**The State of Mysore Vs. K. Basappa**

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**Court** : Karnataka

**Decided On :** Sep-05-1952

**Reported in** : AIR1953Kant75; AIR1953Mys75

**Judge** : Medapa, C.J. and ;Vasudevamurthy, J.

**Acts** : Defence of India Rules, 1939 - Rules 18(2), 18(4) and 81; Constitution of India - Article 141; Code of Criminal Procedure (CrPC) , 1898 - Sections 32, 417 and 562; Indian Penal Code (IPC), 1860 - Sections 40; Essential Supplies (Temporary) Powers Act

**Appeal No.** : Criminal Appeal No. 59 of 1951-1952

**Appellant** : The State of Mysore

**Respondent** : K. Basappa

**Advocate for Def.** : V. Krishnamurthi, Adv.

**Advocate for Pet/Ap.** : A.R. Somnath Iyer, Adv. General

**Judgement** :

1. The accused was tried and convicted by the City Magistrate, Mysore, for en offence under Rule 81 (2) and (4), Defence of India Rules read with Act 15 of 1947 and sentenced to undergo simple imprisonment for one week and a fine of Rs. 1,000/- and in default of payment to undergo S. I. for one month more. On appeal

the then Principal District and Sessions Judge, Mysore Division, set aside the conviction and sentence and acquitted him. The Government have preferred this appeal against that judgment.

2. The case against the accused is briefly as follows: On 10-11-1948 the Deputy Commissioner, Mysore District, issued a notification which was published in the Mysore Gazette on 11-11-1948 whereby he called upon all the stockists of paddy and rice to furnish a true declaration of the correct stocks of the said foodgrains held either for himself or on behalf of others to the Rationing Officer, Mysore City, if the stocks were held in Mysore City. This was to be done on or before 20-11-1948 and the purpose of the notification was stated to be with a view to maintain supplies and services essential to the life of the community. The declaration had also to state the place or the building where the stock was stored.

3. In response to this notification the accused gave a declaration Ex. P-1 dated 20-11-1948 that he held a stock of 95 pallas of paddy in Thibbanna Rice Mills of which 85 pallas were for the use of his excise employees and the rest 10 pallas was meant for the use of himself and his family. On 5-12-1948, P. W. 5, the Police Daffedar who was then in charge of the Mandi Police Station in Mysore, was asked by the Sub-Inspector of Police, Anti-corruption Branch, to conduct a search of the Thibbanna Rice Mills, which is also known as Shankarananda Rice Mills, as information had been received that the accused had kept paddy in that Mill without a permit. He reported this matter to P. W. 6 who was then the Inspector of that Division and they proceeded to the Mills to make the search. Three of the rooms in that Mill were found closed and under lock of the accused. The locks were then sealed and on the next day, i.e. 6-12-48, the rooms were got opened and searched in the presence of the accused. It was then discovered that the accused had stocked in bags and loosely 204 1/4 pallas of paddy. This entire quantity was claimed by him as his and it was seized under a mahazar Ex. P.-2(a). After further investigation a charge was laid against the accused and his son in C. C. No. 488 of 48-49 on the file of the then City Magistrate, Mysore, on 23-12-1948. The case was tried and the accused persons were discharged. That order was set aside in revision by the Principal District and Sessions Judge, Mysore, in Cri. Revn. Petn.No. 6 of 1949-50 as against the present accused only. He was then tried

afresh in C. C. No. 452 of 50-51 and was convicted by the City Magistrate as aforesaid.

4. In Court also the accused admitted that the paddy so discovered was his and he does not deny that he made the declaration Ex. P-1. Those facts have also been fully established by the evidence for the prosecution. P. W. 1 Ranga Ramiah, a clerk of the Rationing Officer in Mysore, has deposed that the declaration Ex. P-1 though it bears date 20-11-48 reached the office of the Rationing Officer only on 24-11-1948 and that it bears the initials of the Rationing Officer Mr. D.J. Balaraj for having so received it. It has been duly registered in the office and the accused has not given any other declaration to that office. He has been examined at great length but apparently to no purpose and even in this Court the learned Counsel for the accused has not even referred to that evidence, much less challenged it. P. W. 2, a retired Military Officer, P. W. 3 Basaiah, the man who measured the paddy seized, Puttaswamiah the proprietor of a neighbouring Rice Mill, P. W. 5, the Police Daffedar and P. W. 6, the Inspector of Police, have all spoken about the search and the discovery of the paddy in the mill. On this evidence, apart from some grounds based on points of law which have been put forward for the accused and which will be examined later on, there is no room for any doubt that the accused had made a declaration which was false, to the Rationing Officer, to whom he was bound to make a true declaration of the stock of paddy held by him and was 'prima facie' liable to be punished for a violation of that order.

