

G. Gurumurthy Vs. State

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Court : Orissa

Decided On : Aug-24-1967

Reported in : AIR1968Ori72; 33(1967)CLT1128; 1968CriLJ533

Judge : G.K. Misra, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7(1) and 11; Orissa Rice (Movement Control) Order, 1964; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367

Appeal No. : Criminal Revn. No. 375 of 1966

Appellant : G. Gurumurthy

Respondent : State

Advocate for Def. : R.C. Patnaik, Standing Counsel

Advocate for Pet/Ap. : R.C. Misra, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

G.K. Misra, J.

1. The petitioner has been convicted under Section 7 of the Essential Commodities Act 1955 (No. X of 1955) (hereinafter referred to as the Act) and sentenced to pay a fine of Rs. 500/- in default to undergo S. I. for two months. The seized rice was directed to be confiscated to the State.

2. Prosecution case is that P. W. 3, the Officer in-charge, G. R. P. posted at Berhampur had information that rice was being smuggled to Andhra Pradesh from Khurda Road. He accordingly deputed the A.S.I. (P. W. 3) for keeping watch at Khurda Road Station. On 18th of January, 1966, at 3 A. M. Madras Mail bound towards Andhra Pradesh reached Khurda Road. P. W. 3 noticed that the accused, driver of the mail train, was keeping three bags of rice in the rear engine of the train. The train had two engines. P. W. 3 boarded the train. When the train halted at Berhampur at about 7-30 a.m., he informed the matter to P. W. 3. Three bags containing 128 KGs. of rice were seized from the rear engine. The accused took the plea that when he got down at Berhampur Railway station he found three bags of rice had been kept on the bridge plate adjoining both the engines by somebody without his knowledge. He brought the matter to the notice of the Guard and the Station Master who were present there when the rice was seized. After thorough discussion of evidence the learned Magistrate held that the petitioner kept the three bags of rice at Khurda Road in the rear engine of the 3Up Madras Mail. Against the order of conviction and sentence, the revision has been filed.

3. Mr. Misra raised two contentions:

(i) The materials on record do not establish that the petitioner was carrying the three bags of rice.

(ii) There was no compliance with the provisions of Section 11 of the Act and as such the Magistrate had no jurisdiction to take cognizance of the offence.

4. P. W. 3 is the only eye-witness who saw the accused keeping the three bags of rice in the rear engine. His evidence was attacked as he did not inform this fact to the Railway police or the Station Master at Khurda Road. The criticism is without any force. After the stoppage of the mail, some time must have been taken for loading the bags. The stoppage was not for a very long time. P. W. 3 was under

the control of P. W. 5. He chose to follow the rice bags to give information at Berhampur. Nothing has been suggested against P. W. 3 why he would falsely implicate the accused. The conduct of P. W. 3 is quite natural and there is no reason to discard his evidence in this regard. Mr. Misra contended that when P. W. 3 reported the matter to P. W. 5 at Berhampur Railway Station, a Station Diary entry should have been made and that when P. W. 5 got information from P. W. 3, the F. I. R. should not have been drawn by P. W. 5 on his own information. These criticisms are very trivial. The moment the train stopped at Berhampur Rly. station, P.W 3 brought the matter to the notice of P.W 5. Soon after, the three bags of rice were seized. There was no lapse of time. In the F. I. R. it was clearly stated that P. W. 3 brought the matter to the notice of P. W. 5. There is nothing irregular in the procedure. At any rate this is no ground for discarding the evidence of P. W. 3. I am satisfied that P. W. 3 is reliable. The evidence of other witnesses throws no light on the case. After Berhampur, there is no other halting station for the Mail train inside Orissa. The finding that the petitioner was carrying three bags of rice without permit outside Orissa is therefore well founded. At any rate, it was an attempt to export the three bags of rice outside Orissa and the attempt was foiled by the seizure of the bags.

5. Section 7 of the Act so far as relevant runs thus:

'7(1) If any person contravenes any order made under Section 3-

(a) he shall be punishable-

(1) in the case of an order made with reference to Clause (h) or Clause (i) of Sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which may extend to three years and shall also be liable to fine;

Provided that if the Court is of opinion that a sentence of fine only will meet the ends of justice, it may refrain from imposing a sentence of imprisonment.' Section 3(1) of the Act lays down that if the Central Government is of opinion that it is

necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) so far as relevant enacts that without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity.

In exercise of the powers conferred by Section 3 of the Act, the Central Government passed the Orissa Rice (Movement Control) Order, 1964 (hereinafter to be referred to as the Order). Clause 3 of the Order puts restrictions on export and import of rice. No person shall export or attempt to export or abet the export of rice except under and in accordance with a permit issued by the Central Government or the State Government or by any officer authorized in that behalf. The act of the petitioner was an attempt to export rice in contravention of Clause 3(i) of the Order which was passed with reference to Section 3(2)(d) of the Act. The petitioner accordingly committed an offence under Section 7(1)(a)(ii) of the Act. The learned Magistrate should not have committed a confusion by simply saying that the conviction was one under Section 7 of the Act.

