

Mithan Lal Vs. Emperor

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Court : Allahabad

Decided On : Sep-02-1947

Reported in : AIR1948All165

Appellant : Mithan Lal

Respondent : Emperor

Judgement :

ORDER

Mootham, J.

1. These are twelve applications in revision which may conveniently be dealt with in one judgment. The applicants are cloth dealers of Sikandarabad, and they have been convicted under Sub-rule (4) of Rule 81 of the Defence of India Rules for a contravention of Clause 14 of the Government of India Cotton Cloth and Yarn (Control) Order, 1943, (hereinafter referred to as the Control Order). On 4th November 1944, Clause 14 of this Order was amended; and thereafter on the material dates para. 1 of Clause 14 read as follows:

14(1). No dealer shall, after 31st December 1944, buy or sell or have in his possession - (a) any cloth or yarn manufactured in India before 1st August 1943; (b) any cloth or yarn manufactured in India and packed after 31st July 1943, and before 1st January 1944.

2. On 2nd, 3rd and 4th January 1945, a Piece Goods Inspector visited the business premises of the applicants, and seized and sealed the cloth for the possession of which after 1st January 1945 the applicants have been prosecuted. The applicants were tried and convicted. They were sentenced to the payment of fines ranging from Rs. 25 to Rs. 60 and in each case the cloth in question was confiscated. The amount of cloth seized varied in quantity from 87 to 670 yards. Applications in revision made to the Sessions Judge of Bulandshahr were dismissed.

3. In view of the decision of this Court, Cri. Revn. No. 272 of Lalji v. Emperor ('48) 35 A.I.R. 1948 All., it is not open to the applicants to contend, as has been held by certain other High Courts, that as the Textile Commissioner had laid down no conditions under Clause 15 - A of the Control Order, subject to which cloth which fell within the scope of Clause 14 could be kept and sold, the possession of the cloth did not, on the dates upon which it was seized, constitute an offence; but it is sought to distinguish the present case on the grounds, first, that the applicants had no guilty intention and secondly, that they had, within the meaning of Rule 5 of the Defence of India Rules, a 'lawful excuse' for their failure to comply with the provisions of Clause 14 of the Control Order.

4. It is not, in my view, open to the applicants to argue that the absence of a guilty intention exonerates them from liability, for it is clear that the Full Bench of this Court in Cri. Revn. No. 272 of Lalji v. Emperor ('48) 35 A.I.R. 1948 All. and in this respect it followed and approved the earlier decisions of the Court in Ram Saran v. Emperor 34 A.I.R. 1947 All. 250 and Chhotey v. Emperor 34 A.I.R. 1947 All. 394 was of opinion that the intention of the accused was not material.

5. The contention that the applicants were possessed of a 'lawful excuse' stands on a different footing, for no question of lawful excuse arose in Cri. Revn. No. 272 of Lalji v. Emperor : AIR1948 All38 although Malik J., in the course of his judgment in that case, expressed an opinion which was in the circumstances obiter but is nonetheless entitled to respect, as to what constituted a lawful excuse.

6. Counsel for the applicant has relied on three decisions in support of his submission, and to these I shall refer a little later. He has conceded, as indeed he

was bound to do, that a reasonable excuse or a good excuse is not necessarily a 'lawful excuse' but he has refrained, perhaps wisely, from attempting a definition of 'lawful excuse'. What he says is that it was a physical impossibility for the applicants to dispose of the cloth in their possession by 31st December 1944, and that other High Courts have held that such circumstances constituted a 'lawful excuse' for non-compliance with the terms of Clause 14 of the Control Order. Now I should say at once that I am by no means satisfied that it was in fact impossible for the applicants to dispose of the cloth in their possession. There is no satisfactory evidence on the point. It is true that, when examined by the Court, the applicants said that despite their best efforts they could not sell the cloth, but in not a single case was any witness called to state what steps had been taken to dispose of it, Indeed in one of the cases (Criminal Revision No. 217 of 1947) the applicants filed a written statement in which they said that, had they known that it would be an offence to be in possession of the cloth after 31st December, they would have sold it even at a loss. I should perhaps say that the learned Magistrate found as a fact that all the applicants were aware of the amendment of Clause 14 of the Control Order, and that that question has not been raised in this Court.

