

Tharoo Lal and anr. Vs. State

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Court : Allahabad

Decided On : Jan-20-1959

Reported in : 1962CriLJ126

Judge : A.N. Mulla, J.

Appellant : Tharoo Lal and anr.

Respondent : State

Judgement :

ORDER

A.N. Mulla, J.

1. Sri Tharoo Lal, occupier Nawabganj Sugar Mills, district Gonda and Sri Ram Sundar Lal Tewari, the weighment clerk at Ragarganj purchasing centre of Nawabganj Sugar Mills, have been convicted under Section 22 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act of 1953 for a breach of Rule 96(1)(f) of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules of 1954. Sri Tharoo Lal has been sentenced to a fine of Rs. 1,000/-, in default five months' simple imprisonment, and Ram Sundar has been sentenced to a fine of Rs. 500/-, in default three months' simple imprisonment. They have come up in revision against this order of conviction.

2. Briefly stated, the facts of the case are that Sri Tharoo Lal is the occupier of Nawabganj Sugar Mills and Ram Sundar Lal, the other applicant, is the weighment clerk of the said mills at the Ragarganj purchasing centre. On the 24th March, 1955, Sri Man Singh, Sugarcane Inspector Gonda, paid a surprise visit to the Ragarganj purchasing centre in order to check up the working at that centre. He came at about 4 p.m. and he found four empty carts there. The practice which is followed is that when the carts come laden with sugarcane they are weighed and then after removing the sugarcane the empty carts are weighed again. In this way the actual weight of the sugarcane is computed and this is recorded in the 'parchis' which are give to the cane growers who come with their carts. Payment is made to the cane growers on the basis of these parchis. When Sri Man Singh came to the centre, he found three cart men with four carts and. he took their parchis from them. In order to check tip that the weights were rightly recorded on the parchis, he reweighed the empty carts. At that time no employee of the Nawabganj Sugar Mills was present and so Sri Man Singh himself weighed these carts.

On weighment he found that the weight of the empty carts was wrongly recorded in all the three parchis. There was an overstatement of their weights varying from 10 to 25 seers in the case of every cart and the total difference came to one maund 25 seers. This indicated that the cane growers would be robbed of the price of one-maund and 25 seers of sugarcane and the Nawabganj Sugar Mills would wrongfully gain by this incorrect weighment. While Sri Man Singh was-weighing these carts Sri Kedar Nath cashier, an employee of Nawabganj Sugar Mills, came there and Sri Man Singh asked. Sri Kedar Nath to weigh these carts again. Sri Kedar Nath did so and the weight found by Sri Kedar Nath tallied with the weight recorded by Sri Man Singh. Sri Man Singh thereupon asked Sri Kedar Nath to pub down these weights which he had found on the parchis of the cartmen and sign them. Earlier Sri Man Singh had satisfied himself that the weighing machine was in order and it was functioning properly. He then took the statements of the three cartmen who were present there and as some of these cartmen were literate they wrote down their statements. He then served a notice upon the two applicants and as the replies were Found to be unsatisfactory, he obtained the sanction of the Deputy Commissioner, Gonda, and prosecuted the two applicants.

3. In the appellate Court it was contended On behalf of the applicants that the difference in weights found on reweighing of the empty cart by Sri Man Singh was due to the fact that when the carts were first weighed in the morning by Ram Sundar Lal applicant, some other articles such as sipawa, Ulari and ropes were also weighed which was not done when they were reweighed by the Inspector. In other words, the stand taken by the applicants was that the empty carts were correctly weighed but because they were not properly weighed by the sugarcane inspector this difference had arisen. This contention was rightly rejected by both the lower Courts. They reached a finding that the empty carts were weighed in the same condition both by applicant Ram Sundar Lal and the inspector and their weights were deliberately overstated in order to make a wrongful gain. It is a finding of fact and I see No. reason to disturb it. This contention was also not pressed before me. I am, therefore, satisfied that Ram Sundar applicant when he weighed the empty cart in the morning deliberately overstated the weight in order to secure a wrongful gain for the Nawabganj Sugar Mills. There was thus a clear breach of Rule 96(1)(f) of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954.

4. I may ,at this stage quote the relevant parts of Rule 96. It reads as follows:

96 (1) An occupier of a factory or a purchasing agent shall prepare or cause to be prepared at each purchasing centre a parcha in triplicate showing correctly....

