

The State Vs. Karna and ors.

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Court : Rajasthan

Decided On : Apr-05-1973

Reported in : 1973CriLJ1871; 1973()WLN365

Judge : C.M. Lodha and; S.N. Modi, JJ.

Appellant : The State

Respondent : Karna and ors.

Judgement :

ORDER

C.M. Lodha, J.

1. The respondents Karna, Jora and Navla were tried by the Sub-Divisional Magistrate, Bhinmal, for an offence under Sections 3/7 of the Essential Commodities Act, 1955 read with the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 and each of them was convicted under the said offence and sentenced to three months' simple imprisonment and a fine of Rs, 100/-. in default of payment of fine to undergo one month's simple imprisonment. The subject-matter of the offence, namely, wheat, seized from them was also ordered to be confiscated.

2. Aggrieved by their conviction and sentences, the accused filed an appeal and the learned Additional Sessions Judge, Jalore, by his judgment dated 20-9-68 set

aside their conviction and sentences and acquitted them. Consequently, the State has filed this appeal from the said order of acquittal.

3. After having gone through the relevant record, we are satisfied that it is proved beyond all manner of reasonable doubt that the three accused-respondents were found carrying wheat on camels on the night between 3rd and 4th November, 1965 from their village Hadecha Bichavadi towards the village Radaka in the State of Gujarat and that the place where they were caught lies within a five mile belt along with the border of Rajasthan adjoining Gujarat. It is established by the statements of P. W. 1 Navla Ram, P. W. 2 Narainlal, P. W. 3 Bishen-singh, P. W. 4 Bhanwarsingh, P. W. 5 Mohan, P. W. 6 Bhima, P. W. 7 Jagatsingh and P. W. 8 Kishandas that the accused were stopped on the way leading from Bichavadi to Radaka.

There were two bags of wheat on each of the two camels of the accused Kama and Jora and there was one bag of wheat on the camel of Navla. The seizure memo of wheat was duly prepared and the accused were arrested then and there and thereafter taken to the Police Station, Sangadva and the first information report (Ex. P-5) was lodged by P. W. 1 Navlaram. None of these witnesses is proved to have any enmity or illwill against the accused. Both the Courts below have accepted this evidence and the accused have not chosen to appear before this Court and contest the finding arrived at by the Courts below against them.

4. learned Counsel for the State has urged that in spite of having found on facts against the accused, the learned Additional Sessions Judge committed an error of law in acquitting the accused on the ground that the State had failed to show as required by Sub-section (6) of Section 3 of the Essential Commodities Act, 1955 that the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 was laid before both the Houses of Parliament and further that the prosecution had also failed to show that the Central Government was of opinion that it was necessary or expedient for maintaining or increasing supplies of the essential commodity, namely, wheat, that the Order in question was promulgated.

5. It may be pointed out that the accused did not take any such objection before the trial Court and this objection was taken for the first time before the learned

Additional Sessions Judge, But apart from that, it is important to note that laying the prder before both the Houses of Parliament is not a condition precedent for bringing into force the Order. All that Sub-section (6) provides is that every Order made under Section 3 of the Essential Commodities Act by the Central Government or by any Officer or authority of the Central Government shall be laid before both the Houses of Parliament as soon as after it is made.

It is significant that the Order is valid and effective from the date it is duly promulgated. Even the limit or period within which it must be placed before the Parliament has not been specified. It is, therefore not possible to hold that Sub-section (6) at Section 3 of the Essential Commodities Act mandatory. If the Legislature- intended that in order to provide an adequate safeguard was necessary to make the said provision mandatory it could have done so in express words. We are, therefore, of the opinion that the Order cannot be considered as invalid merely because the State was not able to put on record proof of the fact that the Order was laid before both the Houses of Parliament.

6. Then again there is a presumption in favour of the validity of the Acts, Rules or Orders passed by a competent legislative body. It is for the person challenging the validity of such Acts, Orders or Rules to show that they were not passed or promulgated in accordance with law. No material whatsoever even not an affidavit was filed on behalf of the accused to the effect that Sub-section (6) of Section 3 of the Essential Commodities Act had not been complied with. From that point of view also, we are not prepared to uphold the contention raised on behalf of the accused before the learned Additional Sessions Judge.

7. What we have said in respect of compliance of Sub-section (6) of Section 3 of the said Act applies with equal force to the objection that the prosecution should have proved that the Central Government was of opinion that it was necessary or expedient so to do for maintaining or increasing supplies of wheat or for regulating or prohibiting the supply and distribution thereof that the Order in question was made. We are clearly of the view that in absence of anything to the contrary it must be presumed that before issuing any Order under Section 3 of the said Act, the Central Government must have formed the requisite opinion and a

presumption must be raised in this respect. We are further of opinion that the prosecution cannot be called upon in each case to prove the formation of such opinion by the Central Government before every Order under Section 3 of the said Act was issued.

