

Sheonath and anr. Vs. the State

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Court : Orissa

Decided On : Oct-17-1952

Reported in : AIR1953Ori53

Judge : Narasimham, J.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 3(1); [Constitution of India](#) - Article 19(1) and 19(6); [Evidence Act, 1872](#) - Sections 57

Appeal No. : Criminal Revn. Nos. 3 and 4 of 1952

Appellant : Sheonath and anr.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : B.K. Pal, Adv.

Disposition : Revisions dismissed

Judgement :

ORDER

Narasimham, J.

1. These two petitions are heard analogously and will be dealt with in one judgment. Petitioner Sheonath in CrI. Revision No. 3 of 1952 is a Fireman of the B.

N. Rly. residing at Chakradharpur in Singhbhum district of Bihar State. Petitioner Mahammad Ali in Crl. Revision No. 4 of 1952 is also a Fireman of the B. N. Rly. residing at Chakradharpur. On 12-5-1951 a goods train from Bilaspur to Chakradharpur halted at Jharsuguda railway station. There were two engines attached to the goods train, one in the front and another in the rear. The prosecution case is that petitioner Mahammad Ali was working as a Fireman in the rear engine and that he brought four bags of rice and kept them in the rear engine of the goods train. Petitioner Sheonath was said to be working in the front engine of the said goods train and the prosecution case is that he also kept two bags of rice at Jharsuguda in the front engine.

A constable on duty at Jharsuguda railway station named A. Makunda (P. W. 1) noticed the two petitioners carrying bags of rice to the two engines of the goods train and immediately reported the matter at the G. R. P., Jharsuguda. The A.S.I. on duty Sri S.C. Patnaik (P. W. 3) immediately went to seize the rice bags. He recovered about one maund and five seers of rice from an open empty wagon close to the rear engine and about ten seers of rice from the front engine.

On the date of the occurrence the following notification (No. 41668 S. T. dated 15-11-1950) of the Government of Orissa in the Department of Supply and Transport was in force :

'No. 41668 S. T. In exercise of the powers conferred by Sub-section (1) of Section 3, Essential Supplies (sic) notification of the Government of India in the Department of Food. No. PY 603(2)-I, dated 21-10-1946 and with the concurrence of the Government of India and in supersession of the notification of Government of Orissa in the Department of Supply and Transport, No. 1806 S. T., dated 14-1-1948 the Governor of Orissa is pleased to direct that no movement or transport of any of the foodgrains mentioned in the Schedule to this notification or products thereof by rail, road, water or air or in any other manner from any place in the district of Sambalpur or Koraput to any place outside the said districts shall be allowed except under and in accordance with the conditions of a valid permit issued by the Director of Food Supplies or by any officer authorised by him in that behalf. SCHEDULE
Rice Jawar
Rice in the husk (Paddy) Bajra
Broken rice (Khuda)

SamaWheat Bran of paddyRagi or Mandia Bran of wheat.'

The two petitioners were, therefore, sent up for an offence under Section 7 of Act 24 of 1946 for contravention of the aforesaid notification issued under Sub-section (1) of Section 3 of that Act. They were both convicted by a 1st class Magistrate and sentenced to a fine of Rs. 200/-each and their appeal to the Court of Sessions was dismissed.

2. Though a faint attempt was made to challenge the facts as stated by the prosecution, I see no reason for disagreeing with the findings of the two lower Courts to the effect that the two petitioners carried some bags of rice each and kept them in the goods train proceeding to Chakradharpur when it was halting at Jharsuguda railway station. In the case against petitioner Mahammad Ali there is a slight discrepancy about the place from where the rice was recovered. The constable on duty (P. W. 1) stated that he saw petitioner Mahammad Ali keeping the rice bags in the rear engine. But the evidence of the A. S. I. of Police (P. W. 3) shows that the rice was recovered from an open empty wagon close to the rear engine. This discrepancy, however, is very trivial. The constable was standing on the platform and it may be that when he saw Mahammad Ali proceeding towards the rear engine he assumed that the rice bags were kept in the engine itself and not in the open wagon close to the engine.

His evidence to the effect that it was petitioner Mahammad Ali who took the rice bags to the rear engine side has not been shaken materially in cross-examination and that evidence coupled with the recovery of the rice bags by the A.S.I. of Police (P. W. 3) is sufficient to show that it was this petitioner who kept the rice bags there. So far as petitioner Sheonath is concerned, there is no material discrepancy at all about his having carried the rice bags and kept them in the front engine of the goods train.