5. It was pleaded for the accused, however, that he had made an application on 22-11-1948 for a permit to enable him to hull 60 pallas of paddy to D. W. 2 (Mr. G.N. Puttanna) the then Food Assistant to the Deputy Commissioner in Mysore, and that he had stated in that application that he had declared 95 pallas of paddy in the Ration Office and had got about another 100 pallas of paddy in Thibbanna Rice Mills. This application, it is urged, would, taken along with Ex. P-1, negative the suggestion that the accused had any intention of making any false declaration with regard to the total quantity of paddy in his possession. The learned City Magistrate was of the view that apart from issuing a Hulling Permit Ex. D-8, dated 4-12-48, D. W. 2 or anyone else did not communicate to the Rationing Officer the additional quantity mentioned in Ex. D-7. Moreover D. W. 2 had stated that it was

usual to ascertain before the issue of Hulling Permits, the stock which was with an applicant therefor, and he had treated the information conveyed in Ex. D-7 to have been given merely in furtherance of that requirement. The accused had made a separate and independent declaration in Ex. P-1 which suppressed from the Rationing Officer's knowledge the existence of over 100 pallas of paddy. Ex. P-1 could not in the circumstances be considered to be a true declaration in response to the Deputy Commissioner's notification and the accused was therefore guilty.

6. It is difficult to follow the reasoning of the learned Sessions Judge or gather from his judgment the exact grounds on which he holds that the accused is not guilty. It is too general and merely refers in a rather confusing wayto the arguments which were put forward before him and does not set out what the prosecution had to prove and how in his own opinion it has failed to prove it or his criticism of the evidence or the reasons for his conclusions therefor or how the accused has rebutted the effect of the evidence for the prosecution or where the lower Court has wrongly appreciated the evidence or misapplied the law. The learned Sessions Judge has not disbelieved the prosecution case that the accused made a declaration as per Ex. P-1 nor does he say that it was a true declaration. He has also agreed with the Magistrate that the appellant had stocked the paddy in the mill. He was also of the opinion that the subsequent decontrol order may not have the effect of nullifying the effect of the Deputy Commissioner's notification altogether as appears to have been argued before him. He posed to himself the questions whether Ex. D-7 amounted to a declaration within the requirements of the notification and if it did not) whether the accused should be considered to have made a false declaration by stating in Ex. P-l that he had only 95 pallas while actually he held a stock of 204 1/4 pallas in the mills. He recognized that the accused was aware of the fact that he should make a declaration to the City Rationing Officer. He still considered that in the circumstances it was difficult to assert that the presentation of Ex. D-7 to the Food Assistant was not due to any 'bona fide' intention or that it was given with the deliberate intention of keeping from the knowledge of the City Rationing' Officer who could take statutory cognizance of the correct quantity of stock. He therefore felt justified in giving the benefit of the doubt to the accused. This reasoning of his is not at all easy to follow and it is not at all clear what is the evidence for the

prosecution or the conclusion therefrom which was to be doubted.

7. The learned Advocate-General has rightly contended that in para 6 of his judgment, the learned Sessions Judge has chosen to give the benefit of the doubt to the accused after a vague and indefinite reference to some circumstances without clearly setting out what they are and wherein there was any room for doubt in regard to the specific accusation or charge against the accused, viz., that he made a false declaration to the Rationing Officer. The learned Judge has thus, in our opinion, completely failed to see the real point in the case which was whether Ex. P-l was a true declaration or a false declaration. A true declaration had to be made to the City Rationing Officer and if it was found to be false, the circumstance, even if true, that he had disclosed for some reason of his own -- by a side light so to say -- some more stock to some other unconnected officer, cannot affect his liability for making the false declaration Ex. P-1. The case against the accused was not that he presented Ex. D-7 to the Food Assistant with a mala fide or dishonest intention as the Sessions Judge seems to think, but whether he had made a truthful declaration before the Rationing Officer as required by the Deputy Commissioner's notification, particularly when he knew perfectly well that that was the officer to whom he should make the declaration.

