

In Re: Swaranath Bhatia

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Court : Chennai

Decided On : Jan-28-1948

Reported in : AIR1948Mad427; (1948)1MLJ219

Appellant : In Re: Swaranath Bhatia

Judgement :

Govinda Menon, J.

1. Against his conviction for having abetted the contravention of Rules 4 and 7 of the Madras Cotton Cloth and Apparel (Exports) Control Order, 1946, and thereby committed an offence punishable under Rule 81 (iv) read with Rule 121 of the Defence of India Rules and the Sentence of fine of Rs. 300 imposed on him by the learned Chief Presidency Magistrate, Madras, Swaranath Bhatia, a partner in the firm of Viswanath Prem Prakash appeals to this Court and what I have to decide is how far the appellant can be charged with the liability for the crime.

2. The facts are practically admitted. The appellant is one of the partners of the aforesaid firm and the second accused before the lower Court was said to be the other partner. As there was no tangible evidence to prove that he (second accused) had any connection with the Madras branch, the learned Chief Presidency Magistrate discharged him under Section 253(1), Criminal Procedure Code. The partnership of Viswanath Prem Prakash had been given by the Textile Com-missioner, Madras, permit No. 68916, Ex. P-1, granting leave to export

10,000 yards of cloth from Madras to Amritsar in East Punjab. On the 27th June, 1946, presumably acting on this permit, six bales of cotton textiles containing 18,372 yards of cloth were booked for despatch at the Salt Cotaurs goods shed by P.W. 5, an agent and carting contractor, engaged by one Ram Datta, an employee of the firm; which bales of cloth had been handed over to P.W. 5 by the said Ram Datta for despatch. Accordingly, P.W. 5 signed the consignment forms and risk note and the six bales were delivered over to the railway at the Salt Cotaurs goods shed. On information received P.W. 1, the Textile Control Officer, Madras, seized these bales on 4th July, 1946, while they were being loaded and after further investigation, a charge sheet was filed against the appellant for the offence mentioned above.

3. The appellant's defence was that these goods were booked by mistake by Ram Datta, his Punjabi clerk and that the appellant himself was not in Madras at that time and knew nothing about the consignment. He further pleaded that he was not a partner in the firm, but no defence evidence was let in to prove these pleas. After ample discussion, the learned Magistrate had no hesitation in holding that the appellant was a partner in the firm, though he agreed with the contention raised by the defence that the appellant had been temporarily absent from Madras during the period when the offence was committed,

4. Mr. Sivaprasad for the appellant raised three points on the above findings for he did not dispute the conclusion arrived at by the lower Court that the appellant was a partner. The learned Counsel argued the appeal accepting the findings of the lower Court and submitted that on the questions of law, the appellant was entitled to an acquittal. The first of such points was that the presumption under Rule 122 of the Defence of India Rules regarding the offence committed by corporations cannot apply to the circumstances of the present case; for the partnership in question will not come within the meaning of the expression 'other body corporate' in Rule 122. The expression 'body corporate' should be read as ejusdem generis with the word 'company' and should be applied to such legal entities as a corporation created by a Royal Charter or a co-operative society or Other bodies which do not come within the definition of the term 'company.'

5. A partnership as defined in the Indian Partnership Act is not a corporate body because it has no existence separate from its members. A body corporate is a juristic person legally authorised to act as a single individual and partakes of the nature of an artificial person created by a Royal Charter or an act of the Legislature and having authority to preserve certain rights in perpetual succession. The learned Advocate invited my attention to the difference between a partnership and a company enumerated in Salmond on Jurisprudence, 10th edn., at page 329. In Bouvier's Law Dictionary edited by F. Rowle Vol. I, at page 443, a corporation is defined as:

a body consisting of one or more natural persons, established by law, usually for some specific purpose and continued by a succession of members.

6. It is an artificial being created by law and composed of individuals who subsist as a body politic under a special denomination with the capacity of perpetual succession and of acting within the scope of its charter as a natural person. In Warton's Law Lexicon, 13th Edn., at page 226, a corporation is stated to connote an artificial person established for preserving in perpetual succession certain rights, which being conferred on natural persons only would fail in process of time. The several members of the corporation and their successors constitute but one person in law. Apart from the partners, the partnership has no legal existence (Sections 24 and 25 of the Partnership Act). In view of these definitions and especially because of the word 'other' in Rule 122 denoting thereby that the body corporate must be something analogous to a company mentioned immediately preceding and particularly owing to the nature of the rights and liabilities of a partner in a partnership known under the Indian Partnership Act, I am inclined to hold that the words 'other body corporate' cannot apply to a partnership registered or unregistered. The view of the lower Court that a partnership is a 'company' is patently unsound.

7. I may add that the prosecution has not rested its case in the lower Court on Rule 122; but the main reliance had been on Rule 121 which is in the following terms:

Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, any of the provisions of these rules (or of any order made thereunder) shall be deemed to have contravened that provision (or as the case may be that order).

8. The learned Public Prosecutor contends that it is this rule that is applicable and when read along with Rules 5 and 123-A, there can be no doubt that an individual partner is guilty of any offence committed by persons acting for and on behalf of the partnership. It is undisputed that the Defence of India Rules should be interpreted in accordance with the principles laid down in the General Clauses Act. Section 3(39) of the General Clauses Act is in the following terms:

Person shall include any company or association or body of individuals whether incorporated or not.

