

same time it is, in my opinion, of the utmost importance for the healthy growth of parliamentary system of Government and of true democracy that the purity of the election process should be jealously safeguarded and people should in no case be allowed to get elected by flagrant breaches of the law of elections and by corrupt practices. Enquiry into allegations of corrupt practices, therefore, should not be shut out or throttled by dismissing election petitions on unsubstantial or highly technical grounds.

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Shrimati
Om Prabha Jain
Wife of
Shri Kailash
Chand Jain.

Dua, J.

Holding as I do that the receipt in question does show, as required by section 117 of the Representation of the People Act, that the deposit of Rs. 1,000 had been made by the petitioner in the Government treasury in favour of the Secretary to the Election Commission and that the amount was available as security for the costs of the petition, I would allow the appeal, set aside the order of the Election Tribunal dated the 8th November, 1957, and send the case back for disposal according to law in the light of the observations made above. The appellant will have his costs in this Court. The records of the case may be sent to the Tribunal without avoidable delay so that the election petition may be proceeded with expeditiously.

Falshaw, J.—I agree.

Falshaw, J.

B.R.T.

REVISIONAL CRIMINAL.

Before Falshaw, J.

RAM RATTAN SETH AND OTHERS,—*Petitioners.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 281 of 1958

Indian Mines Act (IV of 1923)—Section 29—The Indian Metalliferous Regulations of 1926 framed under—
Whether continue to be law in force in spite of the fact

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that the Act of 1923 has been repealed and replaced by the Indian Mines Act, XXXV of 1952.

Held, that the Indian Metalliferous Mines Regulations of 1926 framed under section 29 of the Indian Mines Act of 1923 continue to be law in force under section 24 of the General Clauses Act in spite of the fact that the Act of 1923 has been repealed and replaced by the Indian Mines Act of 1952 unless and until they are replaced by new regulations framed under the new Act and so far as they are not inconsistent with any provision of the new Act.

G. D. Bhattar and others v. The State (1) and The State v. Kunja Behari Chandra and others (2) followed; Shiv Bahadur Singh and others v. The State of Vindhya Pradesh (3) and In re Lingareddi Venka taredy and others (4) distinguished.

Case reported under section 432(i), Criminal Procedure Code, by Shri S. P. Jain, Additional District Magistrate at Dharamsala, with his No. 36-S/A.D.M., dated 2nd November, 1957/1st March, 1958, for decision of a law point involved in a case under section 74-A, of the Indian Mines Act, pending in his Court.

D. N. AWASTHY, for Petitioners.

K. L. KAPUR, for Advocate-General, for Respondent.

ORDER OF THE HIGH COURT

Falshaw, J.

Falshaw, J.—This case has been referred by the Additional District Magistrate at Dharamsala.

The facts are that four persons, Ram Rattan, Managing Director, Khazana Ram, Contractor, K. N. Khanna, Agent, and Gomti Das, Manager of a slate mine known as Naguni Slate Mine owned and worked by the Kangra Valley Slate Company, Limited, were prosecuted on the allegation that they had

(1) A.I.R. 1957 Cal. 483
 (2) A.I.R. 1954 Pat. 371 (F.B.).
 (3) A.I.R. 1953 S.C. 394
 (4) A.I.R. 1956 Andhra 24

wilfully omitted to take the precautions laid down in regulations Nos. 38, 41 and 91 of the Indian Metalliferous Mines Regulations of 1926 as a result of which a workman received fatal injuries on the 24th of April, 1956, the complaint being filed by the Public Prosecutor, Dharamsala, under the instructions of the Chief Inspector of Mines in India.

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The State.
—
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The preliminary objection was raised that the above regulations of 1926 were framed under the provisions of section 29 of the Indian Mines Act of 1923, which had been repealed and replaced by the Indian Mines Act of 1952 under which admittedly no fresh rules and regulations had yet been framed when this case started. It was contended that the prosecution of the accused violated the provisions of Article 20(1) of the Constitution which provides that no person should be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. The point taken was that the rules and regulations framed under the Act of 1923 were no longer "a law in force" at the time of commission of the act tried as an offence in spite of the provisions of section 24 of the General Clauses Act, which seem to rebut this contention. The section in question reads—

"Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued

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under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted *

* * * * *

The learned Additional District Magistrate, Dharamsala, has referred the case for guidance on the point in dispute, without making any particular recommendation one way or the other, mainly on the strength of the decision of the Andhra High Court in *In re Lingareddy Venkatarreddy and others, Accused* (1). This case also deals with a number of accused who had been prosecuted under the penal provisions of the Indian Mines Act of 1952 for breaches of the regulations framed in 1926 under section 30 of the Act of 1923 and it was held by Subha Rao, C.J., and Bhima-sankaram, J. that the phrase 'law in force' in Article 20 of the Constitution must be understood in its natural sense as being the law in fact in existence and in operation as distinct from the law 'deemed' to have become operative by virtue of the power of the legislature to pass retrospective laws. It was held that the rules and regulations framed under the repealed Act of 1923 could not be described as 'law in force'.