7. I now turn to the authorities relied on by counsel for the applicants, and the first of these is Provincial Government, C.P. & Berar v. Shamsherali A.I.R. 1945 Nag. 249. The decision in this case is not, if I may say so with due respect, easy to understand. The Court considered what was the proper interpretation to be placed on Clauses 14 and 15 - A of the Control Order, and it held that, as no conditions had been imposed by the Textile Commissioner the combined effect of these two clauses was that a dealer was entitled to be in possession of cloth of the descriptions mentioned in para. 1 of Clause 14 after 31st December 1944. The Court then proceeded to hold that as there was a bona fide but unsuccessful attempt on the part of the applicants to sell the cloth before 31st December 1944, they had a 'lawful excuse' for being in possession thereof after that date. I find it somewhat hard to reconcile the two conclusions: for if the applicants were (upon a proper construction of Clauses 14 and 15-A) entitled to be in possession of the cloth after 31st December 1944, what need was there for them to have, or, indeed how could they have, a lawful 'excuse' for being in such possession? On somewhat similar facts the Oudh Chief Court in Murlidhar v. Emperor ('46) 33

A.I.R. 1946 Oudh 234 held that the appellant before it had a lawful excuse for being in possession of cloth after 31st December 1944, the Court expressly following the Nagpur decision in Provincial Government, C.P. & Berar v. Shamsherali A.I.R. 1945 Nag. 249. Finally, Mr. K.N. Agarwala relied on the case in Gokul Das Nensi v. Emperor ('47) 34 A.I.R. 1947 Bom. 28, a decision of the Bombay High Court. In this case, which was one in which the appellant had been convicted for a contravention of Clause 15 - A of the Control Order, the Court held that the failure of the Textile Commissioner, to issue instructions under Clause 18-B provided the appellant with a legal excuse for having certain cloth in his possession after the prescribed date.

8. It has to be observed that there is not in any of these cases any general discussion as to what is the meaning and effect of the phrase 'lawful excuse' as used in Rule 5; all that there is to be found is the pronouncement by the Court that in the particular circumstances of the case before it the accused person had a lawful excuse. Now it appears to me that some meaning must be attached to the word 'lawful', for that word, and not 'reasonable' or 'good' is the adjective which qualifies 'excuse.' In Cri. Revn. No. 272 of Lalji v. Emperor ('48) 35 A.I.R. 1948 All. Malik J., expressed the opinion that 'lawful excuse' meant an excuse which is recognized as a good excuse in law. With great respect, that view, I think is clearly right. Poverty is not a lawful excuse for the theft by a starving man of a piece of bread. It is a circumstance which will properly be taken into account in determining the sentence, but on the question of guilt it is irrelevant. So also in the present case, the inability of an accused person to dispose of the cloth by 31st December 1944, (where that fact is proved) is a circumstance to which full weight will be given in assessing the sentence, but it cannot in my judgment affect the accused's liability under the Control Order and the Defence of India Rules.

9. Two further points were raised in the course of argument. In Criminal Revision No. 217 of 1947 counsel argued that the applicant had refrained from disposing of the cloth as a result of an assurance given to him by the Piece Goods Inspector that no action would be taken in respect of cloth in his possession after 31st December 1944. It is apparent, however, from the applicant's own written statement filed before the Magistrate that the only statement made to him by the

Piece Goods Inspector was that he had no cause to worry, and that that statement was made only when the cloth was seized, namely 'on 2nd January 1945. The argument, therefore, is not supported by the facts as disclosed in the record. Then it is said that the trials of the applicants ought not to have been summary in view of the important issues involved which according to counsel, were whether the applicants made every effort to dispose of the cloth and whether, in the circumstances, they had a lawful excuse for not complying with Clause 14 of the Control Order. The second of these issues is a question of law and, as regards the first none of the applicants proposed to call, or did call, any evidence. In the circumstances I do not consider that the Magistrate acted improperly in trying the cases summarily.

10. Finally, Mr. K.N. Agarwala has asked me to refer the question of what constitutes a lawful excuse within the meaning of Rule 5 of the Defence of India Rules to a Bench. In view however of the course of decisions in this Court, and of his inability to adduce reasons in support of those High Courts upon whose judgments he relies, I am not satisfied that I should be justified in acceding to his request and I accordingly decline to do so. The applications fail and are dismissed.

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