(f) the weight (tare) of the vehicle in which the cane was brought....

It was conceded before me that a breach of this rule was committed and the only point contended before me was that as Sri Tharoo Lal was not present at the Ragarganj purchasing centre when this weighment was made he cannot be held vicariously responsible for a, criminal act done by his servant Ram Sundar. It is Surprising that although this application purports to have been filed both on behalf of Sri Tharoo Lal and Ram Sundar Lal, yet in arguments the case of Sri Tharoo Lal was pressed and no serious attempt was made to defend Sri Ram Sundar Lal applicant. He was almost offered as a sacrifice so that Sri Tharoo Lal may not be convicted.

5. In deciding the question raised on behalf of Sri Tharoo Lal, I will first mention the facts which are not disputed. Sri Tharoo Lal was admittedly the occupier of Nawabganj Sugar Mills. This is also admitted that Ram Sundar Lal was his servant and it was within the scope of his duty to make weighment of the carts at the Ragarganj purchasing centre. The question whether the master can be held vicariously responsible for the acts of his servant should primarily be considered in the light of the statute. No doubt, the principle of mens rea is accepted by criminal Courts but it is within the power of the legislature to make a certain illegal act or omission penal and fix in absolute liability upon any person if a breach of a certain enactment is made. Those on whom the duty is cast to interpret the Statutes cannot ignore the purpose and object of an enactment. If the legislature expressly or in an implied manner has placed this vicarious responsibility on the master, the Courts of law cannot question the discretion of the legislature by relying upon certain well recognized principles.

Such general principles apply to all offences but it is within the power of the legislature to enact that an accused may be convicted without making a props into his mind and without finding out whether he had knowledge of the crime that was committed or an intention of committing that crime. No doubt, these principles can be given up only where the language, of the Statute either clearly expresses the fastening of the vicarious responsibility or it can safely be taken as implied. The question whether the Statute has by necessary implication made the master liable depends upon several considerations. As held by Milk, J., in *Harish Chandra v. Emperor* : AIR1945 All90 this question should be answered on the following considerations. The learned Judge observed:

Primarily it depends upon the language or the statute, the words used, then its scope, its object, the nature Of the duty laid down and whether it intends to impose a public duty binding on the master apart from any question of knowledge or frame of his mind. In many such cases the provision of the statute would be rendered nugatory if it be held that the prohibition or the duty imposed was not absolute.

The same view was again expresed by a Division Bench of this Court in *Gillumal v. Emperor* 1946 Ali LJ 143 : : AIR1946 All393 . The case was relied upon by the

appellate Court in deciding this question. It was a case under the U.P. Cotton Cloth and Yarn Control Order, 1943, and Mulla, J. observed:

In our judgment Section 6 prescribes certain duties which have to be performed by a manufacturer, selling agent wholesale dealer, or retailer in certain circumstances and it is only a manufacturer, selling agent, wholesale dealer, or retailer who can be called to account for failing to perform those duties. It is not in our judgment a good defence to say that the manufacture, siling agent, wholesale dealer or retailer was not himself present when the provision of law was on ravened. The duty lay upon him and it was for him to see that the duty was properly performed as required by the law. His presence or absence is in our judgment immaterial.

6. The same view was also held in an earlier case in *Queen Empress v. Tyab Ali* ILR 24 Bom 423. The learned Judges who decided the case remarked as follows:

We fail to see how it can be contended that under these circumstances a delivery of goods by the man in charge would not be a delivery by the Owner of the shop. It is not a question of tention, or mens rea, or of knowledge; it is the delivery which the Act makes penal, and the delivery by the manager is clearly in this case a delivery by the licensee.

7. The English decisions are also on the same line. In *Houghton v. Mundy* (1910) 103 LT 60, Lord Alverstone, C.J., observed:

Having regard to the usefulness of the Sale of Food and Drugs Act, I think it is most important that we should not throw any doubt upon the decision to the effect that want of guilty knowledge is no defence to a prosecution of this kind, and that if a servant acting within the scope of his authority commits an infringement of the Act the master is responsible.

8. Similarly in *Allen v. Whitehead* (1930) 1 KB 211, Lord Hewart, C.J., made the following observation-

The principle seems to me to be that which was explained, for example, in *Mousell Bros. v. London and North Western Rly.* (1917) 2 KB 836 at p. 845, where Atkin, J., (is he then was) said: I think that the authorities cited by my Lord make it plain

that while prima facie a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as for make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parliament has that effect or not regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed.