8. It appears to have been contended before the learned Sessions Judge, and it has been, argued before us for the State, that the circumstances under which Ex. D-7 has comeinto existence are very suspicious. It is urged that either it might have been presented by the accused through his son sometime after 24th November containing suitable recitals with a view to create evidence in his own favour so that he might escape the consequences of the discovery of the false statement he had made in Ex. P-1 if such contingency arose or that such an application might have been presented after the accused became aware that an enquiry was afoot about the false statement with a view to create some evidence of bona fides. In this connection, reliance is placed on the evidence of P. W. 6, the investigating Officer, and the evidence given by D.W. 2. P. W. 6 has stated that on 7-12-1948 ho examined certain records in the Deputy Commissioner's office in connection with the District Magistrate's notification. In cross-examination he has stated that he saw the application Ex. D-7 in the Deputy Commissioner's office on

17-12-1948 during his investigation. In re-examination he has referred to an entry Ex. D-7 (a) that it was received on 28-11-48 and that he examined the current registers and did not find any entry relating to the receipt of the application Ex. D-7. The learned City Magistrate apparently had his own doubts about Ex. D-7 and he put a few questions of his own to D. W. 2.

9. In examination-in-chief D. W. 2 staled that the hulling permit, apparently Ex. D-8, had been issued on his orders though he had not signed the permit as he was on leave for 8 or 10 days. He took Ex. D-7 to be a declaration as well as an application for hulling permit. In answer to the Court questions D.W. 2 has deposed that a declaration by any resident in Mysore City should be given to the Rationing Officer and not to himself and that he was receiving declarations in respect of any area in Mysore if they sent the same to him. He did not send Ex. D-7 to the Rationing Officer nor did he advise the accused's son to declare the additional quantity of paddy to the Rationing Officer. He did not take any action so far as the declaration portion of Ex. D-7 was concerned and assumed that the mention of paddy in Ex. D-7 was only to show that the accused had in his possession paddy in respect of which he had applied for a hulling permit. He did not take it to be a declaration in response to the District Magistrate's notification because Ex. D-7 was nothing more than an application for a hulling permit. His evidence that he does not know if any register had been kept to note the declarations given to him is rather strange.

10. This is all the evidence with reference to the giving of the application Ex. D-7. It bears no serial number, nor has it apparently been registered in the office. The learned Sessions Judge does not seem to have approved of the eliciting of the answers by the City Magistrate as he refers to that attempt as 'heckling.' Seeing that he was an officer holding a position of some importance and as his evidence in examination-in-chief was opposed to the terms of the notification under which declarations had only to be made to the Rationing Officer and not to himself and as receiving of any such declaration was not justified by any rules or practice, the learned City Magistrate was justified in putting a few questions as apparently the Prosecuting Inspector, who is comparatively a junior officer, might have hesitated to do so.

11. There are some other suspicious circumstances attaching to Ex. D-7. It is dated 22-11-48 and bears a note Ex. D-7(a) by D.W. 2 with his initials that it was received through Sri Channappa and that a permit may be issued as usual for 60 pallas only. It bears another endorsement below which is not very legible and which bears the date 28-11-48. It is explained for the accused that it might mean that it was passed on to the concerned clerk on 23-11-48 to prepare a permit. The permit Ex. D-8 does not make any reference to Ex. D-7. It is argued for the State that in Ex. D-7 the accused says that as 'ragi is not available in the bazaar, he is finding it difficult to supply grains to tappers and that he has to supply rice alone;' and he has asked for the issue of a permit to hull 60 pallas of paddy 'for the use of his tappers and coolies for that month,' i.e. November and the coming month. Yet Ex. D-3 is issued only on 4-12-48 just on the eve of the search. It is urged that a person like the accused would not have allowed this delay to occur in the issue of the permit particularly as he wanted rice for the current month. His son Channappa has not been examined. No explanation is given why he should declare in Ex. P-1 on 20-11-48 that he had only 95 pallas of which 85 pallas were for the use of his excise coolies and state in Ex. D-7 on 22-1148 that he had another 100 pallas of paddy which he wanted to be hulled for the use of his tappers and coolies. 20-11-48 was a holiday being a penultimate Saturday. If Ex. P-l was presented on 24-11-48, as appears from the endorsement Ex. P-1(a), it was easy for the accused and fully incumbent on him to declare the full quantity in his possession to which he had made reference in Ex. D-7 on 22-11-48. There was also no need to have mentioned in Ex. D-7 about the declaration made in Ex. P-1 and such mention can only be of a self-serving nature made with some ulterior object. In these circumstances, it is difficult to resist the conclusion which the prosecution wants to be drawn against Ex. D-7 that it might have been introduced into the office of the Deputy Commissioner sometime after Ex. P-l with a view to create doubts and escape from the consequences of the false declaration already made in Ex. P-1.

