

Jagannath Vs. the State

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Court : Allahabad

Decided On : Mar-09-1956

Reported in : AIR1956All655; 1956CriLJ1270

Judge : Mukerji and ;Choudhry, JJ.

Acts : Cotton Textiles (Control) Order, 1948; [Code of Criminal Procedure \(CrPC\)](#) ,
[1898](#) - Sections 236, 238, 238(2) and 423

Appeal No. : Govt. Appeal No. 824 of 1952

Appellant : Jagannath

Respondent : The State

Advocate for Def. : J.R. Bhutt, Asst. Govt. Adv.

Advocate for Pet/Ap. : B.D. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Mukerji, J.

1. This is a Government Appeal against the appellate order of acquittal of the respondent Jagannath of an offence punishable under Section 7, Essential Supplies (Temporary Powers) Act, 1946, for contravention of Clause 24 (1),

Cotton Textiles (Control) Order, 1948 passed by the learned Sessions Judge of Moradabad.

2. The facts, which are no longer in dispute, were these : Moti Ram was the proprietor of a firm carrying on, under the name and style of Moti Ram and Sons, the business of selling cloth as a licensed dealer in the town of Amroha, and his brother, the present appellant Jagannath was his agent or salesman.

In a test purchase organised by Sri D. K. Bhattacharya, Sub-Divisional Magistrate of Amroha, Jagannath sold a pair of dhotis to constable Roop Singh in the view of Sri Ram Ratan Naib Tahsildar of Amroha on 15-2-1951 for a price higher than the controlled price. This amounted to a contravention of Clause 24 (1) of the said Order. There was also contravention of Clause 25 (2) of the Order in that time tarred cloth, or cloth found after the expiration of the prescribed period marked on the cloth was discovered in the shop.

3. The trying Magistrate convicted and sentenced Moti Ram, the proprietor of the firm, for contravention of both the provisions. He convicted Jagannath, the salesman or agent, for contravention of the provisions of Clause 24 (1) but acquitted him of the other offence. Both of them appealed. The learned Sessions Judge dismissed Moti Ram's appeal but allowed that of Jagannath and acquitted him. The present Government appeal is directed against that acquittal. The question therefore that arises for determination is that of the culpability of a salesman, agent or servant under the provisions of Clause 24(1) of the Order for a sale made by him.

4. Clause 24(1), Cotton Textiles Control Order, 1948 lays down that

'No manufacturer or dealer shall sell or offer to sell any cloth or yarn at a price higher than the maximum price specified in this behalf under Clause 22.'

Clause 3(c) of the Order defines 'dealer' as meaning:

'A person carrying on the business of selling cloth or yarn or both, whether wholesale or retail and whether or not in conjunction with any other business, and shall include master weavers of handloom cloth.'

5. The learned Sessions Judge acquitted the respondent Jagannath on the ground that since he was only a salesman or agent he did not come under the mischief of Clause 24(1) which prohibited sale by a dealer. He did so relying on a single Judge decision of this Court in Harish Chandra v. Empero : AIR1945 All90 , and a division Bench decision of the Patna High Court in Narsingh Das Modi v. Emperor, AIR 1948 Pat 110 (B) which followed the Allahabad decision.

6. These two cases were concerned with analogous law, viz. the Cotton Control and Yarn Control Order, 1943, Clause 12 and the definition of dealer in which were the same as Clause 24(i) and the definition of dealer in the present Order. On an exhaustive review of the English and Indian Precedents, the following propositions of law appear to have been laid down by Malik J., as he then was, in the above Allahabad decision.

7. There being no vicarious liability, nor liability without mens rea, under the general rule of the Criminal law, a master or principal is not liable for the criminal act of his servant or agent unless he has directly or indirectly authorised the act. But this general rule will stand abrogated where the legislature fixes an absolute liability on the master or the principal, provided the language and the scope and object of the particular enactment point clearly in that direction, and provided the servant or the agent acts as such and not dishonestly with a view to profiting himself.

8. The scope and object of the Cotton Textiles (Control) Order, 1948, is to put an end to black marketing, and the language of Clause 24(1) clearly creates an absolute criminal liability of the master or the principal, i.e. the dealer, for the sale of cloth at a price higher than the controlled price even though the sale is made by a servant or agent.

