

Nand Ram and anr. Vs. Emperor

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Court : Allahabad

Decided On : Jul-18-1947

Reported in : AIR1948All95

Appellant : Nand Ram and anr.

Respondent : Emperor

Judgement :

ORDER

Malik, J.

1. Nand Ram and Laxmi Narain have been convicted under Rule 81(4), Defence of India Rules, read with Clause 4, U.P. Revised Foodgrains Supplementary (Movement) Control Order, 1943, and Rule 47(3), Defence of India Rules, and have been sentenced to one year's rigorous imprisonment and a fine of Rs. 500 each under each count, and in default to undergo six months' rigorous imprisonment.

2. The charges framed against the applicants were as follows:

Firstly - That you, on or about the 3rd day of September 1945 at Orai Railway Station, District Orai, contravened Clause 3, U.P. Revised Foodgrains Supplementary (Movement) Control Order, 1943, inasmuch as you caused 200 bags of gram to be carried by rail from Orai to Gorakhpur which is outside

Cawnpore Region through forged permit Ex. P-4 which was in the name of Prag Narain Suraj Bhan and not in the name of your firm, and thereby committed an offence punishable under Clause 4, U.P. Revised Foodgrains Supplementary (Movement) Control Order, 1943 read with Rule 81(4), Defence of India Rules.

Secondly - That you, on or about the 3rd day of September 1944 at Orai Railway Station, District Orai, used forged permit Ex. P-4 an official document and thus contravened Rule 47(2)(b), Defence of India Rules, and thereby committed an offence punishable under Rule 47(3), Defence of India Rules and within my cognizance, and I hereby direct that you be tried by the said Court on the said charges.

3. Nand Ram was the proprietor of a firm, Ram Sewak Nand Ram. Laxmi Narain was said to be a partner of this firm. Durga Prasad was the head munim of the firm Ram Sewak Nand Ram. The firm wanted a permit to send gram from Orai to Gorakhpur. Durga Prasad came to Ghantaghar at Cawnpore and purchased a permit for Rs. 300. This permit was alleged to have been issued to firm Prag Narain Suraj Bhan of Orai. Suraj Bhan was said to have applied for the permit, but it has been found that he is a boy aged three years only. The permit was originally for Kotdwara, but the Marketing Inspector of Orai, Mr. P.N. Anand, penned through the word 'Kotdwara' and made it a permit for Gorakhpur and initialled it on 2nd October 1944. 505 maunds of gram were sent from Orai, which is in the Cawnpore Region, to Gorakhpur, which is in the Benares Region.

4. The permit purported to have been signed by Mr. M.A. Qadir, Deputy Regional Food Controller. He has come into the witness-box and has denied that it bears his signature. His statement has been accepted by the Courts below which have held that this permit is forged.

5. The permit, after it was purchased, was given to Hub Lal, who was also a munim in the firm of Ram Sewak Nand Earn. Hub Lal has been examined as a prosecution witness and he says that at the time when the permit was given to him the two accused were present. Hub Lal gave it to Din Dayal, another servant, who wrote out the forwarding note etc., and, actually booked the consignment. The consignment purported to be on behalf of firm Prag Narain Suraj Bhan, in whose

name the permit was to firm Murari Lal Madhusudan Das. At the destination the goods were received by Asharfi Lal munim of the latter firm.

6. The defence of Laxmi Narain was that he had ceased to be a partner on the material date and that, in any case, he had nothing to do with the management and knew nothing about the transaction. The defence of Nand Ram was that the entire work of this firm at Orai was being done by Durga Prasad, while he, Nand Ram, used to sit at another shop.

7. Learned Counsel for the applicants has urged that it had become commonly known that permits for transport of grains were being sold at Ghantaghar in Cawnpore and anybody who wanted a permit had only to go there, where for a price a permit would be available, rather than go to the Food Controller's Office where there was every possibility of his being harassed by the clerks and of having to wait for days on t' no purpose.

8. Following, therefore, this usual practice Durga Prasad went to Ghantaghar and purchased the permit. Durga Prasad had no reason to think that the permit was forged, otherwise he would never have paid Rs. 300 for it. It is pointed out that after he had bought the permit he took it to the Marketing Inspector at Orai and told him that he wanted to send the goods to Gorakhpur. The Marketing Inspector made the necessary correction in the permit and initialled it. That was clear proof of the fact that Durga Prasad had no reason to think that the permit was forged and the accused's firm, therefore, had used the permit believing it to be genuine and that whatever irregularity there may have been in its acquisition it was neutralised by the action of the Marketing Inspector. Learned Counsel has urged that, in any case, the accused had no knowledge and had no means of knowing that the permit was forged and as mens rea was an essential element in every crime his clients could not be convicted unless it could be said that they had guilty mind or guilty knowledge or intention. Learned Counsel has further pointed out that the prosecution has not even suggested that the accused knew or had reason to believe that the document was forged. The accused were not likely to know the signature of Mr. M.A. Qadir, the Deputy Regional Food Controller, and if the Marketing Inspector could not detect the forgery and was deceived, there is no

reason to think that the accused or Durga Prasad knew any better. It is further said that the mere fact that, when the permit was handed over to Hub Lal, the accused happened to be sitting in the room would not make them liable. Learned Counsel has also urged that the accused did not themselves make use of the forged permit and the use of the forged permit and the transport of 200 bags of gram were both made by the servants in the ordinary course of their duty in the management of the business and that the accused would, therefore, not be liable for the action of their servants as there was no vicarious liability in criminal law.

