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State Vs. Lakhmichand

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Court : Madhya Pradesh

Decided On : Aug-13-1955

Reported in : 1957CriLJ507

Judge : Nevaskar and ;Samvatsar, JJ.

Appellant : State

Respondent : Lakhmichand

Judgement :

Nevaskar, J.

1. Accused Lakhmichand, Chandmal, Manaklal and Prabhulal were found to carry 8 bags of wheat in a bullock cart on 23-3-1951 from Borkhedi in Madhya Bharat to Bangeda in Rajasthan. The cart was stopped as soon as it stepped out of Madhya Bharat territory. Lakhmiehand and Chandmal were arrested on the spot and the other two escaped. A complaint was lodged against the accused on these facts under Sections 4 and 8 of the Essential Supplies (Temporary Powers) Act.

The complaint however did not mention the particular Notification under the Madhya Bharat Foodgrains Export Restrictions Order, Samvat 2005(1948) issued by the Government of Madhya Bharat in pursuance of the powers conferred under the stud Act. Chandmal was discharged on 5-6-1951 on the ground that no case was made out against him. Charges were however framed against the remaining

three accused.

2. On trial the learned Magistrate held that it was proved that the bullock containing 8 bags of wheat had been carried from Borkhedi in Madhya Bharat to Bangeda in Rajasthan. He however felt doubt as to whether Manaklal and Prabhulai were inside the cart at the time the offence is said to have been committed. He therefore acquitted them.

3. As regards Lakhmichand he held that although it was proved that he was inside the cart and that the wheat was being taken as indicated above by him yet inasmuch as the complaint did not mention the particular notification which is said to have been contravened the cognizance taken by the Magistrate was bad in law being contrary to Section 11 of the Essential Supplies (Temporary Powers) Act, He therefore directed the acquittal of Lakhmichand also.

4. The State did not prefer appeal against the acquittal of Manaklal and Prabhulai. An appeal was however filed in respect of the acquittal of Lakhmlchand and the sole question, therefore, which falls to be considered is whether the failure to mention the particular notification under the Essential Supplies (Temporary Powers)) Act which is said to have been contravened is such a defect as to render the complaint Invalid by reason of the provisions of Section 11 of the Essential Supplies (Temporary Powers) Act and for that reason the cognizance taken by the Magistrate was bad in law rendering the subsequent trial as being without jurisdiction.

5. The learned Magistrate who tried the case took reliance upon the decision of this Court reported in Kunhaiyalal v. The State Madh-B LJ 1952 HCR 285 : AIR 1953 Madh-B 243(A) and a brief extract of report appearing in 1953 Law Weekly Notes 286 pertaining to Gulabchand v. State, in Cri. Ref. No. 9 of 1953(MB)(B).

6. In the first of these two cases Dixit J. considered the Question as to the validity of a complaint or a report which does not contain the facts constituting the offence which gave jurisdiction to a Magistrate under Section 11 of the Essential Supplies (Temporary Powers) Act. The facts in that case were that the charge-sheet filed by the Sub-Inspector only mentioned the bare fact that the accused applicant had

sold in black market 1 1/4 yard of cloth to Nanda and thereby committed an offence under Section 8 of the Madhya Bharat Essential Supplies (Temporary Powers) Act. His Lordship took the view that this was not a sufficient statement of facts constituting the offence.

According to his Lordship the assertion in the complaint that the accused in that case sold piece of cloth in black market to Nanda and the Police found the offence established gave no idea whatsoever of the specific acts done by the accused and as to the manner in which they constituted the offence. He therefore relying on certain decisions held that the facts constituting the offence not having been stated in the complaint the cognizance taken of the case was bad in law.

