

Krishan Chandra Vs. Emperor

Krishan Chandra Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/460533

Court : Allahabad

Decided On : Apr-16-1945

Reported in : AIR1945All280

Appellant : Krishan Chandra

Respondent : Emperor

Judgement :

ORDER

Mulla, J.

1. This is an application in revision by one Krishan Chandra who has been convicted by the Courts below under Rule 81 (4), Defence of India Rules, and has been sentenced to pay a fine of Rs. 1000. The applicant is admittedly one of the proprietors of a joint family firm carrying on business in cloth in the town of Bindki in the Fatehpur District. It has been found as a fact by the Courts below that on 22nd February 1943, the firm, of which the applicant is admittedly one of proprietors and which is known as Krishan Chandra Brij Kishore, despatched 196 bags of wheat to Messrs. Owen Roberts & Co, Military Suppliers, from Bindki to Delhi. On 7th October 1942, the District Magistrate of Fatehpur had passed an order in pursuance of the power vested in him by a notification issued by the Provincial Government that wheat shall not be sold in Bindki at a rate of more than 5 seers 2 chhataks per rupee. A copy of that order is Ex. P-15 on the record.

According to the prosecution, that order was in force when the transaction referred to above was entered into by the firm of Krishan Chandra Brij Kishore on 22nd February 1943. Under that transaction wheat was sold at Rs. 10-8-0 per maund. The price of the goods despatched by the firm was realized by it by means of a hundi drawn on another firm in Lahore. On behalf of the applicant it was disputed that the bags of wheat were really despatched by an agent of the firm or were in fact sold by the firm. On this point, however, both the Courts below have found that the evidence on the record establishes beyond any doubt that it was an agent of the firm who despatched the wheat and that the price of that wheat was realized by the firm. On these facts the applicant was charged with having contravened the order passed by the District Magistrate on 7th October 1942, and having thus committed an offence under Rule 81 (4), Defence of India Rules.

2. In his defence the applicant alleged that he had no knowledge of the order passed by the District Magistrate of Fatehpur and it was further contended on his behalf that there was no evidence on behalf of the prosecution to establish that the order passed by the District Magistrate was published in any manner prescribed by him as required by Rule 119, Defence of India Rules. This ground has been pressed in this Court also. Two other points were raised on behalf of the applicant firstly, that he was only one of the partners of the firm and, having regard to the fact that he was not present in Bindki on the date on which the transaction in question took place, he could not be held criminally liable. Secondly, it was contended that the order passed by the District Magistrate on 7th October 1942, had automatically come to an end on the date on which the transaction in question took place. In support of this contention reliance was placed on the fact that the notification of the Central Government, under which power was given to the Provincial Governments to control prices of food grains and other articles, was cancelled later on and that cancellation took place before the date of the transaction in question. With regard to these two latter points I need only say that I do not find any force in them and it is really, the first point urged on behalf of the applicant which merits consideration. I have perused the record of the case and I find that the prosecution adduced some evidence to prove that the order of the District Magistrate of Fatehpur was promulgated by beat of drum. One of the witnesses examined by the prosecution is a stenographer of the District

Magistrate, who, after proving a copy of the order passed by the District Magistrate has stated that

copies of that order were sent to the S. P., all Station Officers, all Tahsildars and all S. D. Ms. and to the Marketing Inspector among others for publication.

It is noticeable that he does not state under whose orders these copies were sent to various officers; nor does he state whether it was he himself who sent the copies or some other official. Lastly there is nothing in his statement to show that any particular method of publication was prescribed by the District Magistrate. If it is assumed for the purposes of argument that it was under the District Magistrate's direction that copies of his order dated 7th October 1942, were sent to various officers for publication, the question which arises for consideration is : Whether the mandatory provision of Rule 119, Defence of India Rules, had been satisfied? Rule 119 runs as follows:

Save as otherwise expressly provided in these Rules, every authority, officer or person who makes any order in writing in pursuance of any of these 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 order concerns....

In my judgment the most important ingredient of this rule is that it is for the authority passing the order to exercise its mind and to decide upon some method of publication of the order. This power cannot be exercised by any one other than the authority passing the order. Before a person can be charged with infringement of an order passed under the Defence of India Rules, it is incumbent on the prosecution to establish that the authority passing that order had prescribed a certain method of publishing that order and that method had been carried out. The evidence on the record in the present case fails to satisfy that essential requirement. All that it shows is that copies of the order, dated 7th October 1942, passed by the District Magistrate of Fatehpur were sent to the S. P. and other officers of the district. There is absolutely nothing in the order itself to show that the District Magistrate applied his mind to the method best adapted for publishing

the order and that accordingly he gave any direction to that effect. The mere fact that copies of the order were sent to various officers is not sufficient to fulfil the requirements of the law. It was for the District Magistrate to prescribe the method of publication and upon the evidence on this record it appears to me that no such method was prescribed by the District Magistrate who passed the order, dated 7th October 1942. I am, therefore, definitely of the opinion that the applicant cannot be charged with infringement of the order, dated 7th October 1942, because before that order could come into effect it was necessary under the law for the District Magistrate to prescribe some method for its publication and for publication to be made in accordance with that method.

3. The result, therefore, is that I allow this application in revision and set aside the conviction and sentence of the applicant Krishna Chandra. The fine, if any, paid by him shall be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com