6. It is now necessary to examine the argument of Mr. Misra that, the Magistrate has no jurisdiction to take cognizance of the offence. The contention is based on Section 11 of the Act which runs thus:

'11. 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.' P. W. 5 is admittedly a public servant. Cognizance was taken on his report in writing (Ext. 2). Two elements of the section were fully satisfied. The only other element is whether the report in writing contained the facts constituting an offence under Section 7(1)(a)(ii) of the Act. A bare perusal of the report is enough to show that all the material facts were mentioned therein. P. W. 5 reported that P. W. 3 Rave him information that the petitioner kept the three bags of rice in the rear

engine of the 3 Up Madras Mail at Khurda Road going outside Orissa. A seizure list was prepared. A copy was supplied to the accused. Thus, all the facts constituting the offence were mentioned in Ext. 2. All the essential ingredients of the offence are made out.

7. Mr. Misra, however, emphasized upon the fact that Ext. 2 did not refer to Section 7(1)(a)(ii) of Act and to Clause (3) of the Order. Non-mention of the section or the order does not affect the jurisdiction of a court to take cognizance and Section 11 is not a bar. There are series of decisions on the point clarifying the position, see AIR 1953 All. 443, *Shiam Manohar v. State*; AIR 1953 Bom 371, *The State v. Zaverbhai*; AIR 1957 Madh. Pra. 145. *State v. Gokul Chand*.

These cases were under Section 11 of the Essential Supplies (Temporary Powers) Act, 1946, which ran thus:

'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.' Thus Section 11 of the 1946 Act is identical with Section 11 of the Act. The aforesaid decisions lay down in unmistakable terms that the section did not require the mention of a particular legal provision which is said to have been contravened. The same view was taken in AIR 1959 All. 332 *Bhagwati v. The State of U. P.* The matter is concluded by AIR 1961 S.C. 928 *Bhagwati v. State of U. P.* in appeal against the decision in AIR 1959 All. 332. In that case all the facts were given but a reference to the notification stated to have been contravened had not been made. Their Lordships held that Section 11 does not require a report to be or to contain either the chargesheet or the evidence in support of the charge. Its function is merely to afford a basis for enabling the Magistrate to take cognizance of the case. AIR 1946 All. 416 *Dr. N.G. Chatterji v. Emperor* and AIR 1949 Oudh 66 *Rachpal Singh v. Rex* cited by Mr. Misra, were distinguished in the Supreme Court decision itself. They were under Rule 130(1) of the Defence of India Rules whose language was also accepted by their Lordships as being similar to Section 11 of the Act. In those cases, the offence and the rule contravened were merely mentioned but the facts constituting the contravention were not mentioned in the report. In such

circumstances, those decisions were said to have laid down the correct law. Those two decisions have no application to this case where facts constituting the offence have been fully set out in the report. The one other decision relied on by Mr. Misra is AIR 1944 Bom 247 Purushottam v. Emperor. In that case their Lordships observed thus :--

'Rule 130, Defence of India Rules, provides that no Court shall take cognizance of any alleged contravention of these rules, except on a report in writing of the facts constituting such contravention, made by a public servant. A charge-sheet sent by a Sub Inspector of Police would be a report within the meaning of this rule. But the charge-sheet sent in this case by the Sub Inspector of Police makes no reference at all to the offence of contravention of the Bombay Retail Trade Control and Licensing Order. It mentions only the attempt to export fur from the Kaira District to village in the Baroda State. On this ground also the conviction and the sentence of one month's rigorous imprisonment for trading in fur without a license must be set aside.' It is not very clear from the aforesaid passage whether the report set out all the material facts but the conviction was quashed merely because there was no reference to the Order which was contravened. If it, however, purports to lay down any such proposition, it is contrary to the aforesaid Supreme Court decision and cannot be treated as good law,

8. The position may thus be summed up. Section 11 of the Act requires compliance of three elements (i) cognizance can be taken only on a report in writing: (ii) the report must be submitted by a public servant; and (iii) the report must contain facts constituting the offence.

If the aforesaid three elements are fulfilled, jurisdiction of the Magistrate to take cognizance of the offence is not ousted merely because there is no reference to the order or the notification contravened or to specific offence.

9. The learned Magistrate has not discussed the proviso to Section 7(1) of the Act laying down that if the Court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment. He simply says that as the accused is Railway employee aged about 55 years and is on the verge of retirement and no previous

conviction is alleged against him, a sentence of fine will meet the ends of justice. These are not true considerations in a case of this nature. As, however, there has been no notice for enhancement, it is not necessary to interfere with the sentence and impose a substantive sentence of imprisonment. The fine, however, as it stands appears to be somewhat heavy. It is reduced to Rs. 200, in default, the petitioner to undergo S. I. for one month.

10. Subject to the aforesaid modification in the sentence, the revision is dismissed.

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