

Narain Singh Vs. Rex

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Court : Allahabad

Decided On : Dec-21-1949

Reported in : AIR1952All621

Judge : Desai, J.

Acts : Uttar Pradesh Foodgrains (Movement) Control Order, 1948; [Evidence Act, 1872](#) - Sections 105 and 106; Essential Supplies (Temporary Powers) Act, 1946

Appeal No. : Criminal Revision Nos. 1052, 1053, 1066, 1067, 1068, 1139, 1140 and 1141 of 1949

Appellant : Narain Singh

Respondent : Rex

Advocate for Def. : P.L. Banerji, A.G. and ;Shri Rama, A.G.A.

Advocate for Pet/Ap. : A.P. Pandey, Adv.

Judgement :

ORDER

Desai, J.

1. These five applications are for revision of judgments of the Ses. J. of Mathura confirming the applicant's convictions & sentences under Section 7, Essential

Supplies (Temporary Powers) Act, 1946 (Act XXIV [24] of 1946) read with Clause 3 (iii), D. P. Food Grains (Movement) Control Order, 1948. The facts found by the Courts below, which are accepted by me sitting in revision, are that these applicants carried rice in motor trucks along the road going from Mathura to Kosi & were caught at the level crossing just in front of Kosi Railway station, on 58-10-1948, at about 4 A. M. There were five trucks loaded with rice. The Police had received previous information that rice would be carried in trucks along the road & so they got the level crossing closed & waited for the trucks to arrive. They all arrived together & were seized by the police. In some trucks there were the owners of the rice. They, as well as the drivers & cleaners of the trucks, were prosecuted. There were separate prosecutions in respect of different trucks.

2. The British Parliament passed the India (Central Govt. & Legislature) Act, 1946, (9 & 10 Geo. VI ch. 89). It empowered the Indian Legislature to make laws with respect to trade & commerce in, & the production, supply & distribution of, Food-stuffs, & offences against laws with respect to the above & to authorize the conferment of powers & the imposition of duties upon the Governor. General in Council or officers or authorities of the Governor General in Council in respect of the above matters notwithstanding their being in the concurrent list. Acting in pursuance of this authority, the Indian Legislature passed the Essential Supplies (Temporary Powers) Act, 1946, (Act XXIV [24] of 1946). Section 3 authorizes the Central Govt., so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodities or for securing their equitable distribution or availability at fair prices, to provide by notified order for regulating or prohibiting the production, supply & distribution thereof. In particular it authorizes the Central Govt. to make an order :

'(d) for regulatingtransport, distribution, disposal, of any'

food stuffs. Section 4 authorizes the Central Govt. to delegate its power of making orders mentioned in Section 3 to Provincial Govts. or officers or authorities subordinate to a Provincial Govt. The Central Govt. in exercise of this last mentioned power delegated its power of making orders mentioned in Section 3 to the U. P. Govt. & the U. P. Govt. passed the Food grains (Movement) Control

Order of 1948. In these applications we are concerned with the provisions of Clause 3 (ii) & (iii) which are as follows :

'3 (ii) No person shall carry or cause to be carried or offer for carriage by rail, road or water any foodgrains into any area lying within 10 miles. or such lesser distance as the District Mag. having jurisdiction in the area may prescribe, of the provincial border, hereinafter called 'Corridor', from any place in the Province outside the Corridor. 3 (iii) No person shall carry or cause to be carried or offer for carriage by rail, road or water any foodgrains from any place in the Corridor to any other place in the Corridor, provided that nothing in this sub clause shall 'apply to the movement of any foodgrains within the Corridor by road, other than by motor vehicle, if the person moving such foodgrains is a resident of such area.'

3. There is no evidence that the District Magistrate of Mathura has or has not, passed any order regarding the corridor. One does not know whether he has reduced the width of the corridor or not. The applicants were all charged with violation of Clause 3 (ii) by carrying the rice from Mathura to Kosi. Kosi is about five miles from the provincial border. Mathura is more than 10 miles from the provincial border. The charge was framed against the applicants on the assumption, that Kosi is within the Corridor & that the rice was brought from Mathnra to Kosi. But there was no evidence to prove from where the applicants brought the rice in trucks. The evidence is only this that they were found at the level crossing of Kosi bringing rice in trucks along the road from the direction of Mathura; so the Mag. convicted the applicants of infringement of Clause 3 (iii) on the ground that they carried the rice from one place in the Corridor to another place.

4. There is no substance in the submission of the applicants' counsel that some order of the District Magistrate of Mathura was necessary to create the Corridor. Apparently the Govt. fixed the width of the Corridor at 10 miles but empowered every Dist. Mag. to reduce it so far as his district is concerned. If the District Magistrate, Mathura, did not choose to reduce the width he had to do absolutely nothing because in that case the width of 10 miles would stand. The law is not that the Dist. Mag. should fix the Corridor whether of 10 miles width or of any less

width. I am certain, that if the District Magistrate has not issued an order fixing a Corridor of less width than that fixed in the Control Order, the Corridor in his district will be taken to be of just 10 miles' width.

5. The crucial question is not whether the Corridor could come into existence even without any action on the District Magistrate's part but of onus of proving what is the width of the Corridor in Mathura district. The prosecution case is that the Corridor in the district is of 10 miles width & the onus lay upon it to prove this. But it did not lead any evidence in this respect & it has been assumed by every one that the District Magistrate has not reduced the width & the Corridor is of ten miles. When the Control Order itself lays down that the Corridor can be of any width upto 10 miles it was obligatory upon the prosecution to prove that the Corridor in Mathura district is of 10 miles width & it could not prove this without proving that the District Magistrate has not reduced the width. Even if it was a negative fact it was a fact within the special knowledge of the prosecution. Unless the prosecution knew that the District Magistrate has not reduced the width it could not have prosecuted the applicants. If the District Magistrate has reduced the width, say to four miles or three miles, Kosi would be outside the corridor & the applicants committed no offence by moving the rice within it. It was suggested by the learned Advocate-General that when the applicants did not know that the District Magistrate had passed an order reducing the width of the corridor they ought to have presumed that it remains as fixed in the Control Order. It is not a question of what the applicants thought they were doing; even if they intended to violate the provisions of Clause 3 (ii) & (iii) & though that Kosi is inside the Corridor, they cannot be convicted just for harbouring the criminal intention. They can be convicted only, if what they did, is an offence, i.e., if Kosi is really inside the Corridor. The prosecution must prove this, as a matter of fact, & cannot rely upon what the applicants thought.

6. The learned Advocate-General was of the opinion that the words 'or such lessor distance as the District Magistrate having jurisdiction in the area may prescribe', create an exception to the rule that the Corridor would be of 10 miles width & contended that if an accused wants to bring his case within an exception he must prove that it is covered by the exception. I do not agree that the above words have

been inserted by way of an exception. It is not that the Corridor is defined to be a 10 miles wide strip on the periphery of the Province except where the width of the strip is reduced by the District Magistrate. The words form part of the definition of corridor itself. They go along with the alternative words '10 miles' in the definition. The law regarding onus of proof when an exception is contained in the definition itself is clear; the prosecution must prove not only that the case is covered by the main or positive provision but also that it is not covered by the exception. According to *Spires v. Parker*, (1786) 1 R. R. 165, it is a settled distinction between a proviso in the description of the offence, & a subsequent exemption from the penalty under certain circumstances that in the former the prosecution must aver a case which brings the accused within the Act & so must negative the exception in the enacting clause, & that the subsequent exemption is matter of defence & it is for the accused to show that he is exempted from the penalty. Under a certain statute no person could place or pack an article for sale upon any card, except the pattern card. J was prosecuted for placing or packing the article upon a card but the prosecution failed to prove that it was not a pattern card & it was held that it failed to establish any offence under the statute. The Ct. observed that a conviction must negative every exception contained in the clause creating the offence. See *The King v. Jukes* (1800) 5 R. R. 445.

