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Court : Allahabad

Decided On : Jun-04-1945

Reported in : AIR1946All223

Appellant : Emperor

Respondent : Akbar and ors.

Judgement :

ORDER

Wali Ullah, J.

1. These are four connected references made by the learned Additional Sessions Judge of Basti, recommending that the conviction and sentence passed upon each of the four applicants before him be set aside. It appears that on 9th December 1943 the Provincial Government, in exercise of the powers conferred upon it by Sub-rule 2(a) of Rule 81 of the Defence of India Rules, made an Order, called the United Provinces Cattle, Sheep and Goats (Slaughter) Control Order, 1943. It was published in the U.P. Gazette Extraordinary on the same date. This Order was subsequently amended on 12th January 1944 by means of the Order No. V-3421/C.S., published in the U.P. Gazette Extra ordinary of that date, and again on 15th March 1944 by means of the Order No. 116/XII-D. 72/44, published in the U.P. Gazette dated 18th March 1944. The two amendments, however, are not material for the purposes of the present case. Paragraph 3 of the said Control

Order provides inter alia that no person shall slaughter or cause to be slaughtered or offer for slaughter any goat below two years of age. Paragraph 4 of the Order provided that if any person contravenes any of the provisions of this Order, he shall be liable to punishment with imprisonment for a term which may extend to three years or with fine or with both. The applicants in the four references, viz., Akbar, Anwar, Sabit Ali and Kotar, are butchers by profession.

2. It appears that on 6th March 1944 each of the applicants slaughtered some goats below two years of age in the slaughter house maintained by the Notified Area, Basti. According to the bye laws of the Notified Area, the Veterinary Assistant had to pass the goats as fit for slaughter before they could be slaughtered. The applicants were tried summarily in four separate trials by a learned Magistrate of the first class. Each accused admitted that the goats were slaughtered and that they were below two years of age. It was, however, contended in each case that the goats were slaughtered with the permission of the Veterinary Assistant, Basti, and that the accused was ignorant of the Order passed by the Provincial Government. The learned Magistrate, who decided these cases on 26th April 1944 held that the goats slaughtered by the accused were below two years of age. He also found that the applicants were all unaware of the Order passed by the Provincial Government. He went on to say that even the Veterinary Assistant appeared to be unaware of the Order and so he had passed the goats in question for slaughter. In view of these findings he took a lenient view and sentenced the accused in each case to a fine of Rs. 25 and in default three months' rigorous imprisonment. The four applicants thereupon moved the learned Sessions Judge in revision and it was contended on their behalf that the case could not be tried summarily inasmuch as the offence was punishable with imprisonment which may extend to a period of three years. The learned Sessions Judge, however, repelled this contention. He has pointed out that Rule 130(4) of the Defence of India Rules makes provisions for the summary trial of offences relating to the contravention of any of the provisions of the Defence of India Rules, or of any Order made thereunder as the Central Government may by order specify in this behalf, provided certain conditions are satisfied. He has further pointed out that by Notification No. 5/D.O.(48)43-1, dated 4th March 1944, the Central Government has specified that contravention of Orders made under Rule

81(2) of the Defence of India Rules shall be triable summarily. He has also noted the fact that the prosecution in these cases made the necessary application and that the Magistrate concerned was invested with summary powers. In view of these facts, the learned Sessions Judge very rightly repelled this contention.

3. The next point urged before the learned Sessions Judge was that, having regard to the provisions of Rule 119 of the Defence of India Rules and the finding of the learned Magistrate that the accused in each case was unaware of the Control Order in question, he could not be held guilty of the offence with which he was charged. The learned Sessions Judge, after hearing arguments of learned Counsel on both sides came to the conclusion that the provisions of Rule 119 were not complied with. He further held that there was no proof that the Provincial Government had directed the publication of the Control Order in the Gazette for the purpose of Rule 119. He was accordingly of the opinion that no liability attached to any of the applicants who, as held by the learned Magistrate, were actually unaware of the Order. He has accordingly made these references and in support of his opinion he has referred to the case in *Shakoor Hasan v. Emperor* ('44) 31 A.I.R. 1944 Nag. 40.