In arriving at the decision the learned Judges relied almost entirely on the decision of the Supreme Court in *Shiv Bahadur Singh and another v. The State of Vindhya Pradesh* (2), which therefore requires to be considered. In that case the accused had been tried for certain offences alleged to have been committed in February, March and April, 1949 under the provisions of the

(1) A.I.R. 1956 Andhra 24
(2) A.I.R. 1953 S.C. 394

Vindhya Pradesh Ordinance No. 48 of 1949, which was enacted on the 11th of September, 1949. It was, however, provided in section 2 of the Ordinance that it should be deemed to have been in force in Vindhya Pradesh from the 9th of August, 1948. In other words it was retrospective criminal legislation and had the effect of making an offence out of an act which was not an offence at the time it was committed. The decision of the learned Judges is summed up in paragraph 10 thus:—

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“ ‘Law in force’ referred to therein must be taken to relate not to a law ‘deemed’ to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. * * * * *

It cannot, therefore, be doubted that the phrase ‘law in force’ as used in Article 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law ‘deemed’ to have become operative by virtue of the power of legislature to pass retrospective laws.”

It seems to me, however, that this is a wholly different type of a case from the one with which we are dealing, and retrospective criminal legislation of this kind is generally regarded as repugnant to Fundamental principles of justice. The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952 and the effect of section 24 of the General Clauses Act in such a case is clearly that all the rules and regulations framed under the old Act, which had the force of law, were to remain in force until replaced by new rules and

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regulations framed under the new Act except where they were inconsistent with any provision of the new Act, and moreover were not only to remain thus in force, but also were to be deemed to have been formulated under the new Act, I fail to see how any question whatever of retrospective legislation can arise in such a case and it seems to me evident that the scope of the decision of the Supreme Court cannot be carried beyond holding that retrospective criminal legislation of the kind under consideration contravened the provisions of Article 20(1) of the Constitution.

This view has in fact been expressed by a Division Bench of the Calcutta High Court in *G. D. Bhattar and others v. The State* (1), in which the above decision of the Supreme Court and the decision of the Andhra High Court purporting to be based on it have been examined and the Andhra view has been dissented from. This, it may be said, was also a case under the Mines Act. A Full Bench of the Patna High Court also held that the rules and regulations framed under the Act of 1923 remained in force under the Act of 1952 in the absence of new rules and regulations framed under the latter Act in *The State v. Kunja Behari Chandra and others* (2). There is, however, the distinction in that case that the alleged offence was committed before the new Act came into force although the case was brought afterwards, whereas in the present case and in the Calcutta case the alleged offences took place after the new Act had come into force.

In the circumstances I would return the following answer to the question referred by the learned Additional District Magistrate:—

“The Indian Metalliferous Mines Regulations

(1) A.I.R. 1957 Cal. 483

(2) A.I.R. 1954 Pat. 371

of 1926 framed under section 29 of the Indian Mines Act of 1923 continue to be law in force under section 24 of the General Clauses Act in spite of the fact that the Act of 1923 has been repealed and replaced by the Indian Mines Act of 1952 unless and until they are replaced by new regulations framed under the new Act and so far as they are not inconsistent with any provision of the new Act."

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and others.
v.
The State.
———
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SUPREME COURT.

Before Bhuvaneshwar Prasad Sinha, Syed Jafer Imam and
K. N. Wanchoo, JJ

RAM PARKASH,—Appellant

versus

THE STATE OF PUNJAB,—Respondent

Criminal Appeal No. 77 of 1958.

Evidence Act (I of 1872)—Section 30—Retracted confession by one of the accused persons—Whether can be taken into consideration against his co-accused—Extent of corroboration required indicated.

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———
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Held, that from the terms of section 30 of the Indian Evidence Act, it is clear that where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and any one of his co-accused can be taken into consideration by the Court not only against the maker of the confession but also against his co-accused. The Evidence Act, nowhere provides that if the confession is retracted, it cannot be taken into consideration against the co-accused or the confessing accused. Accordingly, the provisions of the Evidence Act, do not prevent the Court from taking into consideration a retracted confession against the confessing