June 13, 1971, the petitioner was accordingly arrested and detained in Dum Dum Central Jail.

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The grounds of detention served on the petitioner at the time of his arrest read as follows :

(1) On 17-8-70 at about 02.00 hours, you and your associates Bhaja alias Tarapada Ghosh, Bablu, Kartic and others attacked the members of R.G. Party who were on duty near Jatadhari Park by hurling bombs towards them. When chased by them, you and your associates again hurled bombs towards them and managed to escape and thereby disturbed public order.

(2) On 10-4-71 at about 16.00 hours, you and your associates being 'armed with sword assaulted one Basudeb Laha of 56/18, Banarjee Bagan Lane. at Sambhu Halder Lane near Jatadhari Park causing injuries on his person. When objected by the members of the public, you also terrorised them by brandishing the sword.

(3) On 1-5-71 at 15.00 hours, you and your associates Tapan, Kartic and others being armed with bombs and other deadly

weapons

demanding money from one Banshi Show of 28, Haraganj Road, P.S. Malipanchghora. When refused, you and your associates assaulted him. The local people and the neighbouring shop keepers objected. At this you and your associates became more violent and terrorised them by throwing bombs towards them. Consequently they became panicky and fled away.

Sub-s. (1) read with sub-s. (3) of s. of the Act authorises inter alia a District Magistrate to direct detention of any person in respect of whom he is satisfied that such detention should be ordered with a view to prevent him from acting prejudicially to the security of the State of West Bengal, or the maintenance of public order. Sub-s. (2) of s. 3 contains a special definition of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" to mean the acts enumerated in cls. (a) to (e) thereof. Cl. (d), which is the only relevant clause for purposes of this petition provides as follows:

"(d) committing, or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 or the Explosive Substances Act, 1908, where the commission of such offence disturbed, or is likely to disturb, public order."

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It is not disputed that the petitioner's- alleged activities set out in grounds (1) and (3) of the said grounds of detention fell under cl. (d) being offences under the Explosive Substances Act, 1908, and also being such that

they did or were likely to disturb public order. The only contention raised for our determination was that activities set out in ground No. (2), namely, causing injuries with a sword, would constitute an offence under s. 324 of the Penal Code, an offence neither punishable with death, nor life imprisonment, nor imprisonment for a term of seven years. Therefore, ground No. (2) would be, it was urged, a ground which would not fall under the said definition, and would, therefore, be an extraneous ground rendering the impugned order invalid.

The contention in our view has no substance as the offence alleged in ground No. (2) would fall under cl. (d) of s. 1 (2) of the Act inasmuch as it will be one, punishable under the Arms Act, LIV of 1959.

Under S. 2(1) (c) of the Arms Act, the word 'arms' inter alia means articles of any description designed or adapted as weapons for offence or defence, and includes firearms, sharp edged and other deadly weapons. A sword is thus arms within the meaning of this definition. Sec. 3 of the Act then prohibits, among other things, possession of firearms or ammunition except under a licence issued under the Act or the rules made thereunder. So far as arms, other than firearms, are concerned, s. 4 empowers the Central Government, if it is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest, that acquisition, possession or carrying of arms, other than firearms, should also be regulated, it may by notification direct that this section shall apply to the area specified in such notification, and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification, except under a licence issued under the provisions of the Act or the rules made thereunder. Once, therefore, such a notification is issued under the Act or the rules made thereunder, and that notification specifies any arms, e.g. a sword, possession of or carrying such a sword without licence in the specified area would be an offence under the Arms Act. Sec. 25 (1) (b) provides that whoever acquires, has in his possession or carries in any place specified by notification under s. 4 'any arms of such class or description as have been specified in that notification in contravention of that section shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

It, however, appears that no such notification as contemplated by S. 4 of the 1959 Act has been issued. But, in 1923 such a

