

In Re: Bavaji Alias Abdul Muhammad

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Court : Chennai

Decided On : Jul-04-1949

Reported in : AIR1950Mad44

Judge : Govinda Menon, J.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 7(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 511

Appeal No. : Criminal Revn. No. 297 and Cri. Revn. Petn. No. 250 of 1949

Appellant : In Re: Bavaji Alias Abdul Muhammad

Advocate for Pet/Ap. : V. Rajagopalachari and ;G. Gopalaswami, Advs.;Asst. Public Prosecutor

Disposition : Petition allowed

Judgement :

ORDER

Govinda Menon, J.

1. The petitioner who was accused 1 in c. c. No. 146 of 1948 on the file of the Court of the Additional First Class Magistrate of Kumbakonam was convicted for the contravention of an order promulgated by the Provincial Government No. 2660, A/45 (C. S.) published at pp. 681 and 582 to Part II of Fort St. George

Gazette dated 4th September 1945 which had been continued as an offence by Section 7(1) of central Act XXXIV [24] of 1946 and sentenced to rigorous imprisonment for one year. The said conviction and sentence were confirmed on appeal by the Court of Session, West Tanjore and the present revision is to set aside the aforesaid confirmation of the conviction and sentence.

2. P. W. 1 was the Grain Purchase Tahsildar of Tanjore in October 1947 and P. W. .2 was the Inspector of Police, C. I. D. X Branch, Tanjore at the same time. On 3rd October 1947 at about 10-30 P.M. both P. Ws. 1 and 2 proceeded along the flood bank shown in the plan EX, D-5 and found four cart-loads of paddy at the place marked 46/5 on the said flood bank. According to the witnesses, the double bullock carts had gone down the bank in a northern direction into the padugai lands which intervene between the Coleroon river in the north and the flood bank in the south. To the north of the Coleroon river is the Ramanoor Island which formed part of the Trichinopoly district. By the time P. Ws. 1 and 2 reached the place in question, the bullocks had been unyoked and accused 2 and 3 who had been acquitted by the learned Sessions Judge were near the cart. On being questioned accused 2 and 3 told P. W. 1 that the paddy belonged to accused 1. Little later, the petitioner came on the scene and admitted that the paddy was his. He was asked to produce the transport permit, because, according to the witnesses, the carts were proceeding towards Trichinopoly district. He did not produce any such permit, but said that the paddy was being taken to Kumbakonam. Since accused 1 did not produce the A. A. permit on demand and after P. Ws. 1 and 2 waited for an hour, the paddy was seized under the Mahazar, EX. p-11 and the witnesses arranged that the paddy should be taken to Kumbakonam to be produced in Court. On this evidence, the lower Courts have held that accused I was attempting to transport paddy in contravention of the G. O. above mentioned. Exhibit, P-4, cl. 1 of which is in the following terms :

'No person shall with effect from the date of this order transport paddy . . . from any place within the limits of any of the districts specified in Col. (1) of Sob. 1 to any place within the limits of any other district in the Province of Madras except under and in accordance with the terms and conditions of a permit issued by the Commissioner of Civil Supplies'

It is not disputed that there was no permit for the transport of paddy from the Tanjore district to the Trichinopoly district which lies to the north of the Coleroon river at a distance of six furlongs from the flood bank. Half the river belongs to the Tanjore district and the other half on the northern side belongs to the Trichinopoly district on the principle of *ad medium filum*. The learned Sessions Judge found that the act of accused 2 and 3 did not constitute an attempt to transport paddy; but that accused 1 committed the offence in question. The learned Judge found that the carts had a considerable distance to go before they crossed the boundary of the district and it was certainly possible for the drivers to repent of their intention to take the carts to Trichinopoly district and give up the attempt. It was further found that when the carts were seized, they were not even moving. Following the decision in *Queen-Empress v. Bamakka*, 8 Mad. 5 : 1 weir 330 the learned Judge was of opinion that the action of accused 2 and 3 would not amount to an attempt. In para. 19 of his judgment, the learned Sessions Judge finds on evidence that if accused 1 had delivered the grain to the carters obviously with instructions to take it into another district and if there had been no interference, the petitioner would not have seen the carts again. According to the learned Judge, he had therefore done everything that lay with him and set in train a series of actions that, if they had not been interrupted, would have led to the commission of the offence. He then applies the analogy of a person who books goods by rail-way transport to a destination to which it is an offence to send the goods and holds that such an act would amount to an attempt to commit the crime. On the above reasoning, the learned Judge was of opinion that the petitioner must have instructed the cartmen (accused 2 and 3) to transport the paddy from Tanjore District to Trichinopoly District.

