

Sita Ram Vs. Rex

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Court : Allahabad

Decided On : Oct-18-1949

Reported in : AIR1950All232

Judge : Agarwala, J.

Acts : Uttar Pradesh Gur Control Movement Order, 1945; [Government of India Act, 1935](#) - Sections 297

Appeal No. : Criminal Revn. No. 1202 of 1949

Appellant : Sita Ram

Respondent : Rex

Advocate for Def. : Jai Kishanlal, Adv. for A.G.A.

Advocate for Pet/Ap. : K.B. Asthana, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Agarwala, J.

1. This is an application in revision by Sita Ram who was found guilty of an offence under Rule 81, Defence of India Rules read with Section 11, U. P. Gur Control

Movement Order 1945, and whose appeal was dismissed by the learned Sessions Judge. He was sentenced to rigorous imprisonment for four months and a fine of Rs. 100 with two months' R. I. in default by the Magistrate but the learned Sessions Judge has imposed a sentence of fine of Rs. 1000 in lieu of the sentence imposed by the Magistrate.

2. On 28th August 1946 one Nand Kishore, father of Sita Ram applicant, obtained a permit for carrying 92 maunds of Gur Shakkar from Ghaziabad to Farrukh Nagar, a village situated to the west of river Hindan within the district of Meerut. Ghaziabad is to the east of the river. After crossing the Hindan bridge, at a short distance, a kutcha road leads to the north of the bridge to village Farrukh Nagar. A pucca road runs between Hindan bridge and Shahadra in the province of Delhi, Shahadra being about five miles away from Hindan bridge to its west.

3. The prosecution case was that the applicant instead of carrying the goods to village Farrukh Nagar was carrying them towards Shahadra. On the road between Hindan bridge and Shahadra lies village Chak Umarpur where the applicant has a shop and at which place he was alleged to have put some more Gur Shakkar on the thelas and the police was said to have intercepted the thelas one furlong from the U. P; Delhi border before the thelas could reach Shahadra, The applicant's defence was that he was arrested at a distance of half furlong from Hindan river from where he would have gone to Farrukh Nagar and that he was merely going from Ghaziabad to his shop at Chak Umarpur on a cycle, got out of order, he put it on the cart and also boarded one of the thelas.

4. Both the Courts below came to the conclusion that the thelas were intercepted one furlong from the U. P. Delhi border and not half a furlong from Hindan river, as alleged by the defence, and that the applicant was carrying Gur Shakkar to Shahadra and not to Farrukh Nagar.

5. In revision before me, three points have been urged, firstly, that the applicant was arrested near Hindan bridge and not near the U. P. Delhi border; secondly, that the U. P. Gur Control Movement Order, 1945, was ultra vires: of the U. P. Legislature, and thirdly, that it was not proved that the Gur Shakkar that was carried on the thelas was Gur within the definition of Clause 2 (6), U. P. Gur

Control Movement; Order,

6. As regards the point whether the thelas were intercepted and the applicant was arrested near Hindan bridge of or near the U. P. Delhi border, there are concurrent findings of both the Courts below. I have myself examined the evidence and have no hesitation in holding that the conclusion arrived at by the Courts below is correct.

7. In support of the contention that the U. P. Gur Control Movement Order, 1946, is ultra vires the Provincial Legislature, it is urged that under Section 297, Government of India Act, no Provincial Legislature or Government has power to pass any law or take any executive action prohibiting or restricting the entry into or export from, the province of goods of any class or description. As the U. P. Gur Control Movement Order prohibits or restricts the export of Gur from the province it contravenes the provisions of Section 297 and, as such, is ultra vires the Provincial Legislature. In support of this contention, reliance has been placed upon the case of Ram Charan v. Rex : AIR1949 All463 .

8. The U. P. Gur Control Movement Order, 1946, was promulgated by the Governor of the United Provinces in exercise of the powers conferred by Sub-rule (2) of Rule 81, Defence of India Rules. Clause 7 of the Order provides :

'No person shall export Gur by rail, road or river from any place in the United Province to any place outside the United Provinces, except under and in accordance with the terms of a permit granted in this behalf by Government or the Controller'. Clause a provides for punishment for contravention of any provision of the Order, under Sub-rule (4) of Rule 81, Defence of India Rules.

9. Sub-rule (2) of Rule 81, D. I. R., authorises the Central Government of the Provincial Government, so far as it appears to it to be necessary or expedient for securing the Defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, to make provision, by order,

(a) 'for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever'

It is not contended that the U. P. Gur Control Movement Order exceeds the power conferred upon a Provincial Government by Sub-rule (2) of Rule 81, Defence of India Rules, which were passed by the Central Government under the Defence of India Act. It is not contended before me that the Central Legislature had no power to enact the Defence of India Act. Thus, if we leave aside Section 297, Government of India Act, for the time being, there can be no doubt that the U. P. Gur Control Movement Order was validly made.