4. The question raised is of some importance. It is, therefore, necessary to examine closely the provisions of Rule 119, Defence of India Rules. Rule 119(1) provides for the publication or notification, of Orders in writing made by any authority, officer or person in pursuance of any of the Defence of India Rules. Such Orders have been divided under three heads for the purposes of notification : (1) Orders of a general nature or affecting a class of persons; (2) Orders affecting individual corporation or firm; and (3) orders affecting an individual person (not being a corporation or firm). The appropriate method for notification of the Order in each case is also indicated. The U.P. Cattle, Sheep and Goats (Slaughter) Control Order, 1943, with which I am concerned in this case obviously falls under the first head. In respect of publication of an Order of this character Rule 119(1) provides that the authority, officer or person making the order

shall publish a notice of such an Order in such manner as may, in the opinion of such authority, officer or person, be best adapted for informing persons whom the

order concerns.

Sub-rule (1) finally lays down,

and thereupon the person, corporation, firm or person concerned shall be deemed to have been duly informed of the Order.

The language of this rule is mandatory and, therefore, it must be strictly carried out before the prosecution can ask the Court to presume that the corporation, firm or person concerned must be deemed to have been duly informed of the Order. The notification of the Order in the U.P. Gazette Extraordinary dated 9th December 1943 to my mind only shows that the particular Order was made by the Provincial Government in pursuance of the powers conferred under Rule 82(2)(a), Defence of India Rules. The language used in the notification makes no reference, direct or indirect, to the manner of publication of the Control Order as provided for in Rule 119, Defence of India Rules. From the mere fact of notification of the Control Order in the U.P. Gazette it does not at all appear that the authority responsible for making the Order ever directed its mind to the consideration of the question as to the manner best adapted for informing the persons whom the Order concerned. Further, the record of the present case does not indicate any evidence led by the prosecution to show that the Provincial Government ever took any action in terms of Rule 119, Defence of India Rules. The provisions of the rule to my mind necessitate proof of two matters: (1) it must be shown that the authority making the Order - in this case the Provincial Government - indicated some manner, which in its opinion was considered best adapted for informing the persons concerned; and (2) that such direction given by the authority concerned was actually carried out. In the case in *Shakoor Hasan v. Emperor* ('44) 31 A.I.R. 1944 Nag. 40 a learned Judge of the Nagpur High Court held that the order passed by the District Magistrate under Rule 81 cannot bind the person concerned unless it is published in accordance with Rule 119, Defence of India Rules. It has been further held at p. 42:

This rule lays obligation on the officer making the order to publish notice of such order. The manner in which such notice is to be published is no doubt left to the discretion of that officer. If he adopts a mode of publication, however inadequate

or unreasonable, it is not liable to be questioned in any Court of law. But the burden of proving publication of the notice of that order in the manner contemplated by the officer making the order lies on the prosecution. In other words, it must be shown that the officer making the order himself prescribed the manner of its publication and that the publication was made in that manner. The obligation laid on the officer passing the order is a statutory obligation and it is incumbent on the prosecution to prove that the statutory obligation was duly discharged. The prosecution cannot in such a case merely rely on the presumption of Section 114, Clause (e), Evidence Act, for the only reason that the making of the order and the direction to publish notice of it were official acts.

5. Similarly in *Emperor v. Manguhu Mal Teku Mal* ('44) 31 A.I.R. 1944 Sind 142, two learned Judges of the Sind Chief Court have considered the scope of Rule 119, Defence of India Rules, and have observed thus:

In this case the order in pursuance of the Rule was made by the Collector and before the accused could be convicted of any breach of the order, we think, it should be shown that notice of the order was given in such manner as the Collector in his opinion thought best adapted for the purpose as Rule 119 requires. This does not mean that the Court can substitute for the opinion of the Collector its own opinion, but it does mean that the Court should be satisfied that the Collector has decided on the manner in which the notice of the order should be given and that notice has been given in accordance with the manner the Collector had decided on.