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notification bearing reference No. Political (Police) Department Notification No. 787 PL, dated March 9, 1923 was issued under s. 15 of the earlier Indian Arms Act, XI of 1878, which was in terms similar to S. 4 of the present Act. The question is, whether Act XI of 1878 having been repealed, the said notification issued under s. 15 thereof can still be said to be operative? Sec. 46(1) of the Arms Act, 1959 repealed the preceding Act of 1878. Its sub-s. (2) provides that notwithstanding such repeal and without prejudice to ss. 6 and 24 of the General Clauses Act, X of 1897 a licence granted under the repealed Act and in force immediately before the commencement of the new Act shall continue, unless sooner revoked, for the unexpired period for which it had been granted or renewed. Sec. 46(2) thus saves only licences issued under the Arms Act.

Sec. 6(b) of the General Clauses Act, however, provides that

where any Central Act or regulation made after the commencement of the Act repeals any earlier enactment, then, unless a different intention appears, such repeal shall not "affect the previous operation of any enactment so repealed or anything duly done or suffered hereunder". Sec. 24 next provides that where any Central Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any notification issued under such repealed Act shall, so far as it is inconsistent with the provisions re-enacted, continue in force and be deemed to have been made under the provisions so re-enacted unless it is superseded by any notification or order issued under the provisions so re-enacted. The new Act nowhere contains an intention to the contrary signifying that the operation of the repealed Act or of a notification issued thereunder was not to continue. Further, the new Act re-enacts the provisions of the earlier Act, and s. 4 in particular, as already stated, has provisions practically identical to those of s. 15 of the earlier Act. The combined effect of ss. 6 and 24 of the General Clauses Act is that the said notification of 1923 issued under s. 15 of the Act of 1878 not only continued to operate but has to be deemed to have been enacted under the new Act.

Possession of arms, such as a sword without a licence or contrary to the terms and conditions of such a licence would thus be an offence punishable with imprisonment under the Arms Act, 1959. Though the possession of and carrying a sword were alleged to have been committed in 1970, that is, after the repeal of the Arms Act, 1878, the said notification of 1923 issued under the repealed Act would, despite its repeal, continue to be in force and its provisions would be deemed to have been enacted under the new Act by virtue of s. 24 of the General Clauses Act.

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This was the construction placed upon these two sections by this Court in the Chief Inspector of Mines v. Lala Karam Chand Thapar, (1) where the question as to the meaning of S. 24 of the General Clauses Act arose. In that case, the directors of a colliery company and its managing agents were prosecuted under the Mines Act, 1952 for violation of Coal Mines Regulations of 1926 made under Mines Act, 1923, which was repealed by 1952 Act. Repelling the contention that the prosecution in respect of the violation of those Regulations made under the repealed Act was unauthorised and invalid, the Court construed s. 24 of the General Clauses Act to mean that when an earlier Act is repealed by a later Act, which re-enacted the provisions of the earlier Act, Regulations framed under the repealed Act continue in force and are deemed to have been made under the provisions so re-enacted, and must be so construed as to have continuity of force, and are to be regarded as laws in force at the date of the offence within the meaning of Art. 20(3) of the Constitution. In that case, the breach of those Regulations took place before the commencement of the new Act. Even then the prosecution under the new Act was held to be valid on the ground that the Regulations were deemed to have been made under the new Act. In the present case, the offence of being in possession of and carrying a sword without licence took place after the commencement of the new Act of 1959. The said notification, by virtue of s. 24 of the General Clauses Act having to be deemed to have been made under S. 4 of the Arms Act, 1959, the notification was in force on the date of the alleged offence. The offence thus fell under the Arms Act, 1959, and that being so, acts set out in ground No. (2) were covered by cl.

(d) of S. 3(2) of the Act. Consequently, that ground cannot be said to be extraneous to the Act.

This being the only contention arising for our consideration and it having failed, the petition fails and is dismissed.

K.B.N. Petition dismissed.

(1) [1962] 1 S.C.R. 9.

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JUDIS