9. These propositions are helpful for the determination of the liability of the principal or master, but not that of the servant or agent. The present appeal is however not concerned with the liability of dealer but with that of an agent or salesman, and the question for determination here, as adverted to above, is the culpability of an agent or servant under the provisions of Clause 24(1) of the said Order for a sale made by him.

10. The Allahabad and Patna cases cited above were concerned only with the liability of the dealer and it was held, on foot of the above propositions, that he was liable in respect of a sale by his servant or agent. At the same time, there appear certain observations in both which might be construed as absolving the servant or the agent totally. Malik, J. observed in the Allahabad case as follows:

'It will be noticed that it is only the 'manufacturer' or the 'dealer' who has been made liable. The 'dealer' must be the person 'carrying on the business of selling cloth'. The person punishable is the 'dealer'. His munib or servant who could not be considered to be the 'dealer' was not punishable at all.'

Likewise, Shearer J. made the following observation in the Patna case:

'It is quite clear, therefore, that, in law and in fact, 'although the cloth was handed over to the customers and the money was received by a salesman, Kanhaya Lal, the sales were actually made by the petitioner whose servant Kanhaya Lal was.'

11. These observations were however in the nature of obiter dicta since the question of the servant or agent's liability did not arise in those cases, and it was not necessary to make the aforesaid observations in absolution of the servant or the agent for determining the liability of the dealer.

Even though the liability created by a particular enactment may be liability of the dealer or the principal, the servant may yet be held liable as an abettor, as held by the same learned Judge in a later decision of this Court reported as Emperor v. Ram Kishore : AIR1948 All79 while interpreting analogous provisions of the Hoarding and Profiteering Prevention Ordinance. To hold the servant liable as an abettor would also be in consonance with the scope and object of the Cotton Textiles(Control) Order 1948, namely, the object of putting an end to black marketing.

12. The view of the lower appellate court that a servant or an agent in no case be held liable for contravention of the provisions of Clause 24(1), Cotton Textiles (Control) Order, 1948, does not therefore seem to be correct since it was permissible to convict the respondent Jagannath as an abettor. And that was the

contention put forward by the learned Government Advocate. It appears however that the respondent was charged along with his master or principal Moti Ram for the substantive offence as a dealer.

The argument was that even so it was permissible, in view of the provisions of Section 238 (2), Criminal P. C. to convict him for abetment of that offence. Before that argument could be accepted the provisions of Section 238 (2), Cr. P. C., should be found to be fully applicable. Section 238(2), Criminal P. C. lays down:

'When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.'

The provision speaks of facts being proved which reduce the offence charged to a minor offence. In other words, the facts proved must be common to the substantive offence charged and the minor offence for which the accused is sought to be convicted though not charged.

It follows therefore that the charge framed must be such as to give the accused notice of the facts which go to the making of the minor offence. In the present case the respondent was charged with the offence in question as a dealer. That charge cannot be said to have given him notice of his liability as an abettor in the capacity of a servant or an agent inasmuch as liability as a dealer is quite different from that as a servant or agent. On being charged as a dealer therefore he was not called upon to set up a defence which he might have done if he had been charged as a servant or an agent. For instance, he might have pleaded that he was really not a servant or an agent;

13. In view of the aforesaid lacuna in the charge, the only proper course would be to order a retrial. The present does not however appear to be a fit case calling for the passing of such an order. Five years have now passed since the offence in question is said to have been committed. Retrial will necessarily reopen questions of fact. One of such questions was whether the actual sale was made by the respondent or by a younger brother of his. Evidence on that point led by the prosecution was not very consistent.

It is likely to be even less so should the various Government servants who were produced as prosecution witnesses, and who must in all probability have since been transferred elsewhere, were now to be recalled after all this lapse of time. The purpose and object of the enactment have also been fulfilled in that the master, under whose direction the respondent was presumably acting, has been punished accordingly. For all these reasons, a retrial does not appear to be called for.

14. In the result, therefore, this appeal is dismissed and the acquittal of the respondent Jagannath is maintained.

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