

Hatimali and anr. Vs. the Crown

Hatimali and anr. Vs. the Crown

SooperKanoon Citation : sooperkanoon.com/337769

Court : Mumbai

Decided On : Jun-20-1949

Reported in : AIR1950Bom38; 1950CriLJ427

Judge : Hemeon, J.

Appellant : Hatimali and anr.

Respondent : The Crown

Judgement :

ORDER

Hemeon J.

1. The applicants, Hatimali and Turabali were convicted and sentenced Under Sections 7 and 10, Essential Supplies (Temporary Powers) Act, 1946, to pay fines of Rs. 20,000 and Rupees 6000 respectively by the Section 30-Magistrate, Nagpur; and in appeal the Sessions Judge, Nagpur, altered the convictions to convictions under Kr. 81 U) and 117 of the Defence of India Rules, but maintained the sentences. The applicants have now come up in revision to this Court.

2. They are partners of a firm which carries on in Nagpur the business of iron and steel goods under the name 'Khan Sahib M. Hassonjee and Sons' and is a registered stockholder. The applicants were subject to the control of the Regional Deputy Iron and Steel Controller, Bombay, who by the order Ex. P-22, dated 27th August 19i6, issued, under Clause 11 of the Iron and Steel (Control of Distribution)

Order, 1941, directed all stock holders to declare their stock on 1st September 1946, as it was intended that sales of iron and steel goods were to be controlled after 31st August 1946. Under that order also stock holders were required to declare the stocks of such goods on or before 14th September 1946,

3. In September 1946, the Defence of India Rules were in force and the order Ex. p. 22 of the Regional Deputy Iron and Steel Controller was as shown, under cl. 11 of the Iron and Steel (Control of Distribution) Order, 1941 which had been made under Defence of India, Rule 81 (2). Contravention of that Order was punishable Under Section 81 (i) *ibid*-

4. The applicants made the declaration Ex. P-15 and it was received in Bombay on 14th September 1946, Next day, the police sealed the applicants' godown and from 16th to 19th September 1946 seized the applicants' registers and goods. The sealing of the godown and the seizure of the goods had been done in connection with some other matter which was under investigation, but as the police considered that the declaration submitted by the applicants was untrue, the seizing Sub-Inspector made the report Ex. P 8 on 9th November 1946 and investigation into the present case began.

5. Some iron and steel goods were placed by the direction of the Iron and Steel Controller of the Central Government at the disposal of the Provincial Government for distribution to agriculturists and those goods were sold by the Central Provinces and Berar Government through various merchants, including the applicants, who were registered as owners of yards for the sale of such goods. The applicants were also scrap merchants.

6. The trial Court held, as shown, that the applicants had not made a true declaration in compliance with the order Ex. p. 22 and they themselves admitted that in some instances the declaration was not in accordance with the stock of goods. They claimed, however, that they were not bound to declare some of the goods and that in some cases there might have been mistakes through oversight. They also asserted that as they had reserved materials for their East Barkuhi Colliery, the Central Potteries Ltd., Nagpur and Nagpur Glass Works they had not shown them in the stock return. There were also claims that some material had

been reserved for the erection of a third storey to their house, that material which did not belong to them was merely stocked with them and that steel flat bars had not been shown in the return as Government had ordered them to prepare beam soales. Stress was also laid on the contention that they acted in a bona fide manner at and after the submission of the declaration Ex P-15.

7. That declaration did not reveal the possession of iron pipe³, the total length of which was 2800,' and the applicants claimed that the nondisclosure was due to their impression that they were not required to disclose them. That there were cogent reasons for an impression of that kind will be clear from the fact that the Regional Deputy Iron and Steel Controller found it necessary to issue to all registered stockists the cyclostyled memorandum Ex. D-I, dated 1st November 1946, which is, because of its relevance to this part of the case, reproduced in extenso:

Further to the instructions incorporated in this office letter Bom/608 of 27-8-46 you are hereby directed to submit copies of invoices for all supplies of controlled categories of Iron and Steel which have been received in your stocks since 31-8-46, and which may arrive from now on, to the following authority:

S. H. Aole Esqr: Provincial Steel Rationing Officer C. P. & Berar, Secretariat Nagpur. The Iron and Steel Controller is also pleased to authorize you to dispose of steel of the controlled categories mentioned in Sub, 2 to the Iron and Steel (Control of Production and Distribution) Order 1941 to any person surrendering a permit issued by the Provincial Iron and Steel Rationing Officer above, and to no other person.

