

Jagdish Prasad Vs. State

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Court : Allahabad

Decided On : Sep-09-1966

Reported in : AIR1967All490; 1967CriLJ1260

Judge : D.P. Uniyal, J.

Acts : Defence of India Rules, 1962 - Rule 5; Uttar Pradesh Foodgrains (Control, Requisition and Distribution) Order, 1963

Appeal No. : Criminal Revn. No. 217 of 1965

Appellant : Jagdish Prasad

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : G.P. Bhargava and ;A.N. Bhargava, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.P. Uniyal, J.

1. This revision has been filed from the judgment of the learned Sessions Judge, Bijnor affirming the conviction of the applicant under Rule 125 of the Defence of

India Rules. 1962 for contravention of Clause 3B (b) of the U. P Foodgrains (Control, Requisition and Distribution) Order, 1963, but reducing the sentence of fine from Rs. 1,000 to Rs. 500.

2. The order of the Magistrate regarding forfeiture of 100 quintals of wheat and gram was set aside and the same was ordered to be restored to the applicant.

3. The facts of the case lie in a short compass and may be stated thus: Jagdish Prasad applicant is a licensed dealer in foodgrains. On 26-9-1964 S.D.M Bijnor checked the stock of the accused and found 110.357 quintals of foodgrains in his possession.

4. Under Clause 3B(b) of the said Order 'no dealer shall have in his possession at any time a quantity of foodgrains exceeding 100 quintals .

5. Rule 5 of the Defence of India Rules lays down that if any person, who is in possession of anything to which the provisions of these rules apply, fails without lawful authority or excuse to comply with such provisions he shall be deemed to have contravened these provisions.

6. Rule 125 of the D.I.R. prescribes punishment for the contravention of any order made under the D.I.R. Rules, the punishment being imprisonment for a term which may extend to three years, or with fine, or with both.

7. It is not disputed that on the date of the raid the applicant was in possession of 110.357 quintals in excess of the legitimate quantity prescribed under Clause 3B(b) of the U.P. Foodgrains (Control Requisition and Distribution) Order, 1963. The defence put forward by the applicant was that he had sold 16 bags of foodgrains on 22nd September, 1964 but as the price of the same had not been paid by the purchaser so he was unable to remove it with the result that the said foodgrains continued to remain in the godown of the applicant. In support of his defence he called the Senior Marketing Inspector in the witness box and the latter stated that the accused had on 23-9-1964 submitted a weekly report showing sale of 16 bags of foodgrains, vide Ext. Kha-1.

8. The learned Judge below did not consider the explanation given by the accused as satisfactory. He was of the opinion that the accused had not mentioned the sale of foodgrains in the appropriate column nor was the said sale transaction found entered in his stock register.

9. It will be seen that what is prohibited under the U.P. Foodgrains Control Order is possession by a dealer of more than 100 quintals of foodgrains. By Sub-rule (a) of Rule 5 contravention of any order made under the D.I.R. would be an offence unless the accused person is able to show that there was 'lawful authority or excuse' for his being in possession or control of the excess quantity. The question for consideration, therefore, is whether there was 'lawful excuse' on the part of the accused for being in possession of excess quantity of foodgrains. The evidence of the Senior Marketing Inspector together with the statement of accused Ext. Kha-1 submitted by the applicant on 23-9-1964 would in my opinion constitute 'lawful excuse' within the meaning of Rule 5, D.I.R. The explanation of the accused may not have convinced the learned Judge below but it could not be said to be so absurd as to be wholly unreasonable. In the circumstances I am of the opinion that the accused was entitled to the benefit of the doubt.

10. For the reasons given above, I allow the revision and set aside the conviction and sentence of the applicant. The fine if already paid shall be refunded to him. The order of forfeiture regarding 10 quintals of foodgrains is set aside

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