3. I find it difficult to follow the learned Judge's reasoning. A strict construction of para. 1 of the G. O. extracted above would show that the offender is the person who transports the goods. It cannot be said that even if the prosecution evidence is true that the petitioner who delivered the bags of paddy to the cartmen (accused 2 and 3) to be taken to the Trichinopoly district would be actually transporting paddy. If the petitioner had done an act like this, it could at the utmost amount only to an abetment of the transport of paddy from Tanjore to Trichinopoly district. The drivers would be the persons who would transport the goods and the person who

directs them to do so would be the abettor of the offence. The learned Judge has found that accused 2 and 3 did not commit the crime. He also has found that they did not even attempt to commit the crime. In such circumstances, it is difficult to hold that if the actual participants did not even commit the offence of the attempt to transport, then the person who is alleged to have abetted the act which did not amount to an attempt has committed any offence at all. On this short ground, in my view, the offence has not been brought home to the petitioner.

4. On the merits also, I am unable to agree with the lower Courts that any offence has been committed. There is no evidence whatever that the petitioner directed accused 2 and 3 to take the paddy from the Tanjore district to the Trichinopoly district. P. W. 1 says that when accused 2 and 3 were questioned as to whose the paddy bags were, they replied that the paddy belonged to accused 1, but they did not give any reply to the other question as to where it was being taken. P. W. 2 also gives evidence to the same effect. Therefore, there is absolutely no material on which the Court could come to the conclusion that the paddy was being taken to Trichinopoly. On the other hand, it is clear from the evidence that accused 1 had been directed to deliver 1500 kalams of kuruvai paddy on 6th October 1947 to the Government licensed merchant in Tanjore district. Exhibit D-11 shows that towards that quantity 12 carts containing 177 bags had already been delivered, and if the contents of the four carts had also been delivered to a Government licensed merchant, that would fulfil the obligation imposed upon accused 1, regarding the delivery of the 1500 kalams of kurivai paddy. Exhibit D 2 the A. A. permit is for 16 carts of paddy to be delivered between 26th September 1947 and 5th October 1947. In these circumstances, in my opinion, the lower Courts were not justified in concluding that even if the carts had taken a detour little to the north of the flood bank into the Padugai lands and that at the time P. Ws. 1 and 2 observed the carts the bulls had been unyoked, the only possible inference is that the carts were being taken to the Trichinopoly district. P. W. 1 himself admits in cross-examination that when he first sighted the bandies some were in the flood bank while others were on the cart track on the north, and as they neared, the carts on the flood bank went towards the north on the cart track. The evidence of D. W. 13, a retired District Board Engineer, is to the effect that along the flood bank there are a number of vents between various distances and that there are

sidings also. Granting that the evidence of P. Ws. 1 and 2 is acceptable--and I do not see any reason to disbelieve the evidence of these respectable witnesses--it cannot be predicated with absolute certainty that the carts were proceeding to Trichinopoly district at all.

5. The learned Judge's view that it 'must have been' in obedience to the instructions of the petitioner that the carts set out to cross the river is not based on any evidence at all, and in a criminal case unless there is some evidence, no Court is justified in concluding that a person has given instructions which would amount to a crime. There is also the evidence of D. W. 2 that all the 16 carts which included the four carts in question reached the Kumbakonam chowki practically at the same time at 7-80 on the morning of the next day. If the petitioner had sent 12 carts with paddy for the purpose of delivering them to the licensed grain purchaser, the quantity contained in the four carts now in dispute would make up the requisite quantity which he had to deliver. There is a reasonable conclusion to draw that the petitioner would have sent the carts not to Trichinopoly district but to Kumbakonam to be delivered to the licensed dealer. The discussion by the learned Judge in para. 8 of his judgment is sufficient justification for drawing the inference that the four carts also should have formed part of the 16 carts containing the requisite quantity of paddy to be delivered.

6. In order to constitute an attempt to commit an offence, there must first of all be an intention to commit the crime, a commencement of the commission, and an act done towards the commission. Neither the mere forming of the intention to commit the crime nor the mere preparation for an offence is punishable. The dividing lines between a mere preparation and an attempt to commit a crime may be rather thin in some cases and the question whether there has been an attempt or only a preparation to commit it is to be decided on the facts of each particular case. One important consideration in such case is whether there was a locus penitentiae -- See *In re Narayanaswami Pillai* : AIR1932 Mad507 . Applying the above principles, it seems to me that on the evidence let in, it cannot be conclusively inferred that there has been an attempt to transport the paddy to Trichinopoly district.

7. The criminal revision case is therefore allowed and the petitioner is acquitted.

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