Again, in *Makan Lal v. Emperor* ('45) 32 A.I.R. 1945 Pat. 119, a Bench of two learned Judges of the Patna High Court had to consider the scope of Rule 119, Defence of India Rules, and the effect of non-compliance with it. They upheld the principle laid down in *Shakoor Hasan v. Emperor* ('44) 31 A.I.R. 1944 Nag. 40, viz., that the legal fiction under Rule 119 that when notice had been published the person concerned shall be deemed to have been duly informed of the order is applicable only when it has been proved that everything that was required to be done by the authorities or officer was actually done. At page 120, after referring to the provisions of Rule 119, their Lordships proceeded to consider the merits of the

application before them and then observed:

There is no direct evidence as to the opinion of the Sub-divisional Officer relating to the manner best adapted in his opinion for informing the person concerned of this order or its contents. But the order itself recites that for the information of the public it was being printed. Whether it was actually printed or not we do not know, and if it was printed, how it was distributed is not disclosed. But the clerk of the Price Control Officer has been examined and he states that on 23rd January he sent copies of the notice to the Secretary of the Merchants Association at Deogarh and Madhopur and to the different thana officers for circulation. It may be assumed that this was done in pursuance of the orders given by the Price Control Officer.

In *Emperor v. Rayangouda Lingangouda* ('44) 31 A.I.R. 1944 Bom. 259 two learned Judges of the Bombay High Court, while considering the provisions of it. 119 have observed:

There is no justification for limiting the scope of Rule 119 to orders other than 'notified orders.' The rule simply says orders' and it presumably governs 'notified orders' as well.

Presumably in view of the above decision of the Bombay High Court the Central Government has added Sub-rule (1a) after Sub-rule (1). It reads thus:

Where any of these rules empowers an authority, officer or person to take action by 'notified order,' the provisions of Sub-rule (1) shall not apply in relation to such order, and all persons whom the order concerns shall, upon its notification, be deemed to have been duly informed of it.

This amendment obviously refers to what are known as notified orders, e.g., orders passed under Rule 26(5B) and Rule 130(4) of the Defence of India Rules and it has no bearing upon the question of the notification of an Order like the one in the present case. I find that in a recent case decided by a learned Judge of this Court, *Giridhari v. Emperor* : AIR1945 All291 , it has been held that no order passed by the District Magistrate under the Defence of India Rules can have any legal effect until notice of that Order has been duly published as required by Rule

119 of the Defence of India Rules. It was further held that Rule 119 incorporates a mandatory provision which must be strictly carried out before the prosecution can ask the Court that the accused person¹ was duly informed of the order which he is alleged to have contravened. The decision of the Nagpur High Court in *Shakoor Hasan v. Emperor* ('44) 31 A.I.R. 1941 Nag. 40 was relied upon by the learned Judge in this case. If I may say so with respect, I am in full agreement with the view expressed in the above case.

6. In view of the law discussed above in the four cases before me it is necessary to see if the requirements of Rule 119(1) of the Defence of India Rules have been in any way complied with in any of these cases. As the learned Additional Sessions Judge has pointed out, there is no material on the record to show that the Provincial Government took any action in terms of Rule 119. Mere publication in the Official Gazette, as mentioned already, gives no indication whatsoever that the authority making the Control Order over even applied its mind to the consideration of this rule in regard to the publication or notification of the Order in question. This being the position, it is perfectly clear that the Control Order in question was not 'published' in accordance with the provisions of Rule 119 of the Defence of India Rules. The presumption, therefore, that the persons concerned must be deemed to have been duly informed of the Order does not arise. In view of the findings of the learned Magistrate that the applicants were ignorant of the Order, it must be held that the conviction of the applicants was contrary to law. I accordingly accept all the four references made by the learned Additional Sessions Judge. The convictions and sentences of the four applicants are set aside and the fine, if paid, shall be refunded to the applicant in each case. Let the papers be returned.