12. Mr. Krishnamurthi, learned Counsel for the accused contends that this is not a case in which this Court ought to interfere in appeal against an acquittal and relies upon a decision of this Court reported in -- 'Govt. of Mysore v. Maddura', 19 Mys L J 358 (A). In that case it has no doubt been laid down that this Court will interfere in appeal against acquittal preferred under Section 417, Criminal P. C. only when

the acquittal depends upon a mistake of law or clearly on an unreasonable finding of fact. The decision of t e Privy Council in -- 'Sheo Swamp v. Emperor' was brought to the notice of their Lordships who heard that case and it was contended that in approaching an appeal against acquittal the High Court must apply exactly the same principles as would be applied to a case against conviction and that this Court should go info the evidence and assess its value on the same principles as may be adopted by the trial Court. But their Lordships refused to follow the Privy Council decision and preferred to follow an earlier decision of this Court in -- '10 Mys I R 317' (C). They were of the view that in regard toappeals against acquittals a different standard prevails in the matter of appreciation of evidence and questions of fact to that applicable when an appeal is filed against a conviction. But as pointed out by the learned Advocate-Genera! for the State this Court is now bound under Article 141 of the Constitution by the law laid down in this matter by the Supreme Court.

13. In -- 'Surajpal Singh v. The State', : 1952 CriLJ331 (D) the Supreme Court has pointed out that it is well established that in an appeal under Section 417, Criminal P. C., the High Court has full power to review the evidence upon which the order of acquittal was founded though it is equally well settled that the presumption of innocence of accused is further reinforced by his acquittal by the trial Court and the finding of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons. In -- the Privy Council has held that upon an appeal to the High Court under Section 417, Criminal P. C. from an order of acquittal made by a Sessions Judge without a Jury but with Assessors, Sections. 417, 418 and 423 of the Code gave to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it is found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusion on facts, the High Court should and will always give proper weight and consideration to such matters as the views of the trial Judge as to the credibility of the witnesses, the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, the right of the

accused to the benefit of any doubt and the slowness of an Appellate Court in disturbing a finding of fact arrived at by_ a trial Judge who had the advantage of seeing the witnesses. To state this, however, was only to say that the High Court in its conduct of appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice. It seems, therefore, that when the power of the High Court to interfere against acquittals has been now defined by the Supreme Court, to the extent to which it is different from the rule laid down in -- '19 Mys L J 358' (A), the former must prevail.

14. The learned Advocate-General has also contended that in the present case the High Court is not really being called upon to set aside the acquittal passed by a trying Magistrate but an order of acquittal by a Sessions Judge on appeal. He urges that the rigour of the rule against interference against the orders of acquittal is somewhat less in cases where this High Court is to examine the grounds of acquittal of a person who had been convicted by the trying Magistrate. That contention is not without force. In this connection, he has relied on a case reported in -- 'Emperor v. Mahomed Khan', AIR 1930 Lah 403 (E) where it has been held that whatever may be the value of the judgment of a trial Court which has had the opportunity of seeing the witnesses and observing their demeanour, no such reason can apply where the trial Court convictsthe accused and it is the Appellate Court which acquits. In such a case it was observed that the Sessions Judge was in no better position to weigh the evidence than the High Court and the order of acquittal was set aside as in the opinion of the High Court the offence had been clearly proved against the accused. To a similar effect is the decision reported in -- 'Emperor v. Chattar Singh', AIR 1933 Pesh 27 (F).

15. Mr. Krishnamurthi has pointed out that in -- 'In re Dyavamma', 12 Mys L J 253 (G), while dealing with the revisional powers of the High Court to interfere against an order of acquittal, it has been pointed out that the Government will not as a rule direct an appeal to be preferred against an acquittal where the case is trifling in itself or where the acquittaldoes not involve an erroneous principle of law and not of much public importance requiring correction at the hands of the High Court. We would say with respect that this is no doubt a very healthy rule which the Government should bear in mind when approaching this Court to set aside orders

of acquittal and this Court may refuse to interfere against an order of acquittal if the Government has not observed this rule; but that decision does not define the powers of this Court while hearing an appeal against an order of acquittal. There is no doubt that in the present case the learned Sessions Judge has not kept before him the real point for decision and the same is not In accordance with law and we feel justified in upholding the judgment of the City Magistrate in preference to that of the Sessions Judge.