9. The Counsel for the applicants relied upon a Bench decision of the Calcutta High Court in *Varaj Lall v. Emperor* : AIR1924 Cal985 . The facts of that case are clearly distinguishable. In that case Vraj Lall, who was the owner of a motor vehicle was convicted under the Motor Vehicle Rules because his driver was driving the motor vehicle at an excessive speed even though Vraj Lall was not in the car at that time and he had instructed the driver not to exceed the regulation speed. It was observed in these circumstances by Greaves, J:

The principle I should adduce from the cases is that, where a particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for his servant's acts, if an act is expressly prohibited but not otherwise, and that he cannot be so made liable, if the act provides for liability for permitting and causing a certain thing, unless it can be shown that the act was done with the master's knowledge and assent, express and implied.

It would be seen that even in this decision it was clearly stated that where an act is expressly prohibited a master can be held vicariously responsible for the conduct of his servant if a particular intent or state of mind was not an essential ingredient of the offence. In the Calcutta case, : AIR1924 Cal985 the rash driving by the driver was clearly his own individual act and the master could not possibly have gained any benefit by this rash conduct.

10. In Halsbury's Laws of England, Volume IX, at page 235 the following principle of law is laid down:

The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable. A master is not criminally liable merely because his servant or agent commits a negligent or malicious or fraudulent act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his orders.

The Calcutta case : AIR1924 Cal985 can, therefore, be no authority for holding that where the profit on account of a wrongful act accrues to the master and the act done was within the scope of duties assigned to the servant, the master can plead that as he was not present at the time of the breach, therefore, no criminal liability can be fastened to him.

11. Two other cases were cited before me but they also do not support the contention advanced before me. These two cases are *Srinivas Mall v. Emperor* AIR 1947 PC 135 and *Isaak Solomon Macmull v. Emperor* AIR 1948 firm 364.

12. The Bombay decision is based upon the Privy Council decision. The question was not really involved in the case but the Privy Council made an obiter dicta. Lord du Parcq commenting upon the view of the High Court observed:

The High Court took the view that even if appellant (1) had not been proved to have known of the unlawful acts of appellant (2) he would still be liable, on the ground that where there is an absolute prohibition and no question of mens rea arises, the master is criminally liable for the acts of his servant.' With due respect to the High Court, their 'Lordships think it necessary to express their dissent from this view. They see no ground for saying that offences against those of the Defence of India Rules here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. See the judgment of Wright J. in *Sherra's v. De Rutzen* (1895) 1 QB 918 at p. 921. Offences which are within that class are usually of a comparatively minor character, and it would be a surprising result of this delegated legislator if a person who was morally innocent of blame could be held vicariously liable for a servant's

crime and is punishable with imprisonment for a term which may extend to three years.' Their Lordships agree with the view which was recently expressed by the Lord Chief Justice of England, when he said: It is in my opinion of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind.

The Bombay High Court relying upon this Privy Council case dilated upon that view in the following words. Chagla, C.J. observed:

According to the Privy Council it is not in every case of an absolute prohibition that no question of mens rea arises. According to them it is only a limited and exceptional class of offences which can be held to be committed without a guilty mind. Further, according to them, these offences are of a comparatively minor character and they expressed surprise and it is almost a note of horror that it could possibly be contended that offences under the Defence of India Act and the Defence of India Rules which are punishable with imprisonment for a period of three years could possibly fall within this limited and exceptional category of offences.

These two decisions really are not in conflict with the decisions cited by me earlier. They only to a certain extent modify the proposition that where there is an absolute prohibition the question of mens rea does not arise at all, and the master can be held to be liable for the acts of his servant. It seems to me that the proposition that where the legislature has either clearly or by necessary implication declared an act or omission to be an offence irrespective of the mens rea, the Courts of law cannot go into this question cannot be seriously challenged. So far as the facts of this case are concerned, it cannot be seriously contended that the offence charged against the applicants does not fall within that limited and exceptional class of offences which can be held to be committed without a guilty mind. The maximum term of imprisonment which could be awarded under Section 22 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, is six months. It is

therefore, clearly an offence of a minor character. In Halsbury's Laws of England, Volume IX at page 11 it is stated:

In a limited class of offences, mens rea is not an essential element, This class 'consists for the most part, of statutory offences of a minor and only quasi criminal character and in order to determine whether mens rea is an essential element of an offence, it is necessary to look at the object and terms of the statute which creates it.' In foot-note (n) at that very page in order to illustrate this statement certain offences are mentioned. These offences include.