Your attention is further drawn to the fact that Pipes, Tubes and Fittings have since 1911 been included in the Schedule of controlled categories of Iron and Steel, and the instructions both in this letter and No. Bom/608 of 27-8-46 therefore apply to this material. If you omitted to declare any stocks of this category as on 1st September, due to a genuine misapprehension, the omission will be overlooked if it is rectified immediately. A supplementary declaration should be sent to the above Authority direct together with your reports of subsequent arrivals.

The final paragraph of my letter Bom/608 of 27-8-46 may kindly be deleted. The reference cl 01, 7,. Iron and Steel Control Order was made in error,, the clauses having being [sic] deleted sometime ago.

8. This memorandum was supplementary to the letter Ex. P 22 of 27th August 1946 and its concluding paragraph showed that the Begional Deputy Iron and Steel Controller himself had been previously unaware of a change in the law. The memorandum also declared that a, genuine omission to declare stocks of the category in question as on 1st September 1946 would be overlooked if it were rectified immediately, and as the applicants rectified the omission by is rating a return of pipes shortly afterwards to the aforesaid Regional Controller, it was clear that they had complied with the direction in the memorandum. I am also satisfied that their previous omission was due to a genuine misapprehension.

9. The same applied to the non-disclosure of the large quantity of material reserved for the Central Potteries Ltd. This reservation resulted from the letter Ex. D.E., dated 26th August 1946, from that concern and the applicants' firm is reply thereto issued the letter Ex. D-6 intimating its booking of the angles and bars specified therein. During the investigation of the case D. L. Verma (P.W. 3) had called for explanations regarding discrepancies and to quote his-own words:

List of materials found in excess was said to have been reserved for oertain customers. The letters of customers were shown to me.

The report Ex. p-18 also contains a reference to the Central Potteries Ltd , and be too does the applicants' written statement. Moreover, Vishnu Phadke (D. w. 1), managing director o that business, had shown Ex. D-6 to the police when they made inquiries from him regarding the transaction in question, and after the applicants had sent to the Begional Deputy Iron and Steel Controller, Bombay, the letter Ex. D. 3, dated 23rd October 1946, in which they referred to their reservation of goods for the Central Potteries Ltd., he sent them the memorandum Ex. D-2 in which be pointed out that although their omission of the items was irregular, he was prepared to regard their action as bona fide and to recommend to the Provincial Steel Officer the covering of the transactions with his permits in order to legalise the position. A copy of this memorandum was issued with the following

endorsement to Shri S. H. Aole, Provincial Steel Rationing Officer :

I am satisfied that the firm acted in good faith, inasmuch as I would readily have issued the permit necessary to regularise those transactions after 19-46, and they had nothing to gain by the irregularity. I would suggest, therefore, if the end-use is approved by you, you issue your own permits to cover the sales. If the end-use is not approved, the items should of course be added to the stock as originally declared and those concerned notified to cancel the order.

The Regional Deputy Iron and Steel Controller thus gave cogent reasons for believing that the applicants had acted in good faith and it seems to me also that their non-disclosure of the material reserved for the Central Potteries Ltd., was not actuated by mala fides or by its desire to conceal the existence of that material.

10. The applicants' firm had in response to the indent ex. d-7, dated 22nd August 1946, reserved for the Nagpur Glass Works Ltd., the iron angles specified in ex. D-8; and they had referred to them in their letter Ex. D-3 to the Regional Deputy Iron and Steel Controller, Bombay, who as is shown, sent the reply Ex. D 2 to which reference has already been made. The Provincial Steel Officer eventually issued the permit Ex. D 9 on 1st September 1947 in respect of the angles in question to Digamber Ogale (D. W. 2), managing director of the Nagpur Glass Works Ltd., but when he asked the applicants to give delivery they told him that the material was seized and he, accordingly, despatched the letter Ex. D 10, dated 7th September 1947, to the Provincial Steel Officer. The nondisclosure of the iron angles by the applicants was not in my view the result of bad faith.

11. Material had also been reserved for the East Barkuhi Colliery which is situated in the Chhindwara district and belongs to the applicants and for the construction of their house, but that material which was referred to in their letter Ex D-3 was covered by the letter ex. D-2 from the Regional Deputy Iron and Steel Controller who was, as shown, satisfied that they had acted in good faith. I am of the same opinion and will at a subsequent stage of this order refer to the legal consequence of this.