8. Thus, the grounds on which the learned Additional Sessions Judge has recorded acquittal of the accused are not sustainable. But while examining the case, we have noted certain striking features of the law which do not seem to have attracted the attention either of the parties or of the Courts below. The challan was filed under the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, whereas the learned magistrate framed the charge under the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959. The latter Order deals with 'foodgrains' and 'wheat' as is apparent from the definition clause contained in the Order. 'Foodgrains' has been defined in the Order as any of the food-grains specified in the Schedule to this Order, and 'wheat' includes its products other than wheat bran, bread, biscuits, cakes and pastries.

It may be pointed out that in the Schedule appended to the Order wheat is not included. The Schedule makes mention of only rice, maize, jowar, bajra, gram and barley. Clause 3 of the Rajasthan Food-grains (Restrictions on Border Movement) Order, 1959, no doubt lays down that no person shall transport...wheat to any place in the internal border area from any place outside that area or from any place in the internal border area to any place outside that area. This is correct so far as it goes, but by the Rajasthan Foodgrains (Restrictions on Border Movement) Amendment Order, 1961, Clause 3 of the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959, was omitted.

Again by the Rajasthan Foodgrains (Restrictions on Border Movement) Amendment Order, 1965, Clause 3 was restored but it was slightly different inasmuch as this time transport of foodgrains from any place in the internal border area to any other place in that area or to any place in the internal border area from any place outside that area was restricted. The result of this change was that the restriction was confined only to foodgrains as mentioned in the Schedule to the 1959 Order and not to wheat.

The learned Sub-Divisional Magistrate did not notice all these changes and the relevant law and not only charge-sheeted the accused under the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959, but also convicted them by virtue of this Order. This fact, however, cannot exonerate the accused altogether because as already mentioned above, there is another Order, namely, Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, Clauses 3 and 4 of which read as under:-

Clause 3. Prohibition of export and import of wheat and wheat products -

(1) No person shall export or attempt to export or abet the export of wheat or any wheat product except under and in accordance with a permit issued by the Central Government or by the Government of the State from which such wheat product is to be exported or by an officer authorised in that behalf by the Central Government or, as the case may be, by the Government of that State....Clause 4. Restriction on the movement of wheat or wheat products to or within Zonal border area,- No person shall move attempt to move or abet the movement of wheat or any wheat product-

(a) to any place in the Zonal border area from any place outside that area; or

(b) from any place in the zonal border area to any other place in that area, except under and in accordance with a permit issued by the State Government having jurisdiction in this behalf or by an officer authorised in that behalf by that Government.' Now, the act of the accused certainly falls within the mischief of these Clauses. In the definition Clause 2 of the Inter-Zonal Order, 1964, the terms 'export', 'zone' and 'zonal border areas' have been defined as under:-

'Export' means to take or cause to be taken by any means whatsoever out of any place within a zone to a place outside it.' (Clause 2 (a)).

'Zone' means any of the territorial units of India consisting of a State or States or Union territories or any portion of any Union territory as specified in the Schedule annexed to this Order.' (Clause 2 (g)).

'Zonal border areas' means the area within a five-mile belt all along the border of a zone adjoining the territory comprising another zone or, as the case may be, the area lying outside any of the zones.' (Clause 2 (h))

In the Schedule appended to the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, Zone IV is the State of Rajasthan and Zone VII is the State of Gujarat. Thus, the State of Rajasthan and the State of Gujarat are two different zones and the accused were found moving bags of wheat from one place in the zonal border area to another place in that area without a permit, or, in the alternative, they were attempting to export wheat. This was clearly an offence under the Inter-Zonal Wheat Order, 1964, referred to above.

9. We are, therefore, of the opinion that the accused have committed an offence under Section 3/7 of the Essential Commodities Act, 1955, read with Clauses 3/4 of the Inter-Zonal Wheat and Wheat Products (Movement control) Order, 1964, and not the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959.

10. A question then arises whether it would be proper to convict the accused of the offence under Section 3/7 of the Essential Commodities Act, 1955, read with the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964. In the charge all the facts constituting the offence have been clearly mentioned. It has also been mentioned that the acts committed by the accused fall within the mischief of Section 3/7 of the Essential Commodities Act, 1955, out instead of mentioning the correct Order, that is, Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964, the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959, has been mentioned. This, in our opinion, does not cause any prejudice to the accused because they very well knew the nature of the offence and the constituents and the ingredients of the offence of which they were charged.

11. In the result, we allow this appeal, set aside the order of acquittal passed by the learned Additional Sessions Judge, Jalore and convict the three respondents Kama, Jora and Navla under Section 3/7 of the Essential Commodities Act, 1955, read with Clause 3/4 of the Inter-Zonal Wheat and Wheat Products (Movement

Control) Order, 1964, and sentence each one of them to three months' simple imprisonment and a fine of Rs. 100/-, in default of payment of fine, each of them is further sentenced to one month's simple imprisonment. The order confiscating the wheat seized from the accused-respondents, passed by the learned Magistrate- is also restored.

12. The District Magistrate, Jalore, is directed to take steps to get the accused-respondents arrested and send them to jail for serving out the sentences awarded to them.

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