

Umesh Chandra Pal Vs. the King

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Court : Kolkata

Decided On : Sep-15-1949

Reported in : AIR1950Cal125

Judge : Das Gupta and ;Guha, JJ.

Acts : West Bengal Black Marketing Act, 1948 - Sections 2, 12, 12(2), 14 and 26;
;Indian Penal Code (IPC) - Section 474

Appeal No. : Appeal No. 129 of 1949

Appellant : Umesh Chandra Pal

Respondent : The King

Advocate for Def. : Nirmal Kumar Sen and ;Amaresh Chandra Roy, Adv.

Advocate for Pet/Ap. : Gopal Chandra Narayan Choudhury, Adv.

Disposition : Appeal allowed

Judgement :

Das Gupta, J.

1. The appellant was tried by a Special Tribunal of Alipore constituted under the West Bengal Black Marketing Act, 1948 and convicted under Section 3 read with Section 2 (h) of that Act, also under Section 3 read with Section 2 (h) and Section

6 of the Act, and under Section 474, Penal Code, and was sentenced to two years rigorous imprisonment for the first mentioned offence and rigorous imprisonment for one year for the second offence. No separate sentence was passed under Section 474, Penal Code. The two sentences under the two offences under the West Bengal Black Marketing Act were ordered to run con. currently. It was further ordered that the hand printing press together with the printing outfit seized were forfeited under Sub-section (3) of Section 3 of the Act.

2. The prosecution case was that on the night of 25th April 1948, a Sub-Inspector of the Enforcement Branch, Calcutta, accompanied by certain other Police Officers and some search witnesses went to premises No. 18, Fakir Chand Mitra Street and on search of the portion where this accused lived found under the bed and also in a trunk a large number of bread coupons which, according to the prosecution, are forged documents. A hand-printing machine was also found in one of the rooms and certain blocks from which it is said these bread coupons had been printed. There were some bread coupons the printing of which was only partly finished.

3. The accused pleaded not guilty, his suggestion being that these bread coupons said to have been forged had been planted in his house by his landlord as an easy way for evicting him from the building.

4. On the question of recovery of these coupons from the rooms in the possession of the accused evidence has been given by the Police Officer and two search witnesses Ganesh Chandra Ghoah and Priyanath Choudhury. I have no doubt from the evidence that these coupons were actually found in the possession of the accused. The suggestion that they were planted there by the landlord Naresh seems to me to be highly improbable.

5. It is not disputed that these bread coupons were not the genuine coupons issued by the rationing department, and evidence has also been given by the Assistant Controller of Rationing to that effect. I have no hesitation in accepting this evidence as correct and find that these documents were prepared by some person with the intention of causing it to be believed that they were made by the rationing authorities. There cannot be the slightest doubt that in doing so, the

person who made it had the intention to commit fraud by deceiving the officers concerned that they were genuine bread coupons, Whether or not Act XXIV [24] of 1946 which introduced rationing and the consequent bread coupons has legal validity after 31st March 1948, is of no relevancy on this question. For it is clear that whether it was necessary or not to have bread coupons in law, the person who made these coupons must have made them with the purpose of so using them and thereby deceiving certain persons to believe that they were genuine coupons and thereby gaining an advantage. I find it proved therefore that these documents that were seized were forged documents.

6. Before the act of the accused could be held as black marketing within the meaning of Section 2 (h), it is also necessary for the prosecution to prove that the accused made these documents. Certainly the mere fact that they are found in his house is not sufficient to show that he made them. There is, however, on this point a confession made by him, though since retracted, that he printed a number of bread coupons on his machine, which is corroborated by the circumstances disclosed by the evidence of prosecution witness No. 1. As regards some samples which were printed on the machine then and there, I have examined these samples and find the printing there exactly similar to the printing on the forged coupons except for the fact that the base printing is absent. In my opinion the presence of the hand-machine in the accused's room together with the evidence as regards the samples is sufficient corroborative evidence of the accused's retracted confession. I would, therefore, have no hesitation in holding the accused guilty under Section 3/2 (h) of the Act and also for an attempt as regards the half finished coupons under Sections 3/2 (h) and 6 of the Act, had these acts been committed after the West Bengal Black Marketing Act came into force. This Black Marketing Act came into force after 17th October 1948. The acts of the accused were in April 1948. They were, therefore, offences under the West Bengal Black Marketing Ordinance 1948, which was in force at the time, and they would continue to be offences under this Ordinance in view of the provisions of Section 6, General Clauses Act, in spite of the fact that the Ordinance has ceased to operate. The decision of the question whether the acts in law are offences under the West Bengal Black Marketing Act also depends on the interpretation of Section 26 of the Act. The section runs thus:

'Any rule, order or appointment made or any notification issued or anything done or any penalty, forfeiture or punishment incurred or imposed or any action taken or any proceedings commenced in exercise of any power conferred by the West Bengal Black Marketing Ordinance, 1948, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, issued, done, incurred, imposed, taken or commenced in exercise of the powers conferred by this Act as if this Act had commenced on the 1st day of January 1948.'