9. The fact that the provisions of Clause 3, Food Grains (Movement) Control Order were contravened, inasmuch as there was no permit for transport of food grains from Orai to Gorakhpur is not denied. It is also not denied that Gorakhpur is one of the stations mentioned in Section 3 of the Order and that a permit from the Controller was necessary. It is also not denied that the permit, which purported to be an official document, was forged. Learned Counsel has also frankly admitted that he cannot challenge the finding of the Court below that Laxmi Narain had failed to prove that he was not a partner on the material date.

10. Taking the second point first, I am not prepared to hold that it can be urged that the 200 bags of gram were carried by rail from Orai to Gorakhpur not at the instance of the accused but at the instance of the servants of the firm, nor am I prepared to hold that the forged permit was not used by the accused but by their servants.

11. It cannot be doubted that if the accused had issued orders with respect to this particular consignment that it should be sent from Orai to Gorakhpur and that this permit should be used for that purpose, they could not escape liability. It would be their act done through the agency of their servants. If, instead of issuing a particular direction, there was a general direction to buy permits in the market to send grain, I do not see how the master could claim any lesser liability.

12. There can be no doubt that the sum of Rs. 300 could not have been, paid and Durga Prasad could not have purchased this permit unless he had either particular or general directions to do so. The fact is admitted that the amount is debited in the account books. It is not denied that the servants acted in the ordinary course of

management of the business. Even if in spite of this that a hundi had been issued by Nand Ram to realise the price of the grain and that the permit was handed over to the servants in his presence, I were, not of the opinion that he had knowledge of the transaction, that he had approved of it and that the transaction was carried out in accordance with his directions, as has been found by the Court below, I am prepared to hold that if acting under the general authority given by the master the servant contravenes the Food Grains (Movement) Control Order in the ordinary course of his business, while acting within the scope of his authority, the master cannot escape liability by pleading that he was not informed of the particular transaction. To my mind, therefore, the accused would be guilty even if they had no knowledge about this particular transaction that it had been entered into by Durga Prasad on their behalf in the ordinary course of management of the business of the firm.

13. In *Harish Chandra Bagla v. Emperor* : AIR1945 All90 , I have expressed my opinion on this point. In that case I have said:

A man cannot be guilty by his agent of an illegal act and be held responsible for that act, unless he has given the agent authority, directly or indirectly, to do that illegal act. No one who is an agent for a legal purpose can make the principal responsible for an illegal act, unless the principal has in some way, directly or indirectly, authorised it.

On the facts of this case I am prepared to hold that the accused had authorised the servants, may be indirectly, to do the illegal act.

14. I do not see how the accused can escape liability by the illegal act of the Marketing Inspector altering the forged permit and substituting 'Gorakhpur' in place of 'Kotdwara.' It, no doubt, is an element which can be taken into consideration to decide in favour of the accused that they had no reason to believe -that the permit was forged. This brings me to the consideration of the first question whether the accused can be made liable under the second charge when they had no knowledge and had no reason to believe that the permit was a forged or an altered document. I have already said in some of the connected cases that it was a scandal that the permits which were needed for the strict movement of grain

should have been sold in the manner in which they were publicly sold at Ghantaghar in Cawnpore and that the gross carelessness with which these permits were issued showed that the office of the Regional Food Controller at Cawnpore was not exercising any effective check either on the issue of the permits or on the movement of the foodgrains, but that is a matter with which I am not concerned. I only hope that the Government has taken proper steps against those responsible either for dishonesty on a large scale or gross carelessness which amounts almost to criminal negligence.

15. As the permits were so publicly sold at Ghantaghar and for a price, I am prepared to accept the argument of learned Counsel that neither Durga Prasad nor the accused had any reason to think that it was not a genuine document. It is hard to believe that they would pay a sum of Rs. 300 for a forged permit.

16. The position, however, is that the accused knew that a permit was necessary, and either because they had no hopes that the permit would be issued to them by the office of the Regional Food Controller or because they were not prepared to take the trouble and the risk of applying in due course they decided to obtain the permit in an irregular manner. If, however, it transpires that they were deceived and the permit was a forged document, the question is, should they be held guilty under Rule 47(2)(b), Defence of India Rules.

