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State Vs. Gokulchand

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Court : Madhya Pradesh

Decided On : Feb-28-1957

Reported in : AIR1957MP145

Judge : A.H. Khan and ;Nevaskar, JJ.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 4 and 11; General Clauses Act, 1897 - Sections 3(2); Constitution of India - Articles 366 and 372

Appeal No. : Criminal Appeal No. 51 of 1954

Appellant : State

Respondent : Gokulchand

Advocate for Def. : R.M. Karkare, Adv.

Advocate for Pet/Ap. : Shivdayal, Dy. Govt. Adv.

Disposition : Appeal allowed

Judgement :

Nevaskar, J.

1. This is an appeal filed on behalf of the State of Madhya Bharat against the order of acquittal passed by the Sub-Divisional Magistrate Khilchipur.

2. Accused Gokulchand s/o Bhawarlal resident of Mouja Miana was prosecuted for an offence under section 3 read with Section 7 of the Essential Supplies (Temporary Powers) Act, 1948 for transporting two cart-loads of Jwar from Miana from Sarangpur Tehsil to Jirapur in Khil-chipur Tehsil on 19-5-1954 and thereby contravening Notification No. 132/29/170 (50) dated 5-1-1951 published in the Madhya Bharat Government Gazette dated 13-1-1951, issued by the Government of Madhya Bharat in exercise of its powers delegated to it under Section 4 of the Act.

3. The learned Magistrate found that the accused had brought two cart-loads of Jwar from his village Miana, to Jirapur. He however acquitted the accused mainly on two grounds. Firstly, he held that the written charge-sheet submitted by the Police for taking cognisance of the offence did not contain facts constituting the offence and that therefore his talcing cognizance of the offence was barred by the mandatory provision of Section 11 of the Act. Secondly he held that the notification, the contravention of which was alleged, was not duly proved. This rendered the prosecution unsustainable as was held in State v. Brij Lal Dhodi, AIR 1953 Madh-B 30 (A), Pannalal v. The State, 1952 Madh-B LJ 329: (AIR 1953 Madh B 84) (B) and State v. Gangaram, 1952 Madh-B LJ 426 (C).

4. Both these grounds taken by the learned Magistrate in support of the order of acquittal are not correct.

5. AS regards the first, Section 11 of the Essential Supplies (Temporary Powers) Act provides :

'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 Section 21 of the Indian Penal Code (XL of 1860).'

6. It is clear from the section that before a Magistrate can take the cognizance of an offence punishable under the Essential Supplies (Temporary Powers) Act, he must have before him a report in writing of a public servant as defined in Section 21 of the Indian Penal Code which contains facts constituting such offence.

7. Now in this case a charge-sheet was submitted before the Sub-Divisional Magistrate Khilchipur by Sub-Inspector of Police. Along with the charge-sheet, he submitted supporting documents including a copy of the first information report of Constable Munshikhan recorded by Station House Officer Khilchipur. The charge-sheet in its last column contained a brief statement of accusation. In this it was stated that Constable Munshikhan had submitted a report against Gokulchand that on 19-5-1952 he had carried Jwar from Miana to Machalpur thereby committing an offence under section 3/7.

It was also stated that the grain seized from him was being submitted. Across the charge-sheet were mentioned documents which were submitted along with the charge-sheet. These included the first Information report lodged by Munshikhan and the recovery report contains the full statement of facts constituting the offence. It was stated therein that Munshikhan constable reported that Gokul Mahajan of Miana was transporting two cartloads of Jwar from Miana in one Tehsil to Machalpur in another Tehsil without any licence or permit and that these carts were seized at Jirapur.

Further it was stated that an offence under Section 3/7 of the Essential Supplies (Temporary Powers) Act was committed. The report was in the hand of the Station House Officer Jirapur. A copy of this report was sent to the Sub-Divisional Magistrate Khilchipur the same day.

8. It will thus appear that when the Magistrate took cognizance of the offence, he had before him the charge-sheet making a reference to the first information report containing facts constituting the offence. This report in writing was submitted by the Sub-Inspector of Police who submitted the charge-sheet. The first information report was also by Station House Officer of Thana Jirapur and a copy of it had been sent to the Sub-Divisional Magistrate Khilchipur independently on 19-5-1952. There was also before him the recovery report.

9. Thus the Magistrate had duly taken cognizance of the offence as required by Section 11 of the Essential Supplies (Temporary Powers) Act, Mere failure to repeat all the facts referred to in the first information report in the last column off the charge-sheet or failure to mention the particular notification said' to have been

contravened cannot amount to a defect which prevented the Magistrate from taking cognizance of the offence. I am therefore of the view that there was sufficient compliance of Section 11 of the Essential Supplies (Temporary Powers) Act and that for that reason the view of the Magistrate that he could not take cognisance of the offence was not correct.

