

Republic of India Vs. Hadibandhu Das

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Court : Orissa

Decided On : Apr-20-1978

Reported in : 45(1978)CLT657; 1979CriLJ303

Judge : R.N. Misra, J.

Appellant : Republic of India

Respondent : Hadibandhu Das

Judgement :

R.N. Misra, J.

1. This appeal under Section 378 of the Cr.P.C. is directed against the appellate judgment of the learned Special Judge, Puri, setting aside the conviction of the respondent under Rule 132 (3) of the Defence of India Rules, 1962, by the Special Magistrate, Orissa, at Bhubaneswar.

2. Respondent is an excise vendor and has has place of residence as also business within the Mangalabag area of the Town of Cuttack. The Deputy Superintendent of Police, C.B.I. (Economic Offences Wing) at Calcutta (P.W. 1) obtained a search warrant (Ext. 2) from the Additional District Magistrate (Judicial), Puri, authorising search of the premises of the respondent and his brother in connection with a case under Section 9 of the Opium Act. In execution of Ext. 2, the respondent's premises were searched on 6-5-1965 and during search the

Inspector (P.W. 74) recovered small coins of different denominations from several places of the residential building along (From order of V. Gopalaswamy, Dist. and S. J. and Special J., Puri, D/- 6-7-1974.) with obsolete coins, gold and other valuables. The Inspector conducting the search submitted a report (Ext. 3) to the Superintendent of Police, C.B.I., stating that in course of the search for the offence under the Opium Act, the respondent was found to be in possession of small coins beyond his personal or business requirements and had thus committed an offence punishable under Rule 132 of the Defence of India Rules, 1962. A formal First Information Report (Ext. 4) Was drawn up and investigation followed. Respondent was ultimately charged thus:

That you on or about the 6th day of May, 1965, at Mangalabag, P.S. Mangala-bag, Dist. Cuttack, possessed small coins of different denominations amounting to Rs. 8355.05paise in excess of your personal or business requirements for the time being.

Respondent's defence was that out of the coins recovered from his house, coins worth Rs. 500 to Rs. 700 belonged to him and the rest of the amount belonged to his mother and other relations staying with him in the same house. He also took the plea that a part of the coins represented collections of the Puja Committee of Mangalabag which as Treasurer of the Committee he was keeping with him.

3. Prosecution examined as many as 74 .witnesses and exhibited scores of documents. I must say that bulk of the evidence, oral and documentary, was wholly irrelevant for the purpose of trial for the charge in question and Mr. Patnaik appearing as Special Public Prosecutor in support of this appeal has fairly accepted that position. I am surprised that the learned Magistrate who tried the case exercised no control and allowed so much of irrelevant evidence to be brought on record. The learned trying Magistrate canie to hold,

To sum up, a huge quantity of coins was recovered from the house of the accused; he is the head of the family; there is no evidence that such coins were necessary for the accused's business or personal requirements and there is no evidence that the coins seized belonged to different members of the accused's family.

This being the position, I am satisfied that an offence under Rule 132 (3) is committed by the accused by violating Sub-rule (2)(e) of Rule 132 of the Defence of India Rules. This is a piece of special legislation meant to cover special offences and to meet special circumstances that may arise in the society. Of course, prosecution led evidence to show that there was acute shortage of coins at Cuttack and Choudwar but that evidence in my opinion is not sufficient to say that simply because the accused hoarded this much of coin, it brought about a shortage of coins at those places.... Though there is no adequate proof that there was shortage of coins in the market in the year 1965, the liability of the accused is in no way lessened. Hoarding of such huge quantity of small coins is certainly derogatory to the principle of circulation of coins which the law seeks to ensure.' and accordingly convicted the petitioner of the charge and sentenced him to two years' rigorous imprisonment and fine of Rs. 1,000/- with a default sentence of six months' rigorous imprisonment.

4. On appeal challenging the conviction, the learned Special Judge took note of the fact that according to the prosecution the value of small coins seized from the respondent amounted to Rs. 8,355.05. He noticed the fact that small coins of the value of Rs. 33.50 paise seized as per Ext. 5 had not been produced in court. There was no clear indication as to the extent of rupee coins in the total amount referred to above. He also noticed unexplained difference between the total of items 2, 4, 6, 11 and 14 which are said to be small coins as per the search list (Ext. 5) and the total amount for which respondent was charged being Rs. 8,355.05 paise. The lower appellate court was impressed by the fact that there was no admission of seizure of the entire small coins from the respondent's possession and at the most, respondent had stated that out of the seized amount, small coins worth Rs. 500/- to Rs. 700/- belonged to him. It came to the conclusion that the rest of the coins appeared to be of respondent's mother and since admittedly she was living in the house and these coins had been kept mixed up with old, obsolete coins which respondent's mother was likely to have preserved, the defence plea seemed to be cogent. It found that the respondent was doing business and was involved in substantial commercial activities and came to conclude that the prosecution had failed to prove that on 8-5-1965, respondent was in possession of small coins in excess of his personal or business

requirements for the time being and accordingly set aside the conviction and sentence and directed return of the seized coins to the respondent. Against this judgment of acquittal, the prosecution has preferred the appeal.

