

State of U.P. Vs. Ram Charan

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Court : Allahabad

Decided On : Sep-26-1961

Reported in : AIR1962All359

Judge : J.N. Takru and ;J.D. Sharma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 511; Uttar Pradesh Wheat (Restriction on Movement) Order, 1949; [Essential Commodities Act, 1955](#) - Sections 1 and 3; [Constitution of India](#) - Articles 19(1), 301, 302 and 303

Appeal No. : Criminal Govt. Appeal No. 1437 of 1960

Appellant : State of U.P.

Respondent : Ram Charan

Advocate for Def. : P.N. Tewari and ;C.S. Saran, Advs.

Advocate for Pet/Ap. : Adv. General and ;Government Adv.

Disposition : Appeal allowed

Judgement :

J.D. Sharma, J.

1. This is an appeal by the State Government against an, order dated the 6th May, 1960 of the learned Sessions Judge, Oral, acquitting the respondent Ram Charan

of an offence under Section 7 of the Essential Commodities Act read with Clause 3 of U.P. Wheat (Restriction on Movement) Order, 1940, (hereinafter referred to as the Order).

2. At about 5-30 p. m. on the 19th June, 1959 Ram Gharan transposed in four bullock carts 72 bags of gujai containing 18 per cent of wheat from the shop of the firm Mangli Prasad Bimal Ghand of Kalpi to the Kalpi ferry at the river Jamuna. The bags were then loaded in a boat which was rowed towards the opposite bank of the river. When the boat was midstream Assistant Marketing Inspector Om Prakash Bajpai who was on duty at the opposite bank saw the boat and suspecting that the bags contained wheat got the boat stopped midstream. The Senior Marketing Inspector Sri C.B. Dube was called and he made an analysis of the grain. It was found that the proportion of wheat in the mixture was 18 per cent as against 2 per cent the movement of which was permissible under the Order. The boat was brought back to the Kalpi side of the river and Om Prakash Bajpai lodged the written report Ex. Ka-2 at the police station at 7-30 p.m. During the time Om Prakash had gone to the police station Ram Charan slipped away. He could not be arrested and proceedings under Sections 87 and 88 Cr. P. C were taken against him. Subsequently he surrendered in court.

3. The case for the prosecution was that Ram Charan by attempting to transport the mixture of grain containing more than 18 per cent of wheat contravened the provisions of the Order and committed an offence under Section 7 of the Essential Commodities Act.

4. The trial court found the respondent Ram Charan guilty and sentenced him to six months' R. I. and Rs. 100/- fine. The 72 bags of grain were ordered to be forfeited to the State.

5. In appeal the learned Sessions Judge held that as the boat in which the 72 bags of grain were being transported was intercepted midstream the matter did not go beyond preparation for transporting the grain and therefore no offence under Section 7 of the Essential Commodities Act was committed.

6. The contention on behalf of the State is that the act of the respondent amounted to an 'attempt' to transport the grain from one block to another in contravention of the Order and thereby he committed an offence under Section 7.

7. Learned counsel for the respondent, while disputing the above contention urged that Clause (3) of the Order was hit by Articles 19(1)(g) 301 302 and 303 of the Constitution.

Section 511, I. P. C. provides :

'Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall be punished

8. There are four stages in every crime : (1) the intention to commit; (2) the preparation to commit; (3) the attempt to commit; (4) and if the third stage is successful the commission itself. Sometimes there is a very fine distinction between preparation and attempt, and it is difficult to say where preparation ends and attempt begins. The difficulty is illustrated by the various decisions on the point. The earliest decision of this Court is the Queen v. Ramsarun Chowbey, 4 NWP 46. In that case the accused intending to procure a forged document had directed a servant to purchase blank stamped paper on which the document might be executed, and to describe himself to the stamp vendor as the person who the accused wished it to be deemed was the executant of that document, and the stamp vendor had endorsed upon the bond an endorsement stating that he had sold the stamped paper to the person personated by the servant. The accused was convicted of an attempt to forge a valuable security.

