**Emperor Vs. Joyram Pathak and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/860239

**Court** : Kolkata

**Decided On :** Nov-10-1943

**Reported in** : AIR1944Cal121

**Appellant** : Emperor

**Respondent** : Joyram Pathak and ors.

**Judgement** :

Derbyshire, C.J.

1. In the twelve oases of convictions under Rule 81 (4), Defence of India Rules, namely, profiteering cases, this Court of its own motion issued Rules upon the respective persons convicted to show cause why their sentences should not be increased. We did so, as I have said, of our own motion because it seemed to us that inadequate sen. tenses were being inflicted, and that the pro-secution was not appealing against them. It is of course the duty of the Government to enforce the law. The High Court is only concerned with seeing that the laws are enforced according to their meaning and tenor; but we have power to call for the records of eases and examine them, and, if we think that they have not been dealt with correctly, to deal with them. But as I have said it is the duty of Government to enforce the law. A.s long as Ordinance 2 of 1942 was in operation, there were serious difficulties in the way of our calling for the records of a ease of profiteering, considering it and enhancing the sentence; but when ordinance 2 of 1942 was repealed we were at liberty to do so, and we did accordingly call for the records of

a large number of cases of profiteering which had been dealt with by Magistrates in the Calcutta area. We examined those cases, and in the twelve eases under consideration we issued Rules to show cause why the sentences should not be increased. It necessarily took some time for us to consider the cases and to have the records prepared, and they have been brought on at the earliest possible date. We have no special staff to deal with cases of this kind.

2. The first batch of six cases was dealt with by a Magistrate at Alipore who did not follow-ing the usual practice outside the Presidency, give a statement of the reasons why he passed the sentences that he did. The other six cases were decided in the Presidency Division and the Magistrate there gave reasons for what he did. We have perused the reasons that the Presidency Magistrate gave for the sentences that he imposed. In some instances he deals with the individual cases, but he also gives reasons of a more general nature. He says that in most cases the persons convicted and sentenced by him were petty shopkeepers and hawkers and that they only charged one or two annas more than the controlled price. I may point out that in some instances they charged considerably more than one or two annas. He also says:

I have seen cases in which the accused stated and proved that they were threatened with prosecution on previous occasions and they avoided it on payment, of certain sums of money to the poor box maintained by the police and to such other funds, and they were prosecuted later as they could not make further payments. In some cases they were acquitted as the charges failed and in some they were let off with fines as it did not seem proper to pass severer sentences than what under the circumstances of the particular cases seemed adequate. Moreover severer sentences of fine can be of no avail as the accused will not be able to pay and will go to jail. Sending these people to jail will also serve no useful purpose. A panic will be created in the city to scare away the petty dealers from the market causing further and untold inconvenience to the public.

The bigger dealers are rarely prosecuted and those who sell at the source, never. No action is taken when the cases are found to be false by the Court. Frivolous cases are still coming in as usual.

The cumulative effect of all this is that when a petty shopkeeper or hawker is hauled up for trial and pleads guilty and explains why he charges a few pice more than the price fixed by Government and appeals to temper justice with mercy, the Magistrate has to take everything' into consideration and pass a sentence which in his discretion and according to the circumstances of the case appears to him to be adequate. He has also to take into account that no sentence based on mere speculation regarding profits being made by the accused persons can be supported by law. Also that they are arrested by police and are not released on bail till they are produced before a Magistrate. It often happens that they cannot give bail and remain in custody for sometime.

3. That is a general explanation. As I have said in most instances the over charge is more than one or two annas. As for the rest I cannot agree that that is a reason for not giving sentences which will be an effective deterrent for what is unquestionably a grave and, in my view, a growing evil, namely, profiteering and breaking the law which prescribes that goods and articles should not be sold at more than the controlled prices.

4. I think that the remarks that he has passed with regard to the police poor box are of a grave character This Magistrate is a Presidency Magistrate and presumably is well informed in this matter. I can only say that if contributions to the police poor box are used as a substitute for prosecutions according to law and punishments according to law, the sooner the practice ceases the better both from the point of view of the public and from the point of view of the police. The practice lends itself to abuse, and an abuse, which may bring those who use it within the reach of the law. Apparently, the practice is of old standing, but I think the remarks, which the Presidency Magistrate has made, and those which this Court has made are worth urgent consideration by the police. The Magistrate then goes on: 'The bigger dealers are rarely prosecuted and those who sell at the source, never.' I think there is a good deal of obvious truth in this observation. But that is no excuse for not enforcing the law where occasion requires. There have been some hundreds of prosecutions for profiteering; most of those have been against relatively small dealers such as shopkeepers. In some of the instances to day, it has been alleged that the shopkeepers had to pay more than the controlled prices