12. The declaration Ex. p-15 omits reference to 23 flat bars 14' long and 61 flat bars 15' long which, according to the applicants, belonged to Adam Ali (P.W. 3) who permitted their storage in their godown. Adam Ali, a brother of the applicant Hatimali, ceased to be a partner of the applicants' firm in 1944. His version was that the bars shown in the invoice Ex. p-12 had been received by him from Messrs. Tata and Sons, that they were 126 in number and that after he had removed 42 of them the remaining 84 stayed in the godown. The invoice, however showed that the bars referred to therein were all 14' long and it follows that the applicants' representation regarding the 61 bars was untrue. It was also improbable that the 23 bars belonged to Adam Ali. The bars mentioned in Ex. P-12 were taken delivery of on 2nd March 1946 and it was improbable that Adam Ali, who has a business of his own, would have allowed them to remain for such a long time in the godown of his erstwhile partners. This material too is not covered by Ex. D-2 and it was admittedly not defective.

13. Another item which was not disclosed in Ex. p-15 consisted of 15 pieces of mild steel flat bars and the applicants' plea concerning them is that they required them for the preparation of 68 beam scales in accordance with the order Ex. D-14, dated 16th August 1946, of the Deputy Director of Agriculture, Southern Circle, Nagpur. Girdharilal (d. w. 5), who made the scales, claimed that Hatimali had supplied him with the materials for their preparation with the exception of 15 flats which were not available as they had been seized by the police. Because of this, he continued, he purchased the remaining flats required from second-hand material and was reimbursed therefor by Hatimali. A purchase of that kind was unlikely as the control had been applied from 1st September 1946, but be that as it may, the applicants were not justified in not disclosing the 16 bars which had not been used prior to that date. Clearly, stock unused before then constituted stock held by them as registered stock-holders.

14. Although the declaration Ex. p. 18 indicated that there were 20 mild steel round bars, 15' long and 1 7/2' in diameter, in the applicants' possession, Bashir (P.W. 2), Sub Inspector, did not find bars of these dimensions when he effected seizures on 18th September 1946 at their godown in the vicinity of the Itwari railway station. They were also not found there next day when D. L. Verma (P.W.

3), Sub Inspector, made the seizures shown in Ex. P-4. When, however, the trial Magistrate visited the godown on 14th December 1946, he found bars of those dimensions in an open yard by the side of the compound fencing; and the applicants contended that they could not have had a motive for disclosing stock of which they were not in actual possession. Although the suggestion that the two police officers failed to see these long bars does not commend itself to me, I am unable to resist the applicants' contention to the effect that they could have had no motive for disclosing stock which they did not actually possess. In other words, the entry concerning those bars in the declaration Ex. P-16 might well have been the result of inadvertence or carelessness and not necessarily the result of bad faith or dishonesty.

16. In a schedule appended to their written statement the applicants have shown as defective the following undeclared articles:

(i) 13 square bars 1J', (ii) round bars of which 2 were reserved for the Easi Barkuhi Colliery, (iii) 28 black Bheets reserved for the Bame Colliery, (iv) a black sheet, (v) Iron angles of which some were reserved for the Nagpur Glass Works Ltd., (vi) flat bara reserved for the East Barkuhi Colliery, Central Potteries Ltd., and the construction of their house, (vii) 4 corrugated sheets, and (viii) Flat Bar Spring Cuttings. As defective goods were not liable to be declared, it was the duty of the prosecution to establish that the articles shown in the schedule were not defective, but it was in this respect handicapped by the fact that although the applicants maintained, as they were bound to maintain, stock registers of goods of the agricultural quota, their invoices and registers in respect of goods which were not of that quota could not be found.

16. The prosecution was, therefore, required to enlist the services of Shri H. S. Murti (P.W. 8), a qualified engineer, who had previously given expert evidence in other places concerning iron and steel materials. He found, as his report Ex. P-24 shows, that iron angles, galvanised pipes and mild steel flat bars were in good condition and in the witness-box he made the following statements:

I took about one hour in examining the material in this case. The material noted in my report Ex. P-24 was all the material that was examined by me and shown to

me. I also examined Borne angles but the Bame were found defective and not noted in my report All the materials examined by me and not inoluded in Ex. P 24 were non-standard or defeotive materials.