Sir Charles Turner held that the provisions of Section 511 I. P. C. would not extend to make punishable as attempts acts done in the mere stage of preparation,

'although such acts are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence in the construction which I think should be put on the term 'attempt' as used in this section. I regard that term,

as here employed, as indicating the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done or omitted which of itself is a necessary constituent of the offence committed.'

The learned Judge however observed that he arrived at that conclusion not without some doubt and that he considered the endorsement no part of the document intended to be forged and that the act of the accused in procuring the endorsement could not immediately lead to the forgery.

9. The next case is the Queen Empress v. Dhundi, ILR 8 All 303. The case is distinguishable as the person upon, whom the fraud had to be perpetrated had not been approached in any manner by the accused Dhundi.

10. The case strongly relied upon by the State is In the matter of R. MacCrea, ILR 15 All 173. Dissenting from 4 NWP 46 (supra), it was held that Section 511 was never meant to cover only the penultimate act towards completion of an offence and not acts precedent; if those acts were done in the course of the attempt to commit the offence, are done with the intent to commit it and done towards its commission. It was further observed :

'It is no doubt most difficult to frame a satisfactory and exhaustive definition which shall lay down for all cases where preparation to commit an offence ends and where attempt to commit that offence begins. The question is not one of mere proximity in time or place'.

It was held that whether any given act or series of acts amounts to an attempt of which the law will take notice or merely to preparation is a question of fact in each case.

11. The Bombay High Court held in Emperor v. Ganesh Balvant, ILR 34 Bom 378 that under the I. P. C. all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. A similar view was taken in Rahamat Ali v. Emperor, AIR 1927 Lah 634 and Emperor v. Chandkha

Salabatkha, ILR 37 Bom 553. In the latter case the accused, had dug a hole in the wall of the complainant's dwelling house during the night with intent to complete that hole in order to make their entry into the house through it; and having so entered to commit a theft in the house. In fact, the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other, as the accused were interrupted before they could complete it. The Sessions Judge in appeal acquitted the accused on the ground that the acts did not amount to an attempt to commit house-breaking but only to a preparation. The State having appealed against the order of acquittal, the Bombay High-Court held that the acts of the accused did in law amount to an attempt, for the actual transaction, the distinct overt act, was begun and carried through to a certain point but was not completed by reason of the accused's being interrupted.

12. On behalf of the respondent we have been referred to Asgarali Pradhania v. Emperor : AIR1933 Cal893 . The facts of that case are rather interesting. The accused who had caused pregnancy to a woman suggested that she should take drugs to procure a miscarriage. One night he brought, her a bottle half full of red liquid, and a paper packet containing a powder. After he had gone, she tasted the powder, but finding it salty and strong, spat it out. She did not try the liquid. The following night accused came again, and finding that she had not taken either the powder or the liquid, he pressed her to take them, but she refused saying that she was afraid for her own, life and that the powder irritated her tongue. Thereupon he asked her to open her mouth, and approached her with the bottle, and took hold of her chin. But she snatched the bottle from him and cried out loudly, and her father and some neighbours came, and the accused fled. It was found that neither the powder nor the liquid was harmful. It was held that the accused could not in law be convicted of an attempt to cause miscarriage, as what he did was not an act done towards the commission of the offence of causing a miscarriage. Neither the liquid nor the powder being harmful they couldnot have caused a miscarriage. The appellant's failure was not due to a factor independent of himself. It follows as a necessary corollary that if the failure to commit the offence is due to circumstances independent of the volition of an accused person then there is an attempt under Section 511 I. P. C. This is clearly brought out by the illustrations to the section. Illustrations A and B are as follows :

(A) 'A makes an attempt to steal some jewels by breaking open a box and finds after so Opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.'

(B) 'A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.'

