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Court : Kolkata

Decided On : Jan-09-1953

Reported in : AIR1953Cal408,57CWN275

Judge : Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : West Bengal Foodgrains (Movement Control) Order, 1951; ;Evidence Act, 1872 - Section 105

Appeal No. : Criminal Revn. Nos. 587 to 590 of 1952

Appellant : Anil Kumar Ghosh and ors.

Respondent : The State

Advocate for Def. : N.C. Sen, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;K.P. Mukherjee, Advs.

Judgement :

Das Gupta, J.

1. These four Rules which were obtained by four persons tried separately for offences under Section 7, Essential Supplies Act were heard together as they raised the same question of law. The charge against each accused was that he on 29-5-1951, moved several bags of paddy in a cart without permit from outside the

corridor to a place inside the corridor, not being a 'bona fide' resident of the corridor area, in contravention of Government Order No. 512 F.D. dated 15-1-1951 and thereby committed an offence punishable under Section 7(2) of the Act 24 of 1946, All the four were convicted under Section 7 (2) of the Act 24 of 1946 and each was sentenced to rigorous imprisonment for three weeks and to pay a fine of Rs. 60/-in default, to rigorous imprisonment for three weeks more, and the paddy seized was forfeited.

2. There can be no doubt that the charge as framed is defective. The accusation was that an order under Section 3, Essential Supplies Act had been contravened. The relevant order relating to the movement of the foodgrains was in this case Order No. 512 F.D. of 15-1-1951 as mentioned in the charge. Paragraph 3 of this Order is in these words:

'3. (1) No person shall move or transport or cause to be moved or transported or offer for movement or transport by rail, road or water any foodgrain from any place within West Bengal to any place outside West Bengal except under and in accordