

Hari Ram Agarwalla Vs. Emperor

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Court : Kolkata

Decided On : Mar-06-1947

Reported in : AIR1947Cal420

Appellant : Hari Ram Agarwalla

Respondent : Emperor

Judgement :

ORDER

Sen, J.

1. This rule must be made absolute. The proceedings have been illegal from beginning to end. The petitioner has been charged with having refused to sell cloth thereby acting in contravention of the provisions of Section 12(6), Cotton Cloth and Yarn Control Order of 1943. This order was passed in the exercise of powers conferred upon the Central Government by Sub-rule (2) of Rule 81, Defence of India Rules. The disobedience of this order is made punishable by Rule 81(4), Defence of India Rules.

2. Now, Section 23, Cotton Cloth and Yarn Control Order provides as follows:

No prosecution for the contravention of any of the provisions of this order shall be instituted without the previous sanction of the Provincial Government.

3. In this case the petitioner was arrested by the police without any warrant being issued by any Court....

4. The next thing that happened is this. The officer in charge of the police station for some reason or other released the petitioner on bail. This did not meet with the approval of the Deputy Superintendent of Police, Enforcement Branch, and he sent a report of the Sub-Divisional Magistrate complaining against the conduct of the officer in charge. The Sub-Divisional Magistrate thereupon passed an order to the following effect:

11-6-45. - Bead report of D.S.P. Enforcement. Call for explanation of O/C Harischendrapur on the report of the D.S.P. Enforcement. Issue W/A under Section 81(4), Defence of India Rules fixing 25-6-45 against both. The O/O's action in releasing the accused on police bail was illegal in this case.

5. It is clear from this order that a warrant of arrest was being issued by the Sub-Divisional Magistrate acting as a Court and he could only do this upon taking cognizance of the offence alleged to have been committed by the petitioner. Up to this date, there was no sanction obtained from the Provincial Government or the District Magistrate. The petitioner appeared before the Magistrate and applied for bail. The application was refused. This was on 28-6-1945. On 4-7-1945 a charge sheet was submitted against the petitioner and the Sub-Divisional Magistrate sent the case for disposal to another Magistrate. It appears that on 1-7-1945 sanction had been obtained from the District Magistrate. The question which arises for decision is whether the obtaining of the sanction on 1-7-1945 could validate the previous and subsequent proceedings which resulted in the conviction of the petitioner. In my opinion it could not and for this purpose I rely upon the decision of the Federal Court in *Basdeo v. Emperor* 32 A.I.R 1945 F.C.16.

6. The learned advocate appearing for the Crown contends that the prosecution had not commenced before the submission of the charge-sheet and that as sanction had been obtained from the District Magistrate before the submission of the charge-sheet there has been no illegality. I am unable to accept this view. The prosecution of a person commences as soon as the Court takes cognizance of the offence alleged against him. Unless the Magistrate had taken cognizance the

Magistrate could not have issued a warrant of arrest on 11-6-1945. The learned Magistrate had therefore rightly or wrongly, commenced the prosecution of this case on 11-6-1945. The submission of a charge sheet subsequently would not have the effect of altering the date of the initiation of the prosecution. The prosecution having commenced without sanction the entire proceedings are in contravention of Section 23, Cotton Cloth and Yarn Control Order and must be regarded as null and void ab initio. I therefore quash all the proceedings for want of jurisdiction and direct that the fine paid by the petitioner be refunded. I express no opinion as to whether proceedings may be taken afresh or not.

7. The next objection taken on behalf of the petitioner relates to the misjoinder of charges. Here again there has been an illegality. The charge against the petitioner is as follows:

First - That you, on or about the 9th day of Falgoon, 1351 corresponding to 21-2-1945 at Kariali Mashaldah Bazar refused to sell clothes (sarees and dhotis) to Md. Yusuf, Abdul Kayem and Moslem Mondal without sufficient cause and thereby committed an offence punishable under Section 81(4), Defence of India Rules and within my cognizance:

Secondly - That you, on or about the 12th day of Falgoon 1351 corresponding to 24-2-1945 at Kariali Mashaldah Bazar refused to sell clothes (sarees and dhotis) to Umacharan Karmakar and Rakhal Chandra Sarnakar without sufficient cause and thereby committed an offence punishable under Section 81(4), Defence of India Rules and within my cognizance:

Thirdly That you, on or about the 15th day of Falgoon 1351 corresponding to 27-2-1945 at Kariali Mashaldah Bazar refused to sell clothes (sarees and dhotis) to Umacharan Karmatar and Babhal Chandra Sarkar without sufficient cause and thereby committed an offence punishable under Section 81(4), Defence of India Rules and within my cognizance.

8. Section 233, Criminal P.C., states that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. There are exceptions to this rule, the exceptions being

provided in Sections 234, 285, 286 and 239 of the Code.

9. Section 234 says inter alia that three offences of the same kind committed within the period of one year may be charged together. So the offences committed with respect to the refusal to sell cloth to Md. Yusuf, Abdul Kayem and Moslem Mondal having been committed within the course of one year may be tried together at one trial. It would be better if at such a trial there were three separate heads of charges, but even if there were not three separate heads of charges, it would not in my opinion amount to an illegality. Here, however, the petitioner has not been charged only with these three offences but also with the offences mentioned in the second and third counts of the charge, that is to say, the offences relating to the refusal to sell cloth to Umacharan Karmakar and Rakhal Chandra Sarnakar at two different dates, namely, 24th February and 27-2-1945. This is clearly illegal and the trial is therefore vitiated by reason of this illegality. On this ground also the order of conviction and sentence would have to be set aside. But it is not necessary for me to do so inasmuch as the proceedings are void ah initio and must be quashed.