

Ram Asrey and anr. Vs. Rex

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Court : Allahabad

Decided On : Jul-14-1949

Reported in : AIR1950All150

Judge : Kaul, J.

Acts : Essential Supplies (Temporary Powers) Ordinance, 1946 - Sections 3 and 8

Appeal No. : Criminal Revn. Applns. Nos. 153 and 154 of 1947

Appellant : Ram Asrey and anr.

Respondent : Rex

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : Saraswati Prasad, ;Jamuna Prasad and ;S.B. Chaudhri, Adv.

Disposition : Application allowed

Judgement :

ORDER

Kaul, J.

1. These two criminal revisions were filed in the Chief Court of Avadh on 15th December 1947. Application No. 154 is made by Ram Asrey and Gaya Prasad

while No. 155 is made by Ram Asrey alone.

2. The material facts are as follows: On 6th January 1947, the applicants were taking two consignments of grain by boats from district Lakhimpur to the adjoining district of Bahraich. They were convicted for having contravened an order dated 26th August 1946, passed by the Regional Food Controller prohibiting export of grain from Kheri district to another district without a permit authorising such export. In each case, the person convicted was ordered to pay a fine of Rs. 75/- and all the grain which was being exported was confiscated to Government. Dissatisfied with this decision Ram Asrey and Gaya Prasad preferred appeals which were heard by the Additional Sessions Judge of Kheri. He noticed that there was no copy of the Regional Food Controller's order for the contravention of which the appellants before him were convicted, on record. Accordingly he sent for the order from the Collectorate. He found on reference to the file on which the order was placed that the 'order had been published'. The appellants before him had admitted that they were exporting grain from Kheri to Bahraich, but pleaded that they were not aware of the existence of the order, with the contravention of which they were charged. The learned Additional Sessions Judge considered the existence of the order as sufficient proof of the appellants' guilt and dismissed the appeal. They came up in revision to the Avadh Chief Court. Their revision applications were numbered 154 and 155 of 1947, as already stated. These applications came up for consideration before Walford J. on 8th March 1948. It was argued before him that as the record stood there was no evidence to prove the existence of any order of the Regional Food Controller or of its due notification or publication. It was contended that the action of the learned Additional Sessions Judge in sending for the record and not giving any opportunity to the applicants to meet 'whatever fact that may have been discovered from that file' was a procedure unwarranted by law. The concluding portion of Walford J.'s order runs as follows;

'To my mind there exists only a technical error in not observing the formalities required in admitting evidence by an appellate Court. The case is undoubtedly a serious one and the applicants ought not to be allowed to take advantage of a mere formal technicality.

I, therefore, order that the case be sent back to the Additional Sessions Judge of Kheri who will re-hear the appeal and if it is necessary to admit any evidence, he will act in accordance with Section 428, Criminal P. C. If the learned Judge finds that the evidence adduced falls short of bringing home the knowledge to the applicants, that an order prohibiting export was duly made and promulgated, he would be entitled to acquit them. In the event, however, of his coming to the conclusion that the evidence produced is sufficient to bring home that knowledge, he will return the case to this Court with his finding.'

In compliance with this order, the learned Additional Sessions Judge recorded evidence. He found that the Regional Food Controller had on 26th August 1946, passed an order No. F 3a/85 directing that no person shall export rice, paddy, jawar, bajra, maize and their mixture or products from any place in the districts mentioned above (including Lakhimpur Kheri) to any place outside these districts except under and in accordance with Military Credit Notes; or on U. P. Government Account under the orders of the Provincial Government or under permits issued by him or the Government. The order further provided that the contravention of the provisions of this order shall be punishable under Sub-rule (4) of Rule 81, Defence of India Rules with imprisonment for a term which may extend to three years, or with fine or with both. The order further provided that the food grain in respect of which the Court is satisfied that the offence has been committed shall be forfeited to His Majesty, unless for reasons to be recorded in writing the Court is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part of the property. The concluding portion of this order reads as follows:

'This order will be posted on the notice board of the District Magistrates Tahsils, Municipal boards, District Boards and all the Octroi posts of the districts mentioned above. The District Magistrates of all the districts will also arrange for its publication by beat of drum in the tahsils adjoining the district borders. Copy of the order will also be posted in the office of the Regional Food Controller, Lucknow, Dy. Regional Food Controller, Bareilly and the marketing inspectors concerned by the order.'

