

Mohd. Hanif Vs. Rex

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SooperKanoon Citation : sooperkanoon.com/468195

Court : Allahabad

Decided On : Feb-07-1949

Reported in : AIR1952All578

Judge : Kidwai, J.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 7; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 369 and 517

Appeal No. : Criminal Revn. No. 121 of 1948

Appellant : Mohd. Hanif

Respondent : Rex

Advocate for Def. : P.N. Chaudhari, Asstt. Govt. Adv.

Advocate for Pet/Ap. : Khurshed Husain, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Kidwai, J.

1. This is an appln. for revn. of of an order passed by a Magistrate, first class, in the district of Rae Bareli directing confiscation of some parcels of cloth.

2. The facts are that on 27.2.1947, two suit cases & two bundles of cloth were discovered in a house belonging to the applicant. A case was started against him for contravention of Section 18, Sub-section (2), Cotton Cloth & Yarn Control Order, 1945 & Section 6, Sub-section (4), Rae Bareli Town Rationing Order, 1945, read with Section 17/7 of Act XXII [24] of 1946, namely, the Essential Supplies (Temporary Powers) Act. On 25-4-1947, Mohammad Hanif pleaded guilty. He was convicted & sentenced to pay a fine of Rs. 100. On the same date a separate order was passed by the learned Magistrate forfeiting the cloth to His Majesty. On 15-10-1947, Mohammad Hanif applied to the District Supply Officer, who was the same gentleman as the Magistrate who had disposed of the case praying for return of the cloth. The file was then before the Ses. J. in connection with an appeal in His Ct. filed by another person. The Supply Officer called for office reports with the necessary rules & on 18-12-1947, after the file had been placed before him, he noted that the order had already been passed on 25-4-1947 & consequently the appln. should be filed. On 29-1-1948, another appln. was, filed by Mohammad Hanif praying for return of the cloth. The file was put up before the Supply Officer & he then noted that orders had already been passed & that the applicant should be informed. Thereafter the appct. moved the Ses. J. of Rae Bareli & contended before him that the order confiscating the cloth having been passed after the judgment was signed & pronounced in open Court was illegal & should not have given effect to it. The learned Ses. J. has rejected this contention on the ground that the confiscation of the cloth is not part of the sentence &, therefore, Section 369, Cr. P. C., does not apply to it.

3. Mohammad Hanif has now come up in revn. & his learned Advocate contends that as a matter of fact, the order passed by the Magistrate was very much subsequent in date to the order convicting Mohammad Hanif. From the record it appears that both the orders were passed on the same date. His contention is, however that the copy supplied to him on 17-5-1947, did not contain the portion of the order relating to confiscation. It is quite possible that this may be so because the copy supplied to the appct. would be a copy of the order for which he had asked namely, copy of the order holding him guilty & sentencing him to pay a fine. As I have already stated the order confiscating the cloth is a subsequent order though passed on the same day. I am not prepared to hold that the learned

Magistrate has committed a forgery & has ante dated an order which he passed subsequently since there is no foundation for this contention.

4. It is then contended that even if the two orders were passed on the same day, the order directing the forfeiture of cloth was passed after the judgment had been signed & thus the provisions of Section 869, Cr. P. C. were contravened. This is not so. The forfeiture of the cloth is not part of the sentence passed upon the accused. Section 7, Essential Supplies (Temporary Powers) Act of 1946 provides that

'if any person contravenes any order made under Section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, & if the order so provides, any Ct. trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty.'

From a perusal of this section, it appears that the order of forfeiture is an order which follows conviction & is not a part of the sentence but is a part of the function of the Court under Section 517, Cr. P. C., to direct how the property in respect of which a crime has been committed shall be disposed of. This was a case to which Section 517, Cr. P. C., applies & that section becomes applicable only when the trial has been concluded. This means that it is only after judgment has been delivered that the Ct. can pass an order under Section 517. When in the present case the Ct. passed such an order it did not go beyond its powers & the order was a valid one.

5. It was then contended that the punishment inflicted on the appct. will become very severe if apart from the sentence imposed upon him, his cloth is also confiscated. This is a matter in which the trial Ct. had discretion. In view of the evils which Section 7 is intended to remedy, it cannot be said that the trial Ct. has not exercised its discretion in a proper manner.

6. This appln., therefore, fails & is dismissed.