10. Now Section 297, Government of India Act is in the following terms :

'(1) No Provincial Legislature or Government shall, (a) by virtue of the entry in the Provincial Legislative list relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description'

The opening words of Clause (a) quoted above are important. The prohibition contained in this section is confined to the action of the Provincial Legislature or Government in the exercise of the powers entrusted to it 'by virtue of an entry in the Provincial Legislative List relating to trade and commerce etc.' In other words, where the Provincial Legislature or Government makes any law or takes any executive action in the exercise of the powers conferred upon it under the Provincial Legislative List, namely, List 2 of Schedule 7 to the Government of India Act, then and then alone does Section 297 come into play and prevents the Provincial Legislature or Government from prohibiting or restricting the entry into or export from the province of goods of any class or description. This does not mean, however, that the Provincial Government cannot take any action prohibited under Section 297 in exercise of the powers which may be validly conferred upon it under some other provision of law, e. g. by an enactment of the Central Legislature. The U. P. Gur Control Movement Order, as already stated, was made

in exercise of the powers conferred upon the Provincial Government, not by virtue of the entry in the Provincial Legislative List, but by virtue of a Central enactment, namely, the Government of India Act and the Defence of India Rules. As such, no objection can be taken to its validity.

11. In the case of *Ram Charan v. Rex* A.I.R. (36) 1949 ALL. 468 : (50 Cr. L. J. 694) the accused were convicted for transporting match boxes from a place in the United Provinces to a place outside the United Provinces and thus contravening Section 7, U. P. Control of supplies (Temporary Powers) Act, Act II [2] of 1947. It was observed in that case that any order kept in force by the United Provinces Control of Supplies (Temporary Powers) Act, 1947, prohibiting the transport of goods outside the province was ultra vires the Provincial Legislature. Reference was made to the power of Legislation, of the Province under the Provincial Legislative List 2 of Schedule 7, Government of India Act, and it was stated that the U. P. Government derived its power of legislation under Section 100, Government of India Act and could legislate with respect to matters enumerated in that list; and since Section 297 controlled List 2, the Provincial Government could not have enacted a provision authorising the Government to pass any orders prohibiting the export of any commodity from these provinces to other places. That case did not lay down the proposition that where the Provincial Government made any order, not under the powers conferred upon it by an entry in the Provincial Legislative List, but by virtue of some other law e. g., an Act of the Central Legislature such law or order would be ultra vires the Provincial Legislature. It may be observed that in the present case I have not to deal with U. P. Act II [2] of 1947, as the offence was committed on 28th August 1946 when the Defence of India Rules were still in operation. They ceased to have operation, with certain exception, on 30th September 1946. The present case, therefore, is not governed by *Ram Charan's* case, (A. I. R. (36) 1919 ALL. 463 : 50 Cr. L. J. 694.)

12. The last point urged was that the commodity in the present case was described as Gur Shakkar; and as it was not proved that it was Gur within the meaning of Clause 2 (b), U. P. Gur Control Movement Order, the conviction of the applicant was bad. Clause 2 (b) provides,

'Gur includes, Shakkar, Rab, Mijadana, and any form of sugar containing less than 90 per cent. of sucrose and also convertible molasses, i. e., Khandsari molasses which are the residual products of open-pan sugar factories.'

In the first place, as the word 'includes' indicates, the definition is not exhaustive. It merely lays down what things are included in the definition of Gur. It does not lay down what 'Gur' actually means. In the Government of India Gur Control Order, 1946, (No. 1-G (1)/46), Gur has been defined as meaning, 'articles commonly known as Gur, Gul Jaggery, palmyra jaggery, Shakkar and Rab, and includes raw sugar as also uncrystalised sugar in any other form comprising of original and convertible molasses and other impurities, inherent or foreign prepared by boiling cane or palmyra juice.'

Articles commonly known as Gur are undoubtedly 'Gur' though they have not been specifically mentioned in Clause 2 (b), U. P. Gur Control Movement Order.

13. In the Government of India Sugar and Sugar Products Control Order, 1946, sugar has been defined as meaning.

' (i) any form of sugar containing more than 90 per cent. of sucrose,

(ii) any sugar of crystalline structure.' It is possible that the words 'any form of sugar containing less than 90 per cent. of sucrose,' have been put down in the definition in Clause 2 (b), Gur Control Movement Order in order to include every form of sugar which is not sugar within the meaning of Government of India Sugar and Sugar Products Control Order. This, however, does not mean that all those articles which are commonly known as Gur, Shakkar, Rab, Mijadana, etc., are not Gur within the meaning of Clause 2 (b) of the Order. In the case of articles which are commonly described and known as Gur, Shakkar, Rab and Mijadana, it is not necessary to prove that they contain less than 90 per cent. of sucrose. The words 'containing less than 90 per cent of sucrose' qualify the phrase, 'any form of sugar.' They do not qualify Shakkar, Rab, Mijadana etc., just as they do not qualify convertible molasses, that is, Khandsari molasses mentioned in the same clause.

14. When the offence is alleged to be a contravention of the Government of India Sugar and Sugar Products Control Order, it must no doubt be proved that the sugar was either of crystalline structure or contained more than 90 per cent. of sucrose, as was held by the Hon'ble the Chief Justice in Benod Behari Lal v. Rex, Cri. Revn. No. 1047 of 1947 decided on : AIR1950 All145 . But when the charge is under the U. P. Gur Control Movement Order and the article in question is what is commonly known as 'Gur,' 'Shakkar,' 'Rab' 'Mijadana' or 'Khandsari molasses' it is not necessary to prove that it contains less than 90 per cent of sucrose. If, however, the article be none of these but some 'other form of sugar,' it must, no doubt, be proved that it contains less than 90 per cent. of sucrose.

15. In the present case the article was 'Gur Shakkar.' It was clearly included within the meaning of word 'Gur' in Clause 2 (b), U. P. Gur Control Movement Order.

16. There is no force in this revision. It is rejected.

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