I am supported in this view which, I have taken by a single Bench decision of Allahabad High Court reported in Shiam Manohar v. The State, AIR 1953 All 443 (D). It also appears from the decision in the aforesaid case that failure to mention or in complete reference to the particular penal provision of law in the charge-sheet cannot render the taking of cognizance of offence under the Essential Supplies (Temporary Powers) Act, illegal.

10. As regards the second question there is the decision of Full Bench of Madhya Bharat High Court reported in State v. Gopalsingh, 1955 Madh-B LJ 2015: ((S) AIR 1956 Madh-B333) (E), which relied upon the decisions reported in Edward Mills Co. Ltd. v. State of Ajmer, (S) AIR 1955 SC 25 (F), and State of Bombay v. F. N. Balsara, AIR 1951 SC 318 (G).

11. In (S) AIR 1955 SC 25 (F), the facts material for the present question were as follows :

'On 16th March 1949 Central Government issued a notification in exercise of its powers under Section 94(3) of the Government of India Act 1935 directing that the functions of the appropriate Government under Minimum Wages Act would in respect of every Chief Commissioner's Province be exercised by the Chief Commissioner. On 17th March 1950 the Chief Commissioner of Ajmer, purporting to act as the 'appropriate' Government of the State of Ajmer-Merwara published a notification in terms of Section 27 of the Minimum Wages Act giving three months' notice of his intention to include employment in the Textile Mills as an additional item in Part I of the Schedule. On 10th of October 1950 the final notification was issued stating that the Chief Commissioner had directed that 'employment in the textile industry' should be added in Part I of the Schedule.

On 23rd November 1950 another notification was published with the signature of Secretary to the Chief-Commissioner containing the Rules purporting to have been framed by the Chief Commissioner in exercise of his powers under Section 30 of the Act. Under Article 239 of the Constitution, the President of India could delegate his authority to the Chief Commissioner of Part 'C' States similarly as under Section 94(3) of the Government of India Act 1935. There was however, no such notification, delegating such authority to function as appropriate Government under the Minimum Wages Act.'

12. The question before their Lordships of the Supreme Court was whether the notification issued under Section 94(3) of the Government of India Act, 1935 could be said to be a law in force within the meaning of Article 372(1) of the Constitution. It was contended before them that the Order (Notification) issued by the Central Government, under Section 94(3) of the Government of India Act, 1935 could not be regarded as law in force, within the meaning of Article 372.

A distinction was sought to be made in this connection between an 'existing law' as defined in Article 3GG (1) and 'law in force' under Article 372, and it was contended that though an 'order' can come within the definition of 'existing law' it cannot be included within the expression 'law in force' as used in Article 372 of the Constitution. Their Lordship^ rejected this contention in these terms :

'We do not think that there is any material difference between an 'existing law' and 'a law in force'. Quite apart from Article 3GG (10) of the Constitution, the expression 'Indian Law' has itself been defined in Section 3(29) of the General Clauses Act, ordinance, regulation, rule, order or bye-law which before the commencement of the Constitution had the force of law in any Province of India or part thereof. In our opinion, the words 'Law in force' as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. We agree with Mr. Chaterjee that an order must be a legislative and not an executive order before it can come within the definition of law. We do not agree with him however, that the order made by the Governor-General in the present case under, Section 94(3) of the Government of India Act is a mere executive order,'

'Part IV of the Government of India Act, 1935, which begins with Section 94, deals with Chief Commissioner's Province and Sub-section (3) lays down how a Chief Commissioner's Province shall be administered. It provides that it shall be administered by the Governor-General acting through a Chief Commissioner to such extent as he thinks fit, .

An order made by the Governor-General under Section 94(3) investing the Chief Commissioner with the authority to administer a Province is really in the nature of a legislative province which defines the rights and powers of the Chief Commissioner in respect to that province. In our opinion such order comes within the purview of Article 372 of the Constitution and being a law in force, immediately before the commencement of the Constitution could continue to be in force under Clause (1) of the article.'

Agreeably to this view it must also be held that such order is capable of adaptation to bring it in accord with the constitutional provisions, under Clause (2) of Article 372 and this is precisely what has been done, by the Adaptation of Laws Order, 1950. Paragraph 26 of the order runs as follows :

'Where any rule, order or ether instrument was in force under any provisions of the Government of India Act, 1935, or under any Act amending or supplementing that Act, immediately before the appointed day, and such provision is re-enacted with or without modifications in the Constitution, the said rule, order or instrument, shall, so far as applicable, remain in force with the necessary modifications as from the appointed day, as If it were a rule, order or instrument of the appropriate kind duly made by the appropriate authority under the said provision of the Constitution, and may be varied or revoked accordingly.