Nuisance Cases, Food and Drug Cases, Licensing Case, and the Miscellaneous Cases.

I am, therefore, of the opinion that even on the view expressed by the Privy Council and the Bombay High Court in Isak Sbloman Macmull's case AIR 1948 Bom 364, it can safely be held that an offence under the U.P. Sugareane (Regulation of Supply and Purchase) Act comes under those limited class of offences in which mens rea is not an essential element. It would be impertinent on my part to express any doubts against the view of law laid down in these two authorities. I am, however, of the opinion that it is open to the legislature to absolutely prohibit any act and make an offender vicariously liable. The only restriction upon the power of the legislature is the limitation placed upon it by the Constitution of India. So long as this absolute prohibition is made within the framework of the Constitution, I think that the Courts of law cannot question that absolute prohibition by raising the question of knowledge or intention.

The Sugarcane (Regulation of Supply and Purchase) Act comes under those Acts which may be described as social legislation for the fauve of the community. Its object is to safeguard the interests of the poor cane growers and rules have been framed so that the cane growers may not be robbed of their just dues by the mill owners. The words of Rule 96(1)(f) fix the primary responsibility upon the occupier and option is given to him that he may perform this duty either himself or through a servant. The words of the section clearly imply that the responsibility of taking the weight of the vehicle in which the cane was brought was fastened upon the occupier. If the occupier prefers to perform this duty vicariously through a servant

he can also be held vicariously responsible if the servant commits a breach. As I read the words of Section 96(1)(f), I am satisfied that the duty is cast upon the occupier and it is for him to see to it that this duty is properly performed. It cannot be denied that when Ram Sundar Lal applicant weighed the empty carts he was doing so within the scope of his duty. It would have been a different matter if Ram Sundar had tried to obtain some illegal gratification from the cartmen for giving some preferential treatment to any one of them. In such a case perhaps it would be an individual act of Ram Sundar Lal, as it would not fall within the scope of his duty. The test is whether the act done by the servant falls within the scope of his duty or not. If it falls the master is vicariously responsible but if it does not fall the master cannot be held criminally liable. It was observed by Tudball, J, in *Emperor v. Behari Lal* ILR 34 All 146:

If it were an act done by the servants within the scope of their employment, then the conviction of the master would in the present case be a good one.

On the evidence led in the case it could not be disputed that the illegal act charged against the applicants was one which was within the scope of the servant's duty and so the master can be held to be vicariously liable for the fault committed by the servant.

13. There is another aspect of the case. The conception of the welfare state necessitates an enactment of the kind, such as U.P. Sugarcane (Regulation of Supply and Purchase) Act. It is open to the legislature to adopt an objective approach in determining the liability of offenders. The law has a tendency of becoming more and more objective in the interests of the community which are given the top priority and the rights and liberties of the individuals have to be curtailed. I, therefore, find nothing wrong in this objective approach made by the legislature, I have already observed above that in my opinion Section 96 clearly implies that the occupier would be held responsible for any breach committed.

14. So far I have merely discussed the legal aspect irrespective of the merits of the plea advanced On behalf of Sri Thanjo Lal. Even on merits this plea has no force, Where a servant commits a crime which brings wrongful gain to the master and not to the servant personally, the complicity of the master in the crime can safely

be accepted. Sri Tharoo Lal examined no witnesses nor filed any document in support of the contention advanced on his behalf that the incorrect weighment made by Ram Sundar Lal was against his directions. This contention at best is only an argument for this is not the stand taken by him in his statement. He, on the other hand contended that no incorrect weighment was made by Ram Sundar Lal. I am, therefore, of the opinion that tile circumstances indicate that he not only knew that empty carts were being wrongly weighed at the Ragarganj purchasing centre but it is highly probable that this was being done on his directions in order to make a wrongful gain for the Nawabganj Sugar Mills.

15. I, therefore, find that the case is fully proved and established against both the applicants; Sri Tharoo Lal and Ram Sundar Lal Tewari. This application of revision is dismissed. The fine imposed upon the applicants should be deposited within a period of one month from to day.

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