17. In *R v. Greenberg* (1942) 1942-2 All. E.R. 344, the appellant was convicted of possessing, with intent to deceive, documents resembling clothing coupons contrary to the Defence (General) Regulations, Regn. 82(1)(b). The Court of Criminal Appeal held that:

Once an intent to deceive was proved, mere possession of such document was an offence under Regn. 82, and it was not necessary to prove that the appellants knew they were false.

18. The Defence (General) Regulations, Regn. 81(1) provides as follows:

If with intent to deceive any person...(b) makes or has in his possession any document so closely resembling such a document as aforesaid as to be calculated

to deceive, he shall be guilty of an offence under that regulation.

The language is very similar to Rule 47, Defence of India Rules, with this difference that in our Rule 47 the words 'intent to deceive' are omitted; Rule 47(2) is as follows:

No person shall - (a)...(b) use or have in his possession any forged or altered official document, or any document so nearly resembling an official document as to be calculated to deceive....

Sub-rule (3) then provides:

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years, or with fine or with both.

In *R v. Greenberg* (1942) 1942-2 All. E.R. 344, referred to above, Asquith J. held:

People shall possess such documents at their peril, and the Crown shall not be put to proof that they are not possessed with knowledge of their deceptive or colourable character - always a difficult matter to prove - provided the Crown can establish an intent to deceive by means of or in respect of or in relation to such a document.

The decision of Asquith J. on the point of law as to the construction of the Regulation was upheld by the Court of Criminal Appeal.

19. The point came up for consideration again in an appeal before the King's Bench Division in *Brend v. Wood* (1946) 175 L.T. 306. In that case the accused had used a forged petrol coupon to obtain three gallons of petrol. The coupon had been given to him in a public house by a man whose name he did not know and he had no reason to think that the document was a forgery. On those findings the question was whether the accused was guilty, and the interpretation of Regn. 82(1) of the Defence (General) Regulations, 1939, came up for consideration. Lord Goddard, Lord Chief Justice, held:

It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that, unless a statute either clearly or by

necessary implication, rules out mens rea as a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

Dealing with the case in *R v. Greenberg* (1942) 1942-2 All. E.R. 344, Lord Goddard observed that in that case the clothing coupons had been irregularly obtained. Further, discussing the judgment of the Court of Criminal Appeal, his Lordship held:

In other words, they approved Asquith J.'s ruling that, if the Crown can show that the coupons, or whatever the document may be, have been acquired in a manner not permitted by law, that is enough, but enough in the sense only, in my opinion, that it is enough to establish a prima facie case that the defendant had intent to deceive.

His Lordship further observed:

It follows that if the Crown have given evidence (they must have given evidence in this case because the respondent was convicted on the first summons of acquiring petrol without surrendering a valid coupon, and, they had proved that he had no valid coupon when he acquired the petrol) that the respondent had acquired the coupon in a manner not permitted by law, that establishes a prima facie case which the respondent must answer if he can. If, as is the case, he has satisfied the Magistrate of his good faith in the matter, he negatives the intent to deceive.

On that finding the appeal was dismissed and the Magistrate's order dismissing the information was upheld. According to the last decision, therefore, if the document has been acquired in a manner not permitted by law, it is for the accused to prove his good faith and if he can successfully do that he negatives the presumption of fact, the intent to deceive.

20. I have already said that the words 'with intent to deceive' are not in Rule 47, Defence of India Rules. The question arises whether that should make any substantial difference in the interpretation of the rule. To my mind, the words 'with intent to deceive' having been omitted from Rule 47, by necessary implication, it

must be held that if the document is a forged or altered official document, or any document so nearly resembling an official document as to be calculated to deceive, its use and possession is forbidden by the rule, and the question whether the accused knew that the document was or was not a forged document seems to be irrelevant.

21. Even if this were not so, it being established that the permit which was not transferable, was acquired in a manner not permitted by law, the accused who obtained it in an irregular manner must take the risk of its being forced and must, therefore, be held guilty.

22. I, therefore, uphold the conviction of the applicants under Rule 81(4), Defence of India Rules, read with Clause 4, U.P. Revised Food-grains Supplementary (Movement) Control Order, 1943, and also their conviction under Rule 47(3), Defence of India Rules. In view, however, of the fact that these permits were being so carelessly issued and so freely sold to the public, I cannot place the entire responsibility for the illegal act on the applicants. I, therefore, maintain their fine of Rs. 500 under the first count, but reduce their sentence of imprisonment to the period, if any, already undergone.

23. As regards the sentence under Rule 47(3), as I am satisfied that the accused did not know that the document was forged, I consider that a fine of Rs. 100 would be enough and that no sentence of imprisonment need be imposed.

24. In the result I reduce the sentence of the applicants to the extent mentioned above and dismiss the revision.