17. The report of Shri Murti was stigmatised as being perfunctory and it appeared from the evidence of D. L. Verma (P.W. 3) that only some of the articles had been given to him for examination, Nevertheless, the letter Ex. P 14 of 12th September; 1946 from the applicants to the Regional Deputy Iron and Steel Controller which was written to supplement the declaration Ex, p 15 did not contain an assertion that any of the material referred to in it was defective; and the necessary inference is that it was not in that condition. That material consisted of iron angles and flat iron bars for the Central Potteries Ltd. iron angles for the Nagpur Works Ltd., round bars, flat bars and iron sheets for the East Barkuhi Colliery and flat iron bars for the building of the applicants which was under construction. It follows that the claim in the schedule that round bars, flat bars and black sheets for the Colliery, iron angles for the Nagpur Glass Works Ltd., flat bars for the construction of the building and flat bars for the Central Potteries Ltd., were defective was untrue. In other words, I have no doubt of the fact that the material concerning which the applicants were charged was not defective material but was, on the other hand, material which can be described as perfect or up to standard.

18. Although the applicants had in their possession 8 pieces of square bars -of which one was 17' long and 7 were 16 long, they disclosed only 7 pieces 17' long in ex. p-18. Similarly,. Ex. p. 16 shows only 16 mild steel flat bara although they had 17 of them in their possession. These flat bars were found to be perfect by Shri Murti and their inclusion as well as that of the-square bars in Ex. 1M5 connoted that they were-not defective. The suggestion that the undisclosed square bar and flat bar were defective may, therefore, be readily dismissed, although the possibility that their non-disclosure was inadvertent cannot be excluded, as they were found in different places. These articles were not, however, covered by Ex. D-2 and the applicants must be adjudged liable for their non disclosure in Ex. p-15.

19. The position thus is that the applicants are liable in respect of:

(i) 84 flat bars alleged to have belonged to Adam Ali.

(ii) 16 pieces of mild Bteel flat bars,

(iii) 1 square bar, and (iv) 1 mild steel flat bar. Concerning the other items I have, as shown,, held that their non-disclosure was not the result of bad faith and was due to a genuine misapprehension on the part of the applicants. In Snnivas Mall v. Emperor A.I.R. 1947 PC 136 : 26 pat. 460 their Lordships of the-Judicial Committee of the Privy Council made the following observations :

They see no ground for saying that offences against those of the Defence of India Rules here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind.....Offences which are within that class are usually of a comparatively minor charactet

20. Their Lordships bad in that case approved of the judgment of Wright J. in Sherras v. De Butzen (1895) 1 Q. B. 918 : 64 L.J.M.C. 218 and expressed their agreement with the view of the Lord Chief Justice of England in Brend v. Wood (1946) 110 J. P. 917 : 175 L. T. 806 The Lord Chief Justice had in that case made the following observation :

It should first be observed that at common law there must always be mena rea to constitute a crime ; if a person can show that be acted without mens re a that is a defence to a criminal prosecution. There are statutes and regulations in which Parliament has been fit to create offence and make people responsible before criminal Courts although there is an absence of menareft, but It is certainly not the Court's duty to be acute to find that mena rea is not a constituent part of a crime. It is of the utmost importance for the protection of the liberty of the subject that a Court should alwuya bear in mind that unless a statute, either clearly or by necessary implication, lulesout mene res as a constituent part of a crime, the Court should not find a man guilty of an offence agate the criminal law unless he bus a guilty mind.

I should be sorry to think that in any case where the cheerio of the offence is an intent to deceive if the man charged proves that he acted in good faith and was innocent of intent to deceive the Court would hold that he should nevertheless be convicted of intent to deceive.

21. These authorities and emphatic remarks are of pertinent value to that part of the present case which relates to the omission to declare the stock of iron pipes referred to in paras. 7 and 8 *supra* and the material covered by Ex. D-2 as well as to the declaration of 20 mild steel round bars which were not found during the investigation. The argument of the learned Additional Government Pleader that as soon as these acts or omissions took place the offence was complete would have succeeded if there had been a provision or implication in the relevant law which made offenders liable in the absence of *mens rea*. Here, however, there is no such provision or implication and the consequence is that an accused cannot be adjudged guilty of an offence unless he has a guilty mind. I have shown that the applicants acted or might well have acted in a bona fide manner be far as this part of the case is concerned ; and it follows that there was an absence of *mens rea*. The findings that they were criminally liable were, therefore, erroneous and cannot be sustained.

22. Before proceeding to examine the question of sentences, I must deal with some legal points which were raised by the applicants' learned Counsel. First there was the contention that the charges as framed were vague and defective, but it seems to me that when regard is had to the complicated nature of the case the charges *pro tanto* represented the case which the applicants had to meet. They themselves were fully apprised of the case against them and, in fact, did their best to meet it. No prejudice was occasioned to them by whatever vagueness or defectiveness there may have been in the charges and in these circumstances S. 87, Criminal P.C., will come into play.