According to the findings of the learned Additional Sessions Judge a copy of the order was pasted on the notice board of the District Magistrate on 5th December 1946, but there was no proof that it was pasted on the Octroi posts. It was definitely proved that it was not pasted on the notice boards of the District Board, Lakhimpur. Compliance with the directions that the order be published by beat of drum was made in Nighasan Tahsil in April 1947, and in Mohamdi Tahsil it was made after 25th March 1947. It will thus be seen that all the directions contained in the order for its promulgation and due publication were not complied with. The learned Additional Judge, however, observed:

'This again in my judgment would not warrant the conclusion that sufficient publication of the notification in question was not made and that as such the appellants could not be fixed with the notice thereof.'

In view of the finding arrived at by him, the case was returned to this Court.

3. The matter has been argued at some length before me. It was contended by the learned counsel for the petitioners that on the learned Additional Sessions Judge's findings it was clear that there was no due publication of the Regional Food Controller's Order. That there was no proof that his clients knew of the existence of any such order; nor could such knowledge be imputed to them inferentially by such publication of the order as was made.

4. The applicants are residents of Sidhan Purwa, a hamlet of police station Isanagar in tahsil Nighasan, District Lakhimpur Kheri. This adjoins Bahraich District, tahsil Nanpara. The hamlet where the petitioners reside is 40 miles from the Tahsil headquarters. Even Nighasan tahsil headquarters is not connected by rail with other parts of the district. There is no pucca road leading to Sidhan Purwa. Several rivers have to be crossed in order to reach Sidhan Purwa from tahsil headquarters. It is practically cut off from tahsil headquarters during the rainy season. In these circumstances it is not very likely that the applicants came to know of the existence of the Regional Food Controller's Order. The offences for which the petitioners were convicted are said to have been committed on 6th January 1947. We know from the judgment of the learned Judge that a copy of the Regional Food Controller's order was pasted on the notice board in the office of

the District Magistrate, Lakhimpur (headquarters of the district) on 5th December 1946. We know further that the directions contained in the Regional Food Controller's Order about the mode of its publication were not fully complied with. Under Rule 119 Defence of India Rules, save as otherwise expressly provided in those rules, every authority, officer or person who makes any order in writing in pursuance of any of those Rules shall, in the case of an order of a general nature, or affecting a class of persons, publish notice of such order in such manner as may in the opinion of such authority, officer or person be best adapted for informing persons whom the orders concern etc. etc. In the present case, we know the modes which were considered proper and desirable by the Regional Food Controller for publishing the order passed by him. If they were not complied with, a person who pleads ignorance of the existence of the order and against whom there is no proof that he knew of it, cannot be convicted for its contravention. It was observed by Lord du Parc in *Srinivas Mall v. Emperor A. I. R.* (34) 1947 P. C. 135 : (26 pat. 460), that it is of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, an accused should not be found guilty of an offence against the criminal law unless he has got a guilty mind. His Lordship recognised the existence of a limited class of offences which can be held to be committed without a guilty mind. I am clear, however, that the contravention of the Regional Food Controller's order and the offence created by that order is not within that limited or exceptional class. In the present case, it has been definitely found by the learned Additional Sessions Judge that the direction contained in the order for publishing it by beat of drum in Nighasan tahsil was not made till several months after the commission of the alleged offence for which the petitioners were convicted; nor was a copy of the order pasted on the notice board of the District Board's Office, District Lakhimpur. There is no proof that a copy of the order was pasted on the octroi posts. In these circumstances, it is impossible to hold that inferentially knowledge of the existence of the order can be attributed to the petitioners who lived in a far of village in the interior of the district. As already observed no proof has been adduced that they had any knowledge of the order. In these circumstances I am unable to agree with the conclusion arrived at by the

learned Sessions Judge and hold that there is no proof that the petitioners in the two cases before me had knowledge of the order; nor can such knowledge be inferentially attributed to them when all the directions laid down by the Regional Food Controller for the due publication of the order were not complied with.

5. The result, therefore, is that the applications are allowed. The order passed by the Magistrate convicting the petitioners is quashed. The convictions and sentences passed upon them are set aside. The fines, if paid shall be refunded. The confiscated grain, if it has not been sold already, shall be delivered back to the petitioner. In case it has been sold they shall be entitled to a refund of the price obtained at the sale.

6. There were a number of interesting points raised before me, but I have refrained from dealing with them in view of the fact that in dealing with these petitions I took them up at the stage they were left by Walford J. He observed that if the evidence adduced falls short of bringing home the knowledge to the applicants that an order prohibiting export was duly made and promulgated, the Sessions Judge will be entitled to acquit them. I have come to the conclusion that the knowledge of the existence of the order has not been brought home to the applicants.