

**CASE COMMENT:**  
**M.KARUNANIDHI V. UNION OF INDIA, 1979**

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**Date:**

20/2/1979

**Citation:**

1979 AIR 898.

**Bench:**

Fazalali, Syed Murtaza, Y.V. Chandrachud, P.N. Bhagwati, N.L. Untwalia, R.S. Pathak.

**Facts:**

In 1973 the Madras Legislature had passed The Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 herein referred as State Act. This Act was passed after obtaining the assent of the President of India. This State Act was, however, amended by Act 16 of 1974 and the President's assent was received on 10th April, 1974. According to the provisions of the State Act the statute was brought into force by virtue of a notification with effect from 8-5-1974. The Act provided for the investigation in respect of a complaint of criminal misconduct against any 'public man' by a Commissioner or the Additional Commissioner of Inquiries appointed for this purpose. The word 'public man' had been given a specific connotation in s. 2(c) of the Act and clearly excluded a Government servant.

A CBI inquiry was instituted against the appellants who were alleged to have abused their official position in the matter of purchase of wheat from Punjab. As a result of the inquiry a prosecution was launched against the appellant under the IPC and the Prevention of Corruption Act. A FIR was recorded on 16<sup>th</sup> June, 1976 and four months later sanction under section 197 of the Code was granted by the Governor of Tamil Nadu for the prosecution of the appellant

under sections 161<sup>1</sup>, 468<sup>2</sup> and 471<sup>3</sup> of the IPC and Sec. 5(2) r/w Sec. 5 (1) (d) of the Prevention of Corruption Act (hereinafter referred to as the Corruption Act). Thereafter, the police submitted a charge sheet against the appellant for the offences mentioned above and alleged that the appellant had derived for himself pecuniary advantage to the extent of Rs. 4 to Rs. 5 lakhs from Madenlal Gupta for passing favourable orders in respect of some firms. The case was registered before the Special Judge and the necessary copies of the records were furnished to the appellant.

Then an application for discharging him was filed by him under the Sec. 239 of the Code before the Special Judge but after hearing the counsel the Judge rejected the application and as a result the appellant again filled two applications under the High Court for quashing the proceedings and for setting aside the order of the Special Judge of not discharging him. The High Court also rejected his applications but granted him with the certificate of leave to appeal to the Supreme Court, thus he appeals before the Supreme Court.

### **Issues:**

The appellant challenged the validity of the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973, as amended by the Act 16 of 1974 on the ground that it was inconsistent with the Central Act and Prevention of Corruption Act, 1947 and hence void. The state Act was passed after obtaining the assent of the President. The State Act repealed and the question arose whether action could be taken under the Central Laws i.e. the IPC, the Corruption Act and Criminal Law Amendment. The appellant contended that even though the State Act was repealed it was repugnant to the Central Laws, i.e. the IPC and the Corruption Act. It was argued that by virtue of Art. 254 (2) the provision the Central Act stood repealed and could not be revived after the State Act was repealed. Thus the question before the court was whether there was any inconsistency between the State Act and the Central Act and that the provisions of the Central Act stood repealed and unless re-enacted could not be invoked even after the state Act was itself repealed.

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<sup>1</sup> Sec.161, Indian Penal Code, "Public servant taking gratification other than legal remuneration in respect of an official act".

<sup>2</sup> Sec.468, Indian Penal Code, 1860, "Forgery for purpose of cheating".

<sup>3</sup> Sec.471, Indian Penal Code, 1860, "Using as genuine a forged document".

**Contentions:**

Mr Venu Gopal, learned counsel for the appellant has raised only two points before the Court. In the first place, he submitted that even though the State Act was repealed on 6-9-1977 during the time that it was in force, it was wholly repugnant to the provisions of the Code, the Corruption Act and the Criminal Law Amendment Act and by virtue of Article 254(2) of the Constitution of India the provisions of the aforesaid Central Acts stood repealed and could not revive after the State Act was repealed. The constitutional position, it is submitted, was that even though the State Act was repealed the provisions of the Central Acts having themselves been protanto repealed by the State Act when it was passed could not be pressed into service for the purpose of prosecuting the appellant unless those provisions were re-enacted by the appropriate legislature. A number of grounds were raised by counsel for the appellant in support of the first plank of his argument that the State Act was repugnant to the provisions of the Central Acts as a result of which the former was rendered void.

Secondly, it was argued that even assuming that the State Act has ceased to exist and the Central Acts apply to the facts of the present case, the appellant cannot be prosecuted under any of the Sections of the Penal Code or the Corruption Act, because being the Chief Minister of the State at the relevant time he was not a public servant as defined in section 21 clause (12) of the Indian Penal Code. The argument was that by virtue of the position that the appellant enjoyed as Chief Minister there was no relationship of master and servant between him and the Government and he was acting as a constitutional functionary and, therefore, could not be described as a public servant as contemplated by section 21(12) of the Penal Code.

**Judgement:**

The Supreme Court held that the State Act was not repugnant to the Central Acts and therefore it did not repeal the Central Act which continued to be in operation even after the repeal of the State Act creates distinct and separate offences with different ingredients and different punishments and does not in any way collide with the Central Acts. The State Act is rather a complimentary Act to the Central Act. The State Act itself permits the Central Acts to come to its aid after an investigation is completed and a report is submitted. The State Act provides that the 'public man' will have to be prosecuted under the Central Acts.

The question of repugnancy between the Parliamentary legislations and State legislation arises in two ways. First, where the legislations are enacted with respect to matters allotted in their fields but they overlap and conflict. Second, where the two legislations are with respect to the matters in the concurrent list and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first by virtue of non-obstacle clause in Article 246 (1)<sup>4</sup> and in the second by reason of Article 254 (1)<sup>5</sup>.

In *Deep Chand v. State of U.P.*<sup>6</sup>, the validity of U.P. Transport Service (Development) Act was involved. By this Act the State Government was authorised to make the scheme for nationalisation of Motor Transport in the state. The law was necessitated because the Motor Vehicles Act, 1939 did not contain any provision for the nationalisation of Motor Transport Services. Later on, in 1956 the Parliament with a view to introduce a uniform law amended the Motor Vehicle Act, 1939, and added a new provision enabling the State Government to frame rules of nationalisation of Motor Transport. The Court held that since both the Union Law and the State Law occupied the same field, the State Law was void to the extent of repugnancy to Union Law.

### **Conclusion:**

After the study of this case and Doctrine of repugnancy it can be concluded that the repugnancy generally arises when

1. there is a clear and direct inconsistency between the Central Act and the State Act,
2. such an inconsistency is absolutely irreconcilable and
3. the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. It can also be said that in situations where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy. In situation where however a law passed by the State comes into collision with a law passed by Parliament on an

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<sup>4</sup> Constitution of India, Art. 246 (1).

<sup>5</sup> Constitution of India, Art. 254 (1).

<sup>6</sup> 1959 AIR 648.

Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254. Therefore Article 254 (2) is an exception where the State law prevails in situation of conflict between State and Central law.

