

**Babroo Vs. State**

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**Court :** Rajasthan

**Decided On :** Sep-13-1968

**Reported in :** 1968WLN6

**Judge :** L.S. Mehta, J.

**Appeal No. :** S.B. Criminal Revision No. 410 of 1967

**Appellant :** Babroo

**Respondent :** State

**Disposition :** Petition dismissed

**Judgement :**

**L.S. Mehta, J.**

1. This is a revision-petition filed by Babroo against the judgment of learned Sessions Judge, Pratabgarh, dated August 29, 1967. The petitioner was convicted by Sub-Divisional Magistrate, Partabgarh, for an offence under Section 7 read with Section 3 of the Essential Commodities Act, 1955, and was sentenced to pay a fine of Rs. 2000/- in default of payment of fine to suffer rigorous imprisonment for a month. Learned Sub-Divisional Magistrate also directed that 42 quintals of wheat, recovered from the possession of the accused Babroo, should be confiscated.

2. The case against the petitioner is that he is a licensed dealer of food grains. He was required under the licence to maintain stock register and submit its authenticated copy to the authorities concerned within the prescribed time. On April 30, 1967, Enforcement Officer, Ramjilal and Niab Tehsildar, Ugar Singh, checked the petitioner's register and found that the entries in the register were made only upto April 1, 1967, and not thereafter. The entry of April 1, 1967 showed that the applicant was in possession of 15 quintals of wheat. Contrary to this when the stock in possession of the accused was checked, it was revealed that he had 42 quintals of wheat, 34 quintals and 50 kgs. of Maize. A challan was presented against the accused Babroo for contravening the provisions of the Rajasthan Foodgrains Dealers, Licensing Order 1964, and the Rajasthan Foodgrains (Prevention of Hoarding) Order, 1964, by the Police Station Arnod, District Chittorgarh. After the trial of the case, the Sub-Divisional Magistrate found the accused guilty under the above provisions of law and sentenced him as aforesaid. A revision petition was taken against that order in the court of Sessions Judge, Partabgarh, but it proved abortive. Hence this revision.

3. The contention of learned Counsel for the petitioner is two-fold. His first grievance is that under Clause 3(b) of the Rajasthan Foodgrains (Prevention of Hoarding) Order, 1964, the petitioner could have kept with himself 20 quintals of wheat. Under clause 4 of the said Order any person having in his possession any quantity of foodgrains exceeding the limit prescribed by clause 3 is required to submit a declaration in the Form given in the Second Schedule to the authorities concerned every fortnight. Under clause 7 of the said Order, the court trying the offence, learned Counsel added, could not have ordered the confiscation of the entire stock of foodgrains consisting of 42 quintals of wheat.

4 Clause 7 of the Rajasthan Foodgrains (Prevention of Hoarding) Order, 1964, is in the terms following:

If any person contravenes any of the provisions of this Order, then without prejudice to any other punishment to which he may be liable, any court trying the offence shall order that any stock of foodgrains together with the packages and coverings thereof, in respect of which court is satisfied that the offence has been

committed, shall be forfeited to the State Government, unless for reasons to be recorded in writing the court is of opinion that the direction shall not be made in respect of the whole or, as the case may be, of a part of the property.

Clause 7 provides that any court trying the offence shall order that any stock of food-grains, in respect of which the court is satisfied that an offence has been committed, shall be confiscated to the State Government. The propriety of the order is not challenged. It has been argued that the order of confiscation should have been confined only to the foodgrains in possession of the petitioner in excess of 20 quintals of wheat for the reason that the petitioner has not contravened the provisions of clause 4 in respect of the entire stock of the foodgrains. I am not in agreement with this contention of the petitioner's counsel. A court trying a person for the contravention of the said Order is empowered to direct that any property, in respect of which the court is satisfied that an offence has been committed, shall be forfeited to the State Government. Once a person is found to be hoarding foodgrains in excess of the prescribed quantity, he has committed an offence in respect of the whole quantity of the stock, which he has been found hoarding and he cannot be heard to say that there is no offence committed in respect of the grains upto 20 quintals, but only an offence in regard to foodgrains in excess of 20 quintals. In this connection reference is made to *In re S. Devaraja Tharakan (1)*, in which Happell J. agreed with the above proposition. The first argument of learned Counsel for the petitioner is, therefore, based on a misconception.

5. As regards the second argument, clause 6 of the Rajasthan Foodgrains (Prevention of Hoarding) Order, 1964, lays down that any person contravening any of the provisions of the Order, shall be punishable under Clause (a) of Sub-rule (9) of Rule 125 of the Defence of India Rules, 1962. The said provisions of the Defence of India Rules provide that if any person contravenes any provisions of the rules or orders made under the rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. Thus, the law confers discretion upon the court either to punish the accused to imprisonment or with fine or with both. In this case, the accused has been sentenced to pay a fine of Rs. 2000/-- which, keeping in view the facts and the circumstances of the case, shall be deemed to be rather excessive. I am therefore, disposed to reduce the

same.

6. In the result, I partially accept this revision-petition, and, while maintaining the order of conviction as also the order of confiscation the wheat reduce the sentence of fine to a sum of Rs. 400/-, default of payment of fine the accused Babroo shall be required to undergo simple imprisonment for two months. The excess amount of fine, if realised, shall be refunded to the petitioner.

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