5. Mr. Patnaik has rightly indicated that the entire case would depend on the evidence of P.Ws. 2, 4 and 74. P.Ws. 2 and 4 were railway employees whose services had been requisitioned for the purpose of being witnesses to the search and seizure. P.W. 74 is the Investigating Officer. In the F.I.R. (Ext. 4) the sum recovered has been shown to be Rupees 9,414.36 while the charge was in respect of Rs. 8,355.05. As noticed by the lower appellate court, no cogent explanation is forthcoming from the side of the prosecution for the difference in the sums. There is no dispute that the expression 'small coin' does not cover the rupee. This has been clearly indicated in Rule 132 (1)(iii) of the Defence of India Rules of 1962. Under Sub-rule (2)(e), possession of small coin to an amount in excess of the personal or business requirement for the time being of a person is prohibited and Sub-rule (3) makes such possession punishable and provides the sentence. It would, therefore, follow that 'small coin' as referred to in Rule 132 (2)(e) would not cover the one-rupee coin. Strangely enough the seizure list does not specify the seizure of coins denomination-wise. It is not disputed that the seizure was also of one-rupee coins. In the absence of positive evidence as to how many one-rupee coins were seized, it is indeed difficult to sustain the charge levelled by the prosecution that the respondent was in possession of small coins in excess of his personal or business requirements. Emphasis was put by learned Counsel for the appellant that in the admission of the respondent that small coins to the extent of Rs. 500 or Rs. 700 out of the seized amount belonged to him, there was a clear confession of the guilt. Mr. Patnaik's argument that small coin would exclude the rupee coin cannot as such be accepted. In common parlance, small coin would very often refer to the rupee also as against currency of higher denomination, like 100 rupee, 50 rupee, 20 rupee, 10 rupee, 5 rupee, 2 rupee notes and the like. It is true that at the relevant time, coins of more than one rupee worth were not in circulation, but that by itself is of no assistance to the prosecution. The careless manner in which the seizure has been effected, non-mention of the coins denomination-wise in the seizure-list and the admitted position that what has been described as small coin contained one rupee coins,

put together go a long way against the prosecution stand, I am not prepared to accept Mr. Patnaik's argument in the facts of this case that small coins as claimed by the prosecution did not contain one rupee coins. Similarly, from the admission of the respondent that small coins worth Rs. 500 or Rs. 700 belonged to him it cannot be said that one rupee coins were excluded out of the same. Since the prohibition relied upon does not cover possession of one rupee coins, in the absence of cogent evidence from the side of the prosecution that the respondent was in possession of more of small coins than required for his personal or business purposes, no conviction can lie. It must follow, therefore, that the prosecution failed to establish a material feature and the lower appellate court was entitled to rely upon this lapse.

6. Reliance was placed by appellant's counsel on several authorities, such as *In re Kalapa Mandaya Servai* AIR 1943 Mad 683; *Dharamchand Garibdas Agarwal v. Emperor* AIR 1944 Nag 364 and *Emperor v. Nanabhai Nagindas* AIR 1946 Bom 36 : 47 Cri Lj 484, for the contention that possession of a smaller extent of small coins was accepted to establish the guilt. It has also been contended that the respondent was in physical possession of the entire seized amount and he had actually opened the almirahs from where the coins have been recovered. Reliance was also placed on the feature that respondent's mother was an old and ailing lady and she could not be in possession of so much of coins as recovered. It has next been contended that it was for the respondent to show what exactly was the extent of his requirement both personal and business of small coins and since respondent had failed to establish the same, even the small coins possession whereof is accepted would justify conviction of the respondent.

7. Some of the arguments of Mr. Patnaik for the appellant are indeed quite appealing, but as I have already noted, it was for the prosecution to prove what exactly was the extent of the objectionable possession and respondent's admission that small coins of Rs. 500 or Rs. 700 belonged to him did not take the matter a long way out of the arena of suspicion. As long as the prosecution was not able to establish by cogent evidence the extent of small coins recovered, no burden lay on the accused to offer any reasonable explanation and the prosecution cannot succeed. No explanation is forthcoming as to why

denomination-wise the seizure had not been specified even though it is conceded that all the seized coins had been counted. Counting appears not to have been hurriedly done. In fact, coins which could not readily be counted were heaped up and sent to the Bank where counting was done several months after seizure.

8. In the circumstances, I am satisfied that acquittal of the respondent by the lower appellate court is justified and no interference is warranted. I would accordingly sustain the appellate decision and dismiss the appeal. The bail bond be cancelled.

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