13. The English law on attempt is materially different as under it an attempt must be to do that which if successful would amount to the felony charged and if there was no chance of success then there will be no attempt. In the leading case of *R. v. Cheeseman*, (1862) 10 WR 255, Lord Blackburn observed :

'There is no doubt a difference between the preparation antecedent to an offence and the actual attempt. But if the actual transaction had commenced which would have ended in, the crime if not interrupted, there is clearly an attempt to commit the crime'.

Cockburn, C.J. held in *R. v. Collins*, (1864) 12 WR 886 following his earlier decision in *R. v. McPherson*, (1957) Dears and B 197 that if a person puts his hand into the pocket of another with intent to steal what he can find there, and the pocket is empty, he cannot be convicted of an attempt to steal because an attempt to commit felony can only in point of law be made out where, if no interruption had taken place, the attempt could have been carried out successfully so, as to constitute the offence which the accused is charged with attempting to commit. This is obviously incompatible with the Illustration. A to Section 511 I. P. C. But later English decisions have not meticulously followed the above decisions, which however have not been expressly overruled.

14. *Darling, J.* held in *R. v. Laitwood* (1910) 4 Cri App Rep 248 that if a pregnant woman believing that she is taking a noxious thing does with intent to procure her own abortion take a thing in fact harmless she is guilty of attempting to commit an offence. The present English law is summarized by Russel in his well-known *Treatise on Crimes*, 8th Edn. Vol. 1, pages 145 and 148 as follows :

'The question in each case is whether the acts relied on constituting the attempt were done with intent to commit the complete offence, and as one or more of a series of acts or omissions directly forming some of the necessary steps towards completing that offence, but falling short of completion by the intervention of causes outside the volitions of the accused, or because the offender of his own free will desisted from completion of his criminal purpose for some reason other than mere change of mind'.

This is in substance the Indian law also.

15. While, in our view, it is not possible to give a precise or exhaustive definition of 'attempt' it may be broadly stated that an intentional act which a person does towards the commission of an offence but which fails in its object through circumstances independent of the volition of that person is "attempt".

16. Applying the above principle to the present case there can be no manner of doubt that the respondents act amounted to an attempt to transport the grain to another block across the Jamuna in contravention of Clause (3) of the Order, and but for the interruption caused by the Assistant Marketing Inspector the commission of the offence would have been complete.

17. The question is if Clause (3) of the Order is hit by Article 19(1)(g) 301 302 and 303 of the Constitution. Clause (3) of the Order reads :

'No person shall move or attempt to move or abet the movement of wheat from any place in a block of district specified in the Schedule to this Order to any place outside the said block except under and in accordance with a permit issued by the State Government or any officer authorised by the State Government in this behalf'.

The contention on behalf of the respondent is that as the grant of a permit under Clause (3) has been committed to the unrestricted power of the State Government or any officer authorised by the State Government and no norms regulating the grant of permit have been laid down the clause is void under Article 19(1)(g) which guarantees to all citizens the right to practise any profession or to carry on any

occupation, trade or business. Reliance in support has been placed upon *Dwarka Prasad v. State of Uttar Pradesh* : [1954]1SCR803 . In that case the validity of Clause 3 of the U. P. Coal Control Order, 1953, was challenged on the ground that it was void under Article 19(1)(g) of the Constitution, Clause (3) (1) of the said Order was :

'No person shall stock, sell, store for sale or utilise coal for burning bricks or shall otherwise dispose of coal in this State except under a licence in Form 'A' or 'B' granted under this Order or in accordance with the provisions of this Order'.

It was held that an unrestricted power has been given to the State Controller to make exemptions and even if he acts arbitrarily or from improper motives there is no check over it and no way of obtaining redress. Clause 3(2)(b) of the Control Order was therefore held to be *prima facie* unreasonable. It was further observed that a law or Order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable.

18. On behalf of the State we have been referred to *Harishanker Bagla v. State of Madhya Pradesh* AM 1954 SC 465. In that case the question related to the constitutionality of Clause (3) of the Cotton Textiles (Control of Movement) Order, 1948. Clause 3 was as follows :

'No person shall transport or cause to be transported by rail, road, air, sea or inland navigation any cloth, yarn or apparel except under and in accordance with

- (i) a general permit notified in the Gazette of India by the Textile Commissioner, or
- (ii) a special transport permit issued by the Textile Commissioner'.

