

The King Vs. Birdi Chand Moda

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Court : Orissa

Decided On : Oct-10-1949

Reported in : AIR1953Ori32

Judge : Panigrahi and ;Narasimham, JJ.

Acts : Orissa Cotton Cloth and Yarn Control Order, 1948

Appeal No. : Government Appeal No. 1 of 1949

Appellant : The King

Respondent : Birdi Chand Moda

Advocate for Def. : R.K. Das, Adv.

Advocate for Pet/Ap. : Adv. General

Disposition : Appeal dismissed

Judgement :

Panigrahi, J.

1. This is an appeal by Government against an order of acquittal passed by Mr. S K. Bagchi, Magistrate, First Class, Cuttack.

2. The prosecution case is that P. W. 2, Krupasindhu Mohapatra, Sub-Inspector of Police (Enforcement Branch) searched the premises of the accused, Birdi Chandra Moda on 15-9-1947 and recovered a stock of cotton cloths from an underground chamber of the accused's bouse. The seizure list prepared at the time (Ex. 1) shows that a number of pieces of cloth had been kept by the accused in two trunks in an underground chamber of his house. The cloths recovered are -- a whole 'than' of white drill, pauplin Cambric shirting, voila, mull-mull and fents which could be converted into saree pieces. The accused is admittedly a wholesale dealer in cloths. The prosecution alleges that the seized stock of cloths was in excess of the accused's 'normal requirements' and that Clause 13 (2) of the Orissa Cotton Cloth and Yarn Control Order has been violated.

3. The prosecution examined the Inspector of Police (P. W. 2) who proved the search and the sanction accorded by the District Magistrate for prosecuting the accused. His only evidence on the point is 10 the effect that

'this proceeding is filed as the cloth was beyond the accused's normal requirements. Accused's family consists of two adults and four children. I did not investigate as to the origin of the cloth,'

The other witness (P. W. 1) proved the search conducted by P. W. 2 but admitted in his cross-examination that the family of the accused consisted of 20 to 25 members.

4. The accused examined five witnesses to prove that he is a very rich man and that the seized cloths were required in connection with the nuptial ceremony of his daughter.

5. The Magistrate accepted the defence contention that the seized cloths were required to be given as presents at the time of the re-marriage ceremony of the accused's daughter and that they were covered by the expression 'normal requirements' of the accused; and accordingly held that the accused was not guilty.

6. Clause 18 (2) of the Orissa Cotton Cloth and Yarn Control Order reads as follows:

'No dealer or other person not being a manufacturer shall at any time hold stocks of cloth or yarn in excess of his normal requirements.'

Normal requirement may differ from person to person. The normal requirement of a dealer in cloth is not the same as that of a non-dealer or of a manufacturer. Nor can the expression be restricted to the domestic or personal requirements of the owner. In my opinion the normal requirements of a person in possession of cloth must depend not only upon his status in society but also upon his business needs. Even if the accused's contention were true, I would not readily agree that a re-marriage ceremony is a normal affair and that the requirements for such an occasion are normal. I am therefore not at all impressed by the contention put forward on behalf of the accused that the cloths seized were required for domestic purposes. Mr. R. K. Das, appearing on behalf of the accused, also placed before us a notification issued by the Supply and Transport Department of the Government of Orissa, removing the restriction on the purchase, in any quantities, of cloths other than dhoties and sarees. Even if the sale of such cloths was unrestricted, I do not think a person could be allowed to be in possession of such cloth in excess of his normal requirements, so long as Clause 18 (2) of the Cotton Cloth and Yarn Control Order is in force. The prosecution exhibited the stock book (Ex. 3) of the accused. The entries from the months of May to September, 1947, show that the accused was entitled to have in his possession thousands of yards of cloth in terms of his license and that in the month of September his stock ranged between 1500 yards and 16000 yards. Whether the cloths seized were a part and parcel of this stock which he was entitled to hold, under his license or whether it was in excess of the figure shown in his stock book has not been brought out by the prosecution. Nor has the license been exhibited. It is therefore impossible to say that the cloths kept in the two trunks and seized by the Police were covered by the 'normal requirements' of the accused for his business as a dealer. The prosecution has failed to establish the necessary ingredients of the offence created by a violation of Clause 18(2) of the Order. The Magistrate was right in acquitting the accused and we see no reason to interfere. This appeal is

accordingly dismissed.

Narasimham, J.

7. I agree.

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