for the goods they dealt with and it has been used as some excuse for they themselves having sold at more than controlled prices. It is no excuse at all. But the fact that the matter has been raised gives the authorities notice that the larger dealers are not being dealt with according to law, and it gives the authorities an opportunity of enquiring from the smaller dealers as to whom they bought from, and the prices and terms on which they bought. It gives those responsible for the enforcement of the law a warning, and points out the way in which they can proceed to enforce the law against the bigger dealers. I can only fifty that this Court will watch the matter very anxiously. It is open to the persons who have been convicted and been before us to-day to give information to the prosecution in any ease where they have bought at more than the controlled price, and it is their duty as citizens to do so and see that these law-breakers, who are in a bigger way of business than themselves, are brought to justice so that this system of wholesale breaking of the law which is sometimes camouflaged by the term 'black-market' is put an end to.

5. I realise that the penalties, which Magistrates are empowered to inflict, are inadequate to the evil that has arisen. Under the De-fence of India Rules, the maximum sentence is three years' imprisonment and/or a fine. The maximum fine, which a Magistrate can inflict, is rupees one thousand, and that fine may be altogether inadequate to prevent breaches of the law, which result in profits running in some cases into lacs of rupees. Magistrates should not hesitate to use their powers, and where a fine of rupees one thousand seems to them to be inadequate, to inflict imprisonment. They must remember that they are acting in the interests of the community. I think it is desirable, nay more, I think it is essential that Magistrates should be armed with powers greater than those they have at present powers to inflict fines of a very much larger amount than rupees one thousand. If they are unable to do that and the Government are satisfied that the penalties inflicted are inadequate, they may bring the cases to this Court by way of revision or appeal (as I understand they are doing in other cases) and ask for enhancement, and this Court will not only support the Magistrates if they use their powers, but it will use such powers as it has to see that justice is done and that the evil which has grown up, is as far as is possible under the law, curbed, if not stamped out.

6. I now proceed to deal with the cases, which have come before us. The first is that of Joyram Pathak from Alipore. This man sold soft coke at Rs. 1-9-0 per maund when the controlled price was Rs. 1-6-0 per maund. He pleaded guilty and was sentenced to a fine of Rs. 30 in default one month's rigorous imprisonment. In my opinion that fine is inadequate. Although notice of enhancement has been served upon him he has not taken the trouble to come here to oppose it. Every one knows that there has been profiteering in coke. In my view the proper sentence in this case is one of a fine of RS. 500 in default rigorous imprisonment for three months. The sentence is altered accordingly. In the ease of Ram Chandra Goala he, on 9th April 1943, sold a maund of coke for Re. 1-9-0 instead of Re. 1-6-0. He admitted the offence and was fined Rs. 30. That fine, in my view, is inadequate and must be increased to one of Rs. 500 in default rigorous imprisonment for three months.

7. The case of Kutai Shaw is interesting. He was charged with a breach of the law under Rule 81 (4) of the Defence of India Rules, in that on 17th April 1943, he sold three seers of atta at 10 annas per seer when the controlled price was 0-6-6 pies per seer. The prosecution gave evidence that the controlled price of atta at that time was 0-6-6 piep per seer. Kutai Shaw admitted the offence and was convicted and fined Rs. 60. The learned standing counsel who appeared on behalf of the Government pointed out to us that in April of this year atta was not controlled in price. It was not controlled until August, so that at the time of the sale there was no controlled price fixed by law. The position in fact was that Government in Order to alleviate hardship was, through its own agents, selling atta at 0-6-6 pies per seer, but there was no controlled price for all shops. It would appear that those responsible for the law against profiteering in this particular area had not been adequately instructed as to what the law was. The result is that the learned standing counsel agreed that this conviction must be quashed. Accordingly the conviction of and the sentence passed upon Kutai Shaw are set aside.

8. The next case is that of Jitu Marwari who was convicted by a Magistrate of Alipore for selling 2.1/2 seers of sugar for Re. 1-9 annas on 17th April 1948, when the controlled price was 0-6-9 pies per seer. The accused admitted the offence and pleaded guilty. He was fined Rs. 60. The sale price on this occasion exceeded

the controlled price by more than 50 per cent. The offence is a serious one. In our opinion the sentence must be altered to one of a fine of Rs. 500 in default rigorous imprisonment for three months. The next case is that of Nani Gopal De. He was convicted by the Magistrate of Alipore under Rule 121 read with Rule 81 (4) of the Defence of India Rules. His offence consisted in quoting the price of sugar as 8 annas per seer to a purchaser at his shop when the controlled price was together with the paper packet 7 annas per seer. There was no sale but merely a quotation. The accused pleaded guilty and he was fined Rs. 25. Rule 81 (4) provides:

If any person contravenes any Order made under this rule, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

9. Rule 121 provides, and it is most important to notice the wording of it, as follows:

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 there under shall be deemed to have contravened that provision or, as the case may be, that order.