Their Lordships of the Supreme Court held that Clause 3 does not deprive a citizen of the right to dispose of or transport cotton textiles purchased by him. It requires him to take a permit from the Textile Commissioner to enable him to transport them. The requirements of a permit in this regard cannot be regarded as an unreasonable restriction on the citizen's right under Sub-clause (f) and (g) of Article 19(1). If transport of essential commodities by rail or other means of

conveyance was left uncontrolled it might well have seriously hampered the supply of these commodities to the public. The contention therefore that the clause is invalid as abridging the rights of the citizen under Article 19(1) of the Constitution was not upheld. It was further laid down :

'The policy underlying the Order is to regulate the transport of cotton textiles in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate the policy. The conferment of such a discretion to the Textile Commissioner under Clause 3 of the Order cannot, therefore, be called unregulated or arbitrary and is not invalid on that ground. Further, if there is any abuse of power, there is ample power in the Courts to undo the mischief'.

19. The question how far the vesting of discretionary power was valid under Article 14 of the Constitution arose in *Matajog Dubey v H.C. Bhari* : [1955]28ITR941(SC) . It was held that a discretionary power is not necessarily a discriminatory power. An abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official. A similar view was taken in; *Messrs. Pannalal Binraj v. Union of India* : [1957]1SCR233 where referring to the power vested in the Commissioner of Income-tax and the Central Board of Revenue it was observed ;

'It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials'.

Similarly the power to grant a permit under Clause 3 of the Order is vested in the State Government or any officer authorised by the State Government in this behalf.

20. There is no force in the contention that no norms for regulating the grant of permit have been laid down in the Order. The Order has been promulgated under the powers given by the Essential Commodities Act (Act No. 10 of 1955) the object of which, as mentioned in the preamble, was to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. The preamble lays down the policy and in a way prescribes the norms in accordance with which a permit is to be granted. We therefore hold that Clause 3 of the Order is not hit by Article 19(1)(g) of the Constitution. Article 301 of the Constitution says :

'Subject to the other provisions of this Part (Part XIII) trade, commerce and intercourse throughout the territory of India shall be free.'

Article 302 empowers the Parliament to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest, but subject to the provisions of Article 303(1).

21. It is urged on behalf of the respondent that in so far as Clause 3 of the Order prohibits the movement of wheat from one block to another except under a permit granted by the State Government or by an officer appointed by the State Government, there is a preference in favour of the State of Uttar Pradesh and consequently discrimination against the other States. We are unable to agree with this contention. The Order regulates the movement of wheat within the State and an order regulating trade and commerce within the State falls under Entry 26 of List 2 of Schedule VII of the Constitution and does not impinge upon Entry 42 of List I--Inter-state trade and commerce. The instant case is clearly distinguishable from *Atiabari Tea Co. Ltd. v. State of Assam* : [1961]1SCR809 . The restrictions contemplated under Article 301 are restrictions having direct and immediate effect of giving preference to one State over another or making or authorising the making of any distinction between one State and another as distinct from creating indirect or consequential impediment. As observed in the above case, restrictions from which freedom is guaranteed by Article 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Also see

A.V. Fernandez v. State, (S) AIR 1955 Trav-Co. 126.

22. It cannot be said that the order regulating the movement of wheat within the State has a direct or immediate effect of restricting or impeding the trade between the State of Uttar Pradesh and other States. The Order is therefore not hit by Articles 301 302 and 303 of the Constitution.

23. In the result we allow the appeal, set aside the order of acquittal and convict and sentence the respondent to a fine of Rs. 250/- and in default to six months' R. I. under Section 7 of the Essential Commodities Act read with Clause 3 of the Order. The 72 bags of gujai, and if they have been sold their sale proceeds, are forfeited to the State.

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