16. Mr. Krishnamurthi has contended that Rule 31(2) does not empower the Deputy Commissioner to issue a notification like the one with which we arc concerned in this case calling upon persons to declare the stocks held by them. Rule 81 (A) which refers to regulating or prohibiting, keeping, storage, movement, transport, distribution, disposal etc., of articles or things either general or by specified classes of persons and is, in our opinion, sufficiently wide to cover the present case. Such power has apparently never been doubted; and while Mr. Krishnamurthi has not been able to point out any decision which supports that contention, the case in -- 'Karam Chand v. TheCrown', 48 Cri LJ 634 (Lah) (H) is clearly opposed to it. In that case it was held that an order under Sub-rule (2) of Rule 81 contemplates making provisions for making rules for the production, storage etc., of any article or thing of any description whatsoever, and these words are wide enough to include an order where a person is asked to make a return of an article or thing in his keeping or which he has in store.

17. Mr. Krishnamurthi has next urged that the accused has, by making an application as per Ex. D-7 established that he had no mala fide or dishonest intention in making the declaration Ex. P-1. The Deputy Commissioner notification required all stockists to make true declaration of their stock. If the accused is found to have made a false declaration, false to his knowledge, no question of want of 'mens rea' arises. In this connection he has relied on a case reported in -- 'Hatimali v. Emperor', AIR 1950 Nag 38 (I). In that case the accused who were hardware merchants had made an incorrect declaration of their stock when they were required to do so underan order similar to the present. They had failed to disclose certain items of their stock and hence they were prosecuted. It was found that their non-disclosure was not the result of bad faith and was due to a genuine

misapprehension on the part of the accused. There was abundant material in that case to come to the conclusion that their impression was that they were not required to disclose some of the items, an impression which was supported by some memoranda issued by the Controller himself. In those circumstances it was held though they were guilty and were liable to be punished on account of the non-disclosure of certain items concerning other items which were referred to in the judgment, the non-disclosure was not a result of the bad faith but due to a genuine impression on the part of the accused, and that circumstance was relied upon to reduce the sentence on the accused. That decision, therefore, does not seem to help the accused if he is shown to have made a declaration which was false to his knowledge.

18. A decision nearer in point has been cited by the learned Advocate-General. In -- 'Narayana Naik, In re', : AIR1951 Mad261 (J) a licensee sold rice and issued receipts to customers but failed to note their addresses and license number of shops as required by a notification issued under the Essential Supplies (Temporary) Powers Act. A contention was raised that proof of 'mens rea' was necessary. Panchapakesa Sastry J. observed: 'Assuming without conceding that proof of 'mens rea' is necessary, I fail to see why it should be held that there is no such proof in this case.' He pointed out that by saying that 'mens rea' should be established what was required was proof that the petitioner had a guilty mind in doing the act. If he knew that the law and the conditions of the license required that he should comply with certain formalities and with that knowledge he deliberately omitted to make the necessary entries which were required for checking purposes, he did it consciously knowing that what he was doing was a violation of the law which was by itself proof of 'mens rea'. The profit motive or anything analogous to it was not essential.

19. We think, therefore, that this criminal appeal must be allowed. We accordingly set aside the order of acquittal passed by the learned Sessions Judge. The accused is convicted of the offences with which he is charged under Rule 81 (2) and (4), Defence of India Rules read with Act 20 of 1947 and the notification of the Deputy Commissioner dated 10-11-1048. As regards sentence, we have given the matter our anxious consideration. The offence was committed quite a long time

back and the accused has been facing the prosecution in one form or another ever since November 1948. The food controls have since been largely modified and even abolished in some parts of the State. The accused is an elderly man and it is represented that his object in keeping back the information about the actual stock held by him was more to help his excise coolies and tappers who were employed under him rather than make any large personal profit by selling the rice in the black market. The learned City Magistrate has observed that the accused is a prominent merchant and he could not be said to have been unaware what the purpose of the notification issued by the Deputy Commissioner &that; the accused was by his action attempting to deny the use of a large quantity of paddy by the public in a time of scarcity. Such anti-social acts by persons who are educated and well placed in life he rightly felt should be severely punished. We fully endorse those observations. We are also aware that the offence is a serious one and that the accused instead of frankly confessing to the offence has tried to raise a cloud of dust by putting in Ex. D-7 under suspicious circumstances and that if rich or influential persons are too lightly dealt with though they are guilty, the respect for law and order will be seriously impaired. We are, however, inclined to think that in the present case the interests of justice will be sufficiently met by a sentence lesser than that imposed by the City Magistrate. We accordingly sentence the accused to pay a fine of Rs. 1,000/- only and in default to undergo simple imprisonment for a period of one month.

20. Appeal allowed.