

State of U.P. Vs. Ratan Chand

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Court : Allahabad

Decided On : Oct-29-1965

Reported in : 1966CriLJ1120

Judge : T. Ramabhadran and ;H.C.P. Tripathi, JJ.

Appellant : State of U.P.

Respondent : Ratan Chand

Judgement :

H.C.P. Tripathi, J.

1. This appeal, by the State of Uttar Pradesh, has been directed against an order of acquittal recorded by the learned Additional Sessions Judge of Etawah, in a case under Rule 125 of the Defence of India Rules.

2. The facts of the case lie in a short compass.

3. On the 1st of March, 1963, the Central Government promulgated an Order called 'the Essential Articles (Price Control) Order, 1963' which, inter alia, provided that:

Every dealer shall cause to be prominently displayed on a special board to be maintained for this purpose at or near the entrance to the place of sale:

- (a) a list of essential articles held by him from time to time in stock for ready delivery;
- (b) the past price of each such article; and
- (c) the price at which he proposes to sell that article.

4. On 25.3.1963, under a warrant issued by a Magistrate the shop of the respondent, who is a dealer in vegetable products and washing soaps etc., was searched and it was found that he had stocked a number of Dalda tins and sticks of washing soaps in his shop, but had not displayed a price list of those articles as required under the aforesaid Order. The respondent was, therefore, arrested and sent up for trial for contravening Clause 4 of the aforesaid Order.

5. The respondent was produced before the Magistrate on the same date. He filed an application praying that his case be taken up immediately and decided then and there. Accordingly, he was examined by the Magistrate and a charge was framed against him. When the charge was read over to him, he stated in categorical terms that he had stocked Dalda vegetable Ghee and washing soaps for the purposes of sale, but had not hung their pricelists at the premises of the shop. Taking this as a plea of guilty, the learned Magistrate convicted the respondent under Rule 125 of the Defence of India Rules and sentenced him to pay a fine of Rs. 400 or to undergo rigorous imprisonment for a period of two months in default of payment of fine.

6. On appeal, the learned Sessions Judge held that the trial was conducted in hot haste and that the plea of guilty and the application alleged to have been made by the respondent were not the result of his free will and volition. He was also of the opinion that the procedure prescribed for the trial of warrant cases had not been followed by the Magistrate and that there was nothing to show that the provisions of the Essential Articles (Price Control) Order, 1963 were in force on the date of the alleged contravention. On these findings the lower appellate court allowed the appeal and set aside the conviction and the sentence of the respondent.

7. Learned Counsel for the State has urged that the observations of the lower appellate court that the procedure prescribed under the law for the trial of warrant cases was not followed in the ease and that the plea of guilty made by the respondent was not a result of his volition and free will is wholly unwarranted on the facts and circumstances of the case, it has been further urged that as the impugned Order does not provide any date for its coming into force, it must be held in law that it came into force on the date it was published in the Gazette of India, that is, March 1, 1963. Learned Counsel placed reliance in this connection on Section 5(3) of the General Clauses Act.

8. The respondent was produced before a Magistrate on the date of his arrest and his trial also took place on the same date. It does indicate that the trial was held in haste, but that was so because the respondent himself had desired that his trial should commence on the same date. There is nothing on the record to show that the application which he made to the Magistrate for holding the trial immediately after he was produced before him, was not the result of his free will and it had been brought about under some coercion. The respondent is a businessman and literate. The application is in his own hand praying that the case should be finished on the same date. As the respondent is a shopkeeper, it was natural on his part to have desired a speedy trial in order to prevent dislocation of his business which was bound to result in some degree if he was required to attend protracted proceedings in court on various dates. We are, therefore, satisfied that there is no warrant for holding that the aforesaid application was not given by the respondent out of his own free will and the contrary observations made by the lower appellate court are not justified, on the evidence and the circumstances of this case.

9. The order-sheet of the Magistrate's court shows that when the respondent was produced before the court, he was examined and copies of documents were handed over to him. Thereafter he filed the application praying for the commencement of the trial on the same date. A charge was then framed and the respondent, as has been observed earlier, admitted in clear terms to have stored the vegetable Ghee and washing soaps in his shop without hanging a price-list at the premises. We are, therefore, satisfied that the procedure followed by the Magistrate is in accordance with law and nothing more was desired.

10. We do not, however, find any force in the contention of the State counsel that under the law it must be held that the provisions of the Essential Articles (Price Control) Order, 1963 were in force on 25.3.1963. Clauses 3 and 4 of the Order which are relevant to the question in controversy read:

3. Fixation of maximum price - No wholesale or retail dealer, as the case may be, shall, with effect from the commencement of this Order, sell any essential article to any person at a price which is in excess of,-

(a) where any duty of excise payable under the Finance Bill, 1963 has been paid on that article the aggregate of the past price of each article and the amount specified against that article in the corresponding entry in column 2 of the aforesaid Schedule; and

(b) in any other case, the past price of that essential article.

4. List of essential articles to be displayed-Every dealer shall cause to be prominently displayed on a special board to be maintained for this purpose at or near the entrance to the place of sale-

(a) a list of essential articles held by him from time to time in stock for ready delivery;

(b) the past price of each such article; and

(c) the price at which he proposes to sell that article.

11. It will be noticed that the prohibition envisaged in Clause 3 and the direction given in Clause 4 are inter-connected and they are to come into effect 'with effect from the commencement of that Order.' The Order as such does not give any date on which it was to come into force. Even then, Clause 3 has provided that the provisions were to be applicable only with effect from the commencement of the Order. This, in our opinion, envisages that a date was to be fixed for the commencement of the Order, otherwise it would have been mentioned in the Order itself that it would come into force at once or from a notified date. As there is nothing on the record to show that the Order had come into force on 25.3.1963,

when the premises of the respondent was searched, it is not possible to hold that he had contravened any provision of this Order. Learned Counsel for the State has not been able to show any Government Notification mentioning the date from which the Order was to come into force. It has, however, been contended that as the order as such does not give any date on which it was to come into force, Section 5(3) of the General Clauses Act will apply and it must be held that it came into operation immediately on the expiration of the date preceding its commencement. We are unable to agree with this contention.

12. In the case of Harpal Singh v. State : AIR1950 All562 , a Division Bench of this Court had held that the Preventive Detention (Extension of Duration) Order passed by the President under Article 22(7) read with Article 378 of the Constitution does not amount to an Act of Parliament and does not come within the definition of Central Act or Regulation and as such Section 5(3). General Clauses Act can have no application in determining the time from which the Order has to come into effect. We find ourselves in respectful agreement with the rule laid down in that decision and are of opinion that the provisions of Section 5(3), General Clauses Act, do not apply to an Order under the Defence of India Rules.

13. In this view of the matter, although we do not approve of the observations of the lower appellate Court that the trial was irregular or that the plea of guilty made by the respondent was not voluntary, we upheld his acquittal and dismiss the appeal.