10. The result is that not only is it an offence against the anti-profiteering laws to sell at above the controlled price, but it is an offence to buy at above the controlled price. Moreover, it is an offence to quote a price above the controlled price or offer to sell above the controlled price and it is an offence to offer to buy at above the controlled price. Both dealers and the public should note that position. In this case, this shopkeeper when asked the price of sugar quoted 8 annas per seer. In so doing he broke Rule 121 of the Defence of India Rules. Although no sale resulted, the quotation in itself was a breach of the law and it is important that breaches of the law of that kind should not go unpunished. Persons who have to buy the necessities of life very often have to send other people, sometimes children, sometimes servants, with money and they are entitled to be supplied the goods at the controlled rates. If quotations are made above the controlled rates then the child or the servant may unwittingly pay money, which ought not to be paid. It is necessary that that Rule should be enforced. The Magistrate sentenced the

accused to a fine of RS. 25. In our opinion, that is inadequate and the fine must be altered to one of RS. 250 in default two months' rigorous imprisonment.

11. The next case is that of Shib Charan Das Gupta who, on an inspector of the Department of Civil Supplies asking him in his shop the price of sugar, quoted 11 annas as the price of a seer of sugar, when the controlled price was 0-6-9 pies per seer without package. This again is a serious offence. The Magistrate fined him Rs. 30. This accused, though he entered an appearance through an advocate, gave no further instructions to his advocate and has not been present in Court to-day. Perhaps he is of the opinion that the matter was of no consequence, but in that he is mistaken. He demanded a price of more than 60 per cent, above the controlled price. That was an offence and he must learn that it is a serious offence. The sentence upon him is altered to one of a fine of Rs. 1000 in default six months' rigorous imprisonment. The next batch of cases is from the Presidency Magistrate who dealt with these profiteering eases. The first one is the case of Makhan Lal De who was convicted for having on 20th April 1943, sold a seer of sugar for 8 annas against the controlled rate of 7 annas. He was sentenced to pay a fine of Rs. 15. Here again the fine in our view is inadequate to the offence which has been committed. The sentence is altered to a fine of Rs. 250 in default two months' rigorous imprisonment.

12. The next case is that of Gopal Ch. Paul who was convicted of having sold a seer of sugar on 23rd April 1943, for a price of 10 annas against the controlled price of 7 annas. He pleaded guilty and was sentenced to pay a fine of rupees 30. He appeared through advocate before us and stated that he paid above the controlled price for his sugar, and accordingly sold above the controlled price. In fact he sold at 43 per cent, over the controlled price. If that is so, he bought in the black market and sold in the black market. It was no excuse for selling in the black market, that he bought in the black market. It may be that his position like that of other dealers is an unfortunate one, but if he did pay more than the controlled price he could stop or help to stop it by informing the officer of the Civil Supply Department of the person from whom he bought and the price at which he bought. In that way the bigger dealer can be brought to justice and something done to stop this black market traffic. In the same manner those responsible for the prosecution

can take the cue from what has happened in this case and pursue their enquiries from each of the persons convicted as to from where they bought and the prices at which they bought and so bring the law-breakers, or at least some of them to book. In our opinion, the fine in this case should be one of Rs. 500 in default three months' rigorous imprisonment. The next case is that of Gangaram Kami who sold coal on, 18th April 1943, at the rate of Rule 1-12-0 against the controlled rate of Rule 1-6-0- He was fined RS. 30. In our opinion there is no excuse for this offence and the sentence must be altered to one of a fine of Rs. 500 in default three months' rigorous imprisonment. The next case is that of Kartic Singh who was a hawker apparently carrying all his goods. He quoted a price for kerosene oil at 4 annas for 20 oz., the controlled price being 3 annas' for 22 oz. He was fined Rs. 80. We see no reason to interfere with that sentence.

13. The next case is against Badri Nath Shah who on 18th April 1943 quoted Re. 1-12-0 for a maund of coal against the controlled price of Re. 1-6-0. He pleaded guilty. His story was that he bought at the rate of Re. 1-6-0. He could have bought at the rate of Re. 1, which was the price of coal at that time in the sidings. He was fined Rs. 20. In our opinion, this sentence is inadequate and is altered to a fine of RS. 500 in default three months' rigorous imprisonment. The next case is that of Nagen-dra Nath Nandi who sold on 20th March 1943, a bottle of kerosene oil for 5 annas instead of 3 annas. He was fined Rs. 50. We think the proper sentence in this case is one of Rs. 100 in default one month's rigorous imprisonment. We alter the sentence accordingly. I wish, in addition, to add that it must not be considered that the only punishment for contraventions of the price-control orders is a fine.

**Lodge, J.**

14. I agree.