7. The facts in the other case are not quite clear in the report, However it appears that the same learned Judge followed the aforesaid case. From the short statement of facts which appear in the report it appears that the Police challan only mentions that on a certain date the accused was found transporting in a car 24 maunds of Jwar from Badagaon to Susner and that this act of the accused was an offence under the Essential Supplies Act, On the facts appearing in that case and having regard to the particular notification in question his Lordship might have been justified in holding that there was no mention of facts constituting the offence. However all the facts of that case are not before this Court and therefore it is difficult to say one way or the other as regards that case.

8. Present case is entirely different. From the case reported in Madh-B LJ 1952 HOB 285 : (AIR 1953 Madh-B 243)(A) there was justification for his Lordship to hold that there was no sufficient mention of facts constituting the offence. In the present case that is not the position. The facts which go to constitute the offence are stated. The accused is said to have exported grain from Madhya Bharat territory to Rajasthan although the particular notification which is said to have been contravened was not mentioned.

9. Section 11 Of the Essential Supplies (Temporary Powers) Act. 194G reads as follows:

No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in S 21 of the Indian Penal Code (XLV of 1860).

10. On going through this Section it is clear that all that the Section requires in order to enable a Court to take cognizance of a case is that there should be a report in writing of the facts constituting such an offence. The Section does not require the mention of a particular legal provision which is said to have been contravened. In The State v. Zaverbhai Amaidas : AIR1953 Bom371 Bavdekar J, held that:

Section 11 of the Essential Supplies (Temporary Powers) Act, 1946 states that before cognizance could be taken there must be before the Court a report in writing of the facts constituting such an offence. It is denied that the requirement of the terms of the Section are satisfied but the Section nowhere states that the report must state what was the offence which was committed in the sense that it must quote the section by which the accused's act was made penal.

In that case the complaint did not mention the fact regarding contravention of Bombay Food-grains (Restriction of Movements and Sale) Order, 1949. This was held to be not such a defect as to render the trial without jurisdiction in view of Section 11 of the Essential Supplies (Temporary Powers) Act.

11. Similar view is taken in Shiam Monohar v. The State : AIR1953 All443 . Bhargava J. who held that even an incorrect mention of the legal provision said to have been contravened Where the facts constituting the offence are correctly mentioned in the complaint there is no error which will vitiate the trial. His Lordship held that:

The mere error in mentioning in the report as well as in the charges framed by the Magistrate the particular clause of the U. P. Foodgrains (Movement) Control Order 1949, which had been contravened cannot, therefore, vitiate the trial or the conviction.

12. On consideration of the provisions of Section 11 of the Essential Supplies (Temporary Powers. Act and the authorities referred to above I feel no hesitation in holding that the view taken by the lower court as to the invalidity of the Police report and the consequent cognisance of the case on the ground of its not being in proper compliance with provisions of Section 11 of the Essential Supplies (Temporary Powers) Act cannot be accepted as sound. He has failed to correctly apply the decision of this Court in Madh-B LJ 1953 HCR 285 : (AIR 1953 Madh-B 243)(A).

13. Mr. Oza who appears for the accused has frankly conceded that in view of the aforesaid decision of the Bombay and Allahabad High Courts and on correct reading of the decision of this Court it was not possible for him to contend that the cognizance taken by the Magistrate in this case was bad in law by reason of Section 11 of the Essential Supplies (Temporary Powers) Act.

14. As regards the merits of the case the Magistrate has found against the accused and nothing has been urged before us in this behalf to show that that view of the Court below was erroneous,

15. The result is that the appeal is allowed and the accused is convicted under Section 7 of the Essential Supplies (Temporary Powers) Act for contravention of Section 2(c) of the Foodgrains Export Restrictions Order, Samvat 2005(1948) of the Madhya Bharat Government.

16. In view of the fact that the said restriction order is no longer in force owing to the abolition of all control restrictions with regard to the food stuffs, I am of the opinion that a sentence of fine will meet the ends of justice, I would, therefore, impose a fine of Rs. 50 upon the accused in this case. In default of payment of fine he shall be liable to undergo simple imprisonment for a fortnight,

Samvatsar, J.

17. I agree.

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