7. It is sought to be argued on behalf of the Crown that where this section speaks of penalty incurred, it must mean penalty incurred under the West Bengal Black Marketing Ordinance and that the result of Section 26 is that if a penalty had been incurred under the West Bengal Marketing Ordinance, the penalty would continue as a penalty under the Act. It may very well be that the intention of the legislature was to make acts which were offences under the West Bengal Black Marketing Ordinance also acts under the Act. In my opinion, however, the words in Section 26 have not produced that effect. It seems to me to be clear that the words 'in exercise of any power' have to be read with the words 'penalty, forfeiture or punishment' as much as with the words, 'proceedings commenced' etc. The grammatical structure of the section falls altogether unless this is done, and it becomes impossible to understand what penalty, forfeiture or punishment is being spoken of. The result, therefore, is that any penalty incurred in exercise of any power conferred by the West Bengal Black Marketing Ordinance shall be deemed to have been incurred in exercise of the powers conferred by the Act. This presupposes that some authority had exercised some powers under the West Bengal Black Marketing Ordinance and it was as a result of such exercise that the penalty was incurred. When a person incurs the penalty by doing the act which is an offence under the Ordinance, he cannot reasonably be said to have incurred the penalty 'in exercise of', a power conferred, by the Act, I am unable to agree therefore that Section 26 of the Act has the result of making offences under the West Bengal Black Marketing Ordinance also offences under the West Bengal Black Marketing Act.

8. My conclusion, therefore, is that while the making of forged bread coupons and the attempt to make forged bread coupons would, if committed after the West

Bengal Black Marketing Act came into force, be offences under the Act, they are not offences under this Act inasmuch as they were committed before this Act came into force.

9. The learned Advocate for the Crown suggests that we may alter the conviction to one under the Ordinance. It is to be noticed however that the Tribunal who tried the accused person was constituted under the Black Marketing Act and was not a Tribunal constituted under the Ordinance. Consequently, this Tribunal itself had no jurisdiction to try an offence under the Ordinance.

10. It is also worth mentioning that the sanction which had been obtained was also for an offence under the Black Marketing Act. This cannot by any stretch of imagination be considered to amount to sanction for a prosecution under the Black Marketing Ordinance. In these circumstances it is not possible for us to alter the conviction to one under the Black Marketing Ordinance.

11. The conviction of the accused person under Section 3/2 (h), West Bengal Black Marketing Act and also under Section 3/2 (h) and Section 6 of the Act should, therefore, in my opinion, be set aside and the accused acquitted of the charges.

12. There remains for consideration the conviction of the accused under Section 474, Penal Code. As I have already said, the evidence is sufficient in my opinion to show that a number of forged bread coupons were found in a room in the possession of the accused. I would have no hesitation, therefore, in agreeing with the learned Tribunal that the accused was in possession of forged documents. In view of the confession of the accused already mentioned I would have no hesitation also in agreeing that the accused knew these to be forged and intended that these would be fraudulently and dishonestly used as genuine. The acts that have been proved would, therefore, make out an offence under Section 474, Penal Code.

13. It is, however, contended by the learned advocate for the appellant that this conviction cannot stand inasmuch as the Tribunal had no jurisdiction to try an offence under Section 474, Penal Code. An offence under Section 474, Penal

Code, is triable by a Court of Session. The question is whether anything in the Black Marketing Act has given the Tribunal constituted under this Act any jurisdiction to try an offence under Section 474, Penal Code. Section 12, Black Marketing Act provides thus:

' (1) The Provincial Government may, from time to time by notification in the Official Gazette, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal to another or withdraw any case from the jurisdiction of a Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.

(2) The Special Tribunal shall have jurisdiction to try the cases for the time being respectively allotted to them under Sub-section (1) in respect of such of the charges as may be preferred against the several accused and any such case which is at the commencement of this Act or at the time of such allotment pending before any Court or another Special Tribunal shall be deemed to be transferred to the Special Tribunal to which it is so allotted.'

14. In the absence of anything pointing to a different conclusion I would myself be inclined to think that the cases for trial which can be allotted by the Provincial Government are cases of offences under this Act. It is, however, contended by the learned Advocate for the Crown that the provision in Sub-section (2) read with Section 14 of the Act justifies the conclusion that other; offences, whether triable by a Sessions Judge or otherwise, than the offences under this Act can also be tried by the Special Tribunal constituted under this Act. Section 14 provided that a Special Tribunal may take cognizance of offences without the accused being committed to it for trial. I am unable to hold that this: gives the Special Tribunal a jurisdiction to try offences which are triable by a Court of Session. The right of trial by a Jury in a Court of Session is a very valuable right which can certainly be taken away by legislature by express words, but in the absence of express words it would be improper to impute to the legislature the intention that this right was intended to be taken away.

15. Sub-section (2) of Section 12 speaks of the jurisdiction of the Special Tribunal. According to this the Special Tribunal shall have jurisdiction to try cases allotted to them in respect of such charges as may be preferred against the accused. It is said that these charges may be for offences not under this Act. Assuming that this may so happen, it is necessary to find whether in this case when the Tribunal began the trial, any charge under Section 474, Penal Code, was preferred. The order of the Provincial Government allotting the case for the trial of this Tribunal mentions only an offence under Section 3, Bengal Black Marketing Act. The sanction, of the local Government was also with respect to an offence under Section 3, Black Marketing Act. There is nothing on the record to show that any charge was at any stage preferred before the Special Tribunal for any offence under Section 474, Penal Code. The mere fact that a charge was actually framed by the Special Tribunal under Section 474, Penal Code or evidence was adduced before them does not justify the conclusion that a charge under Section 474, Penal Code was actually preferred. I am accordingly of opinion that the Special Tribunal constituted as it was under the Black Marketing Act, had no jurisdiction to try the offence under Section 471, Penal Code. That conviction also must, therefore, be set aside.

16. I would accordingly allow the appeal, set aside the convictions and sentences passed against the accused, and order that the accused be acquitted.

17. The order for forfeiture is also set aside.

18. Let the accused be released at once.

Guha, J.

I agree.