23. The claim that the applicant Turabali was not liable cannot prevail. It is true that in *In re Swaranath Bhatia* A.I.R. 1948 Mad. 427: 49 Cri. L.J. 570 Govindia Menon J. was of the view that in Defence of India B. 122 the words 'other body corporate' cannot apply to a partnership registered or unregistered and that the presumption under that rule regarding a contravention committed by a company or other body corporate cannot apply in the case of a partnership. That learned Judge was, however, also of the opinion that a partnership falls within the scope of Defence of India B. 121 for the reasons that under the General Clauses Act a person includes any company or association of bodies or individuals whether

incorporated or not and that the substitution of this definition for the word 'person' in the rule would for the attempted contravention, abetment, attempted abetment or the doing of any act preparatory to a contravention of any of the provisions of the Defence of India Rules or of any order made thereunder make a partnership liable for the contravention of that provision or order. In other words, his view was that as the partnership as such had no-existence apart from the individuals constituting the firm, every partner who failed without lawful excuse to secure compliance with an Order made under the Defence of India Rules shall be deemed to have contravened the provisions of that Order.

24. On this view Turabali would be liable-with Hatimali for the acts and omissions in question, although Hatimali was the sole signatory to Ex. p-L5. There was also material to indicate that Turabali was not the detached figure which he was represented to be, Although-Ismail Bhai (d. W. 4), another partner, stated that Hatimali was in charge of the hardware department, he also declared:

Turabali works in hardware department. Turabali sits in the iron shop. Hatimbhai looks to outside worth or going to control offices Calcutta and also attends the office of the hardware department.

As this witness is in charge of the general shop and with his father supervises buildings, it is clear that the hardware section was controlled by his brother Turabali and cousin Hatimali Further, there was the positive evidence of D. L. Verma (P.W. 3) to the effect that during the investigation Turabaluassisted in the measurement operations, that the seizures were made in his presence and that the seized material was entrusted to him on supratnama. The illation that he was aware of the contents of Ex. P-16 and the non-disclosure of material is, therefore, inescapable; and it would also appear that he rather than Hatimali was the real supervisor of the work of the hardware department.

25. The contention that; Defence of India E. 117 was inapplicable rested on the argument that the applicants were not required by Defence Of India Rule 81 to furnish the declaration or the information in it but were so required by an order made under that rule. The learned Additional Government Pleader in countering this contention relied on the provisions of Defenoe of India Rule 6, but, as was

pointed out by Meredith J. in *Dan Mall Sharma v. Emperor* : AIR1944 Pat1 x it was only after this rule had been amended in January 1942 that it could be said that anyone failing to comply with the Mica Control Order, 1940, could be said to have contravened only the Order but not the provisions of the rule (i.e. Rule 81) itself. The point is not, however, of other than academic interest here, as the contravention of the relevant Order is an offence under Defence of India Rule 81 (4).

26. I am, I must confess, unable to discern the force in the contention that the expression 'public servant' in Defence of India Rule 130 (1) did not include a police officer and that it was, therefore, not open to the trial Court to take cognizance of the contravention in question on the report in writing of D. L. Verma (P.W. 3), Sub-Inspector. That he was a public servant for the purposes of the rules is clear from the definition of 'public servant' in Defence of India B. 2 (10); and Defence of India Rule 130 (1) lays it down that no Court or Tribunal shall take cognizance of any alleged contravention of the rule³ or of an order made thereunder except on a report in writing of the facts constituting such contravention made by a public servant. The charge sheet, which is the report in writing, was made by D. L. Verma and it clearly sets out the facts constituting the contravention in issue. There was thus full compliance with the provisions of Defence of India B, 130 (1). The offence was a cognizable offence; and as Gruer J. held in *Emperor v. Beni Madhao* A.I.R. (1936) Nag. 150 : A.I.R. 1936 Hag 143 : 88 Cri. L.J. 175 the report of a police officer, whether in a non-cognizable or in a cognizable offence, does not amount to a complaint;.

27. The question of the sentences remains. The trial Court fined Hatimali Rs. 20,000 and Turabali Beacon and these sentences were maintained in appeal. These fines must be substantially reduced in view of my findings that the applicants' nondisclosure related only to the items set down at the beginning of para. 19 supra. As the value of those items was at the most only about Sections 300 the offence was not of any great magnitude and the trial Court found that there had not been any 'black marketing.' The fines are reduced in the case of each applicant to Rs. 1000 and the balance if paid shall be refunded to them. In default of payment each of them shall undergo two months rigorous

imprisonment.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com