

**The State Vs. Prakashchand**

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**Court :** Madhya Pradesh

**Decided On :** Mar-15-1955

**Reported in :** 1955CriLJ1600

**Judge :** Nevaskar and; Samvatsar, JJ.

**Appellant :** The State

**Respondent :** Prakashchand

**Judgement :**

**Nevaskar, J.**

1. Accused Pmkashchanrlra, Roshanlal and Canesh-prasad were prosecuted Under Section 7, Essential Supplies (Temporary Powers) Act read with Clause 15(1), Cotton Textile Control Order and Sections 3 and 18, Madhya Bharat Cloth and Yarn Dealer's Licensing Order, 1949 before the Municipal Magistrate, Indore (who is the Magistrate of First Class) who found them not guilty and acquitted them.

2. This is an appeal by the State against the order of acquittal passed by the Magistrate.

3. Prosecution case in brief is that Mr. Sinha of the Enforcement Branch on coming to know that the cloth was being sold at the shop of the accused in

Krishnapura at rates higher than those fixed by law decided to lay a trap and effect a raid. He therefore selected a decoy witness Babu-lal Asava who was given marked notes of Rs. 75 and sent to the shop in question for making purchase of Cotton Cloth on 18-10-1950. It is said that Babulal approaches the shop of the respondent in Krishnapura and purchases a 'Than' of long Cloth (HaralO for Rs. 43-10-0 and a pair of 'dhoties' for Rs. 16-12-0.

It is said that no cash memo was given to Babulal. The amount thus realised from Babulal at the shop of respondent was in excess of the control price for each of the commodity aforesaiifcT The total excess amount realised according to the prosecution was Rs. 15-14-6. It was further alleged that the licence of the shop was suspended on 30-8-1950 for a period of two months and that the impugned transaction was of this period

The accused were therefore prosecuted for violation of Glauses 3 and 8 of the Madhya Bharat Cotton and Yarn Dealers Licensing order and Clause 15(1) of die Madhya Bharat Cotton Textile Control Order. Questions as regards the merits of the decision of the trial Court and those relating to procedural errors were raised in this appeal,

4. As regards the procedural errors it was contended both in the Court below and before this Court that the learned Magistrate ought to have tried the case as a regular warrant case and summary trial ought not to have been resorted to. The contention shortly stated is that the Court initially ordered the case to be tried summarily on an application, submitted on behalf of the prosecution, by its order dated 9-12-1950.

Section 12, Essential Supplies (Temporary Powers) Act, justified this order. Later on a question regarding placing of a certain report on record was raised. The Magistrate held that the document could not be brought on record. On a revision petition it was held that the document was liable to be placed on record. At this stage the prosecution wanted the case to be tried as a regular warrant case. This change of procedure at the stage at which the case was, was objected to on behalf of the accused and the Magistrate did not agree to try the ease as a regular one.

5. Since the trial was commenced as a summary one in pursuance of an application submitted on behalf of the prosecution the Magistrate, having once started the case as such, was justified in refusing to change the procedure. Once the requisite condition for exercise of power under Section 12, Essential Supplies (Temporary Powers) Act, to try the case summarily had come into existence and the Magistrate in exercise of his discretion had decided to try the case summarily he could not by any provision of law be made to alter the procedure.

The trial therefore held in this manner is not legally vitiated and no point can be made out of this refusal in an appeal against acquittal.

6. The second point regarding procedural error sought to be urged before us was that the prosecution were not allowed to examine witnesses in addition to those which were given in the initial list which they had right to do Under Section 540, Criminal P. C.

7. It is said that in the statement of Mr. Sharma certain documents were produced on behalf of the prosecution. Mr. Sharma had no personal knowledge about them. This fact was brought out in his cross-examination. An application thereupon was made to examine Chief Inspector, Civil Supplies, as a witness to prove the documents. This was disallowed by the Magistrate. Further the Court ought to have called Samrathmal as a witness.

8. As regards the first, no ground is taken in the memorandum of appeal. As regards examination of Samrathmal in exercise of powers Under Section 540, Criminal P. C, it is clear that this power is not to be exercised to fill up the gaps in the prosecution case. It has not been shown that the witness could not be summoned under normal procedure. The prosecution were entitled to be satisfied with the evidence they adduced.

If later on it was found that the evidence is insufficient it is not permissible in appeal to assail the Magistrate by saying that he should have exercised powers Under Section 540, Criminal P. C. and examined the witness to make up the deficiency.

9. Lastly as regards the merits of the case the decoy witness Babulal says that he was not specifically asked to go to Shrikrishna Stores but was asked to go to any shop in Krishnapura. The propention version that Mr. Sinba had information that cotton cloth was being sold at the shop of

Shrikrishna Stores cannot be believed in view of this admission. Babulal was asked a question in his cross-examination whether he was told by accused Nos. 1 and 2 that cotton cloth could not be sold at that shop and that only silk goods could be sold and his reply is evasive.

He says he did not remember. According to him the goods purchased by him were lying on the top of the show-case Almiras along with other goods and no cash-memo was prepared when the raid took place. He admitted that there were two or three customers at the shop then and yet there was no other extrinsic evidence. Mr. Sinha who effected the raid after the alleged sale admitted that accused No. 1 Prakasheandra had then stated that they could not see cotton cloth but that he had sold silk saris and blouse while Babulal was saying that he had purchased white 'Than' and 'Dhotis'. Deenbandhu the person who was brought by Babulal Asava to serve as 'Panch' and who entered the shop along with Mr. Sinha at the time of raid admitted that on the top of the show-case 'Almirah' there were pieces of cloth and silk along with the disputed goods.

It also appeared from the statement of Babu-lal Asava and Mr. Sinha that Babulal Asava and Deenbandhu were members of Jan Hit Raksha Dal and Babulal was the principal Secretary of the same. They claim to be wedded to catch persons indulging in black-marketing and thus help the police.

10. In view of this prosecution evidence the learned Magistrate thought it unsafe to convict the accused merely on the basis of recovery of marked notes of Rs. 60.

11. The real controversy was whether the goods viz., a piece of 'Harak and 'Dhotis' were sold or not. No cash-memo was prepared. The goods though claimed to be taken delivery of were lying on the top of the show-case along with other goods of silk and cotton. Accused admittedly complained at the time of the raid that they had sold silk 'Saris' and blouse piece and that he could not sell cotton cloth then.

No independent 'Panch' witness was examined who had seen the incident and was present at the time of 'Panchnama'. Babulal Asava and Deenbandhu were taking interest in securing to bag the accused as the culprits and were wedded to successful fruition of the raid.

12. In view of these circumstances it cannot be said that the decision of the Magistrate was such as ought to be interfered with in an appeal against acquittal. The initial presumption of innocence is reinforced and considerable weight attaches to the view of the trying Judge regarding the credibility of the witness whom he had privilege to see and hear. And it is only where the decision could not have been legally reached on the proved circumstances of the case that an interference in appeal against acquittal is justified.

13. In the present case conviction of accused No. 3 Ganeshprasad is also not sustainable in view of the decision of this Court in 'State v-Gendalal' AIR 1930 Madli-B 89 (A).

14. The decision moreover as regards the- accused does not deserve to be interfered with on merits for the reasons discussed above.

15. The appeal therefore deserves to be dismissed. It is hereby dismissed.

**Samvatsar, J.**

16. I agree.

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