3. Mr. Pal in support of the revision petitions urged two important questions of law : (i) Jharsuguda being within Sambalpr district the mere act of placing rice bags in a goods train at Jharsuguda would not amount to 'attempt' to transport rice from Sambalpur district to any place outside the district so as to amount to a contravention of the aforesaid notification, (ii) In any case, the aforesaid

notification is unconstitutional and ultra vires inasmuch as it imposes unreasonable restrictions on the right of a citizen to hold property guaranteed to him by Sub-clause (f) of Clause (1) of Article 19 of the Constitution.

4. In my opinion, neither of these arguments is tenable.

5. It is true that it may not be easy in all cases to define the limit to which a preparatory act would extend and beyond which the act would amount to an 'attempt' to commit an offence. But in the present case the petitioners' own statements under Section 342, Cr. P. C. were to the effect that they were residents of Chakradharpur in Singhbhum district. They kept the rice bags in question in a goods train at Jharsuguda which was bound for Chakradharpur. It may be that Jharsuguda railway station is well within Sambalpur district and an ordinary person found in possession of rice bags at Jharsuguda may not be held guilty of attempt to transport rice from Sambalpur district to any place outside the district. But if a person residing at Chakradharpur in Singhbhum district and working as a Fireman in a goods train keeps rice bags in the train bound for Chakradharpur it may be reasonably inferred that he intended transporting the rice bags from Jharsuguda to Chakradharpur.

It may be that there was apprehension of detection, he might throw away the bags before the train crosses the boundary of Sambalpur district. But as pointed out in -- 'State v. Haricharan Rakshit', ILR (1949) 1 Cut 737 (SB) an attempt to commit an offence does not cease to be an attempt merely because before the completion of the offence the offender may prevent the commission of the offence by some other act. As soon as he had put the rice bags in the train bound for Chakradharpur his attempt to transport the rice bags in question was complete and it is unnecessary to speculate as to what he might subsequently do before crossing the border of Sambalpur district. There is absolutely no evidence on record to show that the petitioners were bound for any place within Sambalpur district.

6. The second argument also is equally groundless. It is conceded that the State may, in the interests of the general public, impose reasonable restrictions on the fundamental right of a citizen to hold property and the crucial point for consideration is whether the restrictions imposed by the aforesaid notification can

be said to be reasonable in the interests of the general public.

As pointed out in -- 'State of Madras v. V. C. Row', AIR 1952 SC 196 :

'the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.'

7. Mr. Pal urged that every person was entitled to carry sufficient quantity of rice for his own personal consumption and any statutory notification of the Government imposing restrictions on the transport of rice should contain an exemption clause in respect of the normal requirements of an individual. He cited instances of similar provisions in some of the Cotton Cloth and Yarn Control orders where no restrictions were imposed against possession of cloth required for normal requirements. He urged that the absence of any exemption clause in respect of normal requirements in the aforesaid notification was itself sufficient to show that the restrictions were disproportionate to the object to be achieved and consequently unreasonable. He also attacked the restrictions as somewhat arbitrary.

8. Though there is no evidence in this case to show the primary object which the Government had in view when they issued the aforesaid notification, the Court can take judicial notice of the fact that Sambalpur district is a surplus district as

regards rice and there was extensive smuggling from the district to the adjacent States such as Bihar and Central Provinces. The object of the notification appears to be to conserve the stock of rice in Sambalpur district so that the procurement policy of the Government may not be jeopardised and rapid depletion may not take place due to unrestricted transport across the border.

The notification does not completely prohibit the transport of rice; but merely says that a permit should be obtained from the authority concerned before any such transport can take place. Considering the nature of the evil that was sought to be remedied I am not prepared to say that the restrictions are unreasonable. It may be that the restrictions are somewhat severe on those persons who have to carry rice for their normal requirements. But they can easily obtain the necessary permit from the authority concerned. The Government might have reasonably thought that if normal requirements of an individual are exempted in the notification itself it may be almost impossible to enforce the provisions of the notification inasmuch as there may be extensive smuggling by hundreds and thousands of people under the cloak of transporting rice for their normal requirements.

Mr. Pal has not been able to place before me any authority to the effect that in any control order in respect of an essential commodity like rice a saving clause in respect of normal requirements is necessary for the purpose of Article 19. In the absence of any such authority and in view of the urgent necessity which the Government must have felt for conserving rice stock in Sambalpur district I would take the view that the restrictions contained in the notification were reasonable.

9. In the result the petitioners have been rightly convicted and the sentence is not excessive. The revision petitions are dismissed.