7. The applicants could not be convicted unless the prosecution proved that they carried the rice into, or from one place to another place in 'any area lying within 10 miles, or such lesser distance as the District Magistrate having jurisdiction in the *rea* may prescribe, of the provincial border' & clearly it has failed to prove this. What it has proved is that they carried it from one place to another in an area lying less than ten miles, but more than five miles, from the provincial border, which is not the same thing.

8. As the prosecution has failed to bring the case of these applicants within Sub-clause (ii) or (iii) of Clause 3, it is quite unnecessary to consider whether the Essential Supplies (Temporary Powers) Act, 1946, was *intra vires* of the Indian Legislature, whether the trial Court was justified in convicting for infringement of Sub-Clause (iii) when, the charge was in respect of infringement of Sub-clause (ii) & whether the Control Order itself was invalid as being a fraud upon the Govt. of

India Act. [The five applications in 1139, 1140, 1141, 1052 & 1053 were then allowed.]

9. There are three more connected revision applications Nos. 1066 of 1949, 1067 of 1949 & 1068 of 1949. They are against convictions & sentences under the same Act for breach of provisions of Sub-clause (ii), Clause 3 of the Control Order. The applicants have been found by the Courts below to have carried two maunds of rice from the United Provinces to Bharatpur State in bullock carts. There were three bullock carts which were seized by a police constable just after they had crossed into Bharatpur State on 8-1-1949, at about 9 A.m. As there were three carts, there were three cases & there are three applications. The facts have been sufficiently proved & sitting in revision I am not inclined to go into them. No question of corridor is involved in these applications & the applicants have clearly violated the provision of Clause 3 (i). The Control Order was issued under the authority of Section 3 (2) (d), Essential Supplies (Temporary Powers) Act, 1946. That provision was enacted under the authority of the British Parliament Act & was intra vires of the Indian Legislature. The British Parliament Act itself empowered the Indian Legislature to delegate its power of making orders to the Central Govt. & to empower the Central Govt. to delegate the same power to Provincial Govts. The matter has been dealt with by me in Criminal Revn. No. 659 of 1949, Bex v. Manohar Lal, decided on 18-9-1949. Nothing that was said during the arguments has made me change the view expressed in that case. The validity of the Essential Supplies (Temporary Powers) Act, 1946, & of a certain order issued by the U. P. Govt. to whom the Central Govt. had delegated its power under the Essential Supplies (Temporary Powers) Act 1946, was considered by the Hon'ble the Chief Justice in Rex v. Bachchu Lal Gupta, Criminal Revn. No. 1380 of 1948, & the Provincial Govt.'s order was upheld. In Munni v. Rex, Criminal Revn. No. 266 of 1949, decided on 6-6-1949, the Hon'ble the Chief Justice again considered whether the Essential Supplies (Temporary Powers) Act, 1946, & the Food Grains (Movement) Control Order issued by the Provincial Govt. were valid & held them to be valid. I, therefore, decide that the Control Order of 1948 is valid. The convictions of these three applicants are correct. They have been sentenced to rigorous imprisonment for two months & a fine & the rice has been forfeited to Govt. They have undergone imprisonment for 20 days. It was contended on their

behalf that no useful purpose will be served by sending them back to jail. I take a serious view of the offence committed by them. Black marketing deserves to be punished ruthlessly. The Magistrate was unduly lenient to the applicants. I do not know how he thought that imprisonment of more than two months would be too severe. If the offences committed by the applicants did not deserve a sentence of at least three months, it was no use sending them to jail & some other punishment should have been inflicted. The applicants were released on bail & so they have been able to argue that they should not be sent back to jail. This is taking advantage of the Court's releasing them on bail during the pendency of the applicants. I consider that they must serve out the full sentences so that they & other people may learn some lesson. The applications in 1066-1067 & 1068 were rejected.

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