Thus the order made under Section 94(3) of the Government of India Act should be reckoned now as an order made under Article 239 of the Constitution and we are unable to agree with Mr. Chaterjee that it was beyond the competence of the President under Clause (2) of Article 372 to make the adaptation order mentioned above'.

13. It will be clear from the judgment of their Lordships in this case that they make no distinction between order and notification and consider the two terms as synonymous. It is clear from. Para 5 of the report that what was issued by the Governor-General was a notification under Section 94(3) of the Government of India Act. This was called 'Order' and the question considered was whether the order delegating functions of appropriate Government to Chief Commissioner containerd in the said notification was legislative in its nature or not. It was held that it was legislative and not executive and thus fell within the term 'law in force' under Article 372(2) of the Constitution and that it was capable of adaptation by Clause (2) of Article 372. It was further held that it was actually so adapted by para 28 of the Adaptation of Laws Order, 1950.

14. The decision makes it plain that where an authority is given power to exercise Legislative functions by means of an order such an order is legislative in its nature.

15. In the present case notification in question is issued by the State Government in exercise of its powers delegated to it under Essential Supplies (Temporary Powers) Act. This was an order end could be included within the term 'Indian Law' as used in Section 3(29) of the General Clauses Act in accordance with the view of their Lordships. It also is an existing law as well as 'Law in force'. If this is so there is no reason why the Court cannot take judicial notice of this 'law in force in the territory of India' in accordance with Section 57(1) of the Indian Evidence Act.

16. The Pull-Bench of Madhya Bharat High Court take reliance upon the aforesaid Supreme Court case which emphasised the distinction between an order or notification issued by an authority of State in exercise of its legislative and executive functions and pointed out that where a notification is issued in exercise of its executive function it cannot fall within the scope of term 'law in force'. A judicial notice therefore cannot be taken of such a notification or order and it has to be proved in accordance with Section 78 of the Evidence Act.

But if the notification is issued in exercise of its legislative function it becomes a law in force and the courts are bound to take judicial notice subject of course to the terms of Section 57 of the Evidence Act. It also based its conclusion on another decision of the Supreme Court in AIR 1951 SC 318 (G), wherein it was

held that a notification containing an order made in exercise of power given by Bombay Excise Act has the force of law as if it were made by the legislature itself.

17. The aforesaid Full-Bench case of Madhya Bharat High Court dissents from the decision in Mathuradas alias Mathuraprasad v. State, ILR 1954 Nag 578: (AIR 1954 Nag 296) (H). Since the Division Bench decisions reported in ILR Nagpur are binding we could have considered it proper to refer the case to the Full Bench had we not been of opinion that the view expressed in the aforesaid Division Bench case cannot be considered to be correct in view of the decisions of their Lordships of Supreme Court referred to above, Justice Mudholkar who delivered the leading judgment in this case put the matter on two alternative grounds.

According to him it would not be right to deduce the meaning of the term 'law' from the definition of the term 'Indian Law' as defined in Section 3(29) of the General Clauses Act 10 of 1897. In the alternative he held that even if the definition of the term 'Indian Law' in General Clauses Act were accepted as the law in force in the territory of India a 'Notification' cannot be said to be included in it.

18. Both these alternative grounds stand displaced by the view expressed by their Lordships of the Supreme Court in the aforesaid case. They specifically referred to the definition of the term 'Indian Law' in General Clauses Act to deduce what the law in force in the territory of India means. They further made no distinction between 'notification' and 'order' and expresed that what is material to be considered is whether it was in exercise of the legislative function of the authority concerned or not.

19. In view of the aforesaid decisions of the Supreme Court we do not think: it necessary to refer the cass to a Full Bench.

20. I am therefore of opinion that the order relied upon need not have been proved. Mere production of copy of the material Gazette notification of the some was enough.

21. For these reasons the order of acquittal passed by the learned Magistrate is erroneous.

22. The appeal is therefore allowed and the respondent Gokulchand is convicted of an offence under Section 3 read with Section 7 of the Essential Supplies (Temporary Powers) Act for contravention of Notification No. 132/-29/170 (50) dated 5-1-1951 published in the Madhya Briar at Government Gazette dated 13-1-1951 issued by the Government of Madhya Bharat in pursuance of powers delegated to it under Section 4 of the Act.

23. In view of the fact that the accused is being convicted nearly five years after the incident and in view of the fact that due to improvement in the food situation the importance of notification is lost and a sentence of fine of Rs. 50 will meet the ends of justice. The accused is therefore sentenced to pay a fine of Rs. 50. In default of payment of fine he is sentenced to simple imprisonment for one month.

A.H. Khan, J.

24. I agree.

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