9. Substituting this definition for the word person in Rule 121, it is abundantly clear that a partnership comes within Rule 121. Rule 5 of the Defence of India Rules is as follows:

If any person to whom any provision of these rules relates or to whom any order made in pursuance of these rules is addressed or relates, or who is in occupation, possession or control of any land, building, vehicle, vessel or other thing to which such provision relates or in respect of which such order is made

(a) fails without lawful authority or excuse, himself or in respect of any land, building, vehicle vessel or other thing of which he is in occupation, possession or control to comply, or to secure compliance with such provision or order, or

(b) evades, or attempts to evade, by any means such provision or order--he shall be deemed to have contravened such provision or order and in these rules the expression ' contravention' with its grammatical variations includes any such failure, evasion or attempt to evade.

10. Analysing this complex sentence into its component parts, the portion of the rule applicable to the present case will read thus:

If any person (partnership) to whom any order made in pursuance of these rules relates fails without lawful excuse to secure compliance with such order, he shall be deemed to have contravened such order.

11. Reading this with Rule 123-A which lays down that where a person is prosecuted for contravening any order made under those rules, the burden of proving that he had excuse for the same shall be on him. It is clear that the onus of proving the excuse is on the appellant in this case. In my judgment Rules 5, 121 and 123-A, are the provisions of the Defence of India Rules applicable to the present case. Accordingly to the General Clauses Act, a person includes a partnership and in rule 5, if a partnership fails to secure compliance with the orders made under the Defence of India Rules such partnership should be deemed to have contravened the provisions of the rules. Now, partnership as such has no existence apart from the individuals constituting the firm. This is an undisputed fact. Therefore every partner who fails without lawful excuse to secure compliance with such order shall be deemed to have contravened the provisions of the order. There can be no doubt that the Madras Cotton Cloth and Apparel (Exports) Control Order was one promulgated under the Defence of India Rules and if there had been a contravention of the terms of a licence granted under that order, by the export of more than 10,000 yards, every partner of the firm which has exported these goods shall be deemed to have contravened the provisions of the order. The burden according to Rule 123-A of proving that circumstances exculpating him exist is on such partner.

12. On this aspect of the case Mr. Sivaparsad argues on the authority of the recent decision of their Lordships of the Privy Council in *Srinivasa Mall Bairolliya v. King-Emperor* (1947) 2 M.L.J. 328 (P.C.) that their Lordships have held that there is no ground for saying that offences against the Defence of India Rules are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. I fail to see how this decision can be applied to the present case. It is not disputed that the export of more than the permitted quantity of cloth was not justified or that it was not done by the firm without knowing that such export was an offence. The firm purported to act in pursuance of the authority conferred by the permit which on its face shows that only 10,000 yards can be

exported. Any export in excess of that quantity was done knowingly and with a due perception that the act is one prohibited by the rules. If that is so, the contravention committed ' by the person ' was with the knowledge that it was a crime. Applying Rule 5, when any member of the partnership fails to secure compliance with the provisions of the order, he should be deemed to have contravened the order and according to Rule 123-A the burden of proving that he had excuse was on him. In the particular case before the Judicial Committee, Their Lordships found as a fact that the first appellant knew about the offence committed there. What the High Court had held was that, even if the first appellant there, had not been proved to have known of the unlawful acts of the second appellant, he would be liable on the ground that no question of mens rea arose where the master is criminally liable for the acts of the servant. After discussing the evidence in the case, their Lordships found that the first appellant there knew about the unlawful act of the second appellant. No question of partnership arose before the Judicial Committee.

13. Mr. Sivaprasad further contended that it was the duty of the prosecution to prove that the accused contravened the provisions of the order without lawful excuse and that in spite of Rule 123-A the burden was on the prosecution to prove knowledge on the part of the appellant. I am not prepared to accept this argument. Rule 123-A categorically and specifically states that the burden of proving that the person had excuse shall be on him and when once it is conceded that the person includes the partnership which means every member of it, I have no doubt whatever that the onus is on the appellant to show that he had excuse. There is nothing to show in the case that the appellant attempted to secure compliance with the provisions of the order.

14. Mr. Sivaprasad relied upon certain observations of the Privy Council in *Bank of New South Wales v. Piper* (1897) A.C. 383. Having read that judgment carefully I fail to see how the observations of their Lordships are applicable to the present case.

15. The next argument of Mr. Sivaprasad is that there is no proof that the appellant had any guilty mind. If I am right in my conclusion on the interpretation of Rules 5, 121, and 123-A it seems to me that this argument is also untenable.

16. A further argument advanced by Mr. Sivaprasad is that the schedule to the Madras Cotton Cloth Dealers Control Order which shows the form in which the permit is to be granted and the conditions to be observed by the licensee does not form part of the order and therefore any contravention of the conditions contained in the permit will not tantamount to a contravention of the order. There is no reason to suppose that the schedule does not form part of the order. The schedules to an enactment like the various schedules to the Criminal Procedure Code are all parts of the Code and I am not prepared, without any compelling authority, to hold that the schedule is not a part of the order.

17. The last question is as regards the sentence. I do not think it necessary to impose a fine of Rs. 300 on the appellant for an act committed by his servant at a time when he was not in Madras. He is found guilty of the offence because of the special provisions of Rules 5, 121 and 123-A of the Defence of India Rules, I would therefore reduce the fine to a sum of Rs. 100. With regard to the order of confiscation of the bales of cloth, I hold that there is no special reason why the three bales which, according to the learned Magistrate, contained the approximate excess yardage attempted to be exported, should be confiscated. I set aside the order of confiscation and direct that the three bales in the condition in which they are now will be returned to the firm of Viswanath Prem Prakash. With these modifications the appeal is dismissed. Mr. N. Srinivasan on behalf of the appellant's advocate asks for leave to appeal to the Federal Court. This judgment does not deal with the interpretation of any section of the Constitution Act or of any Order in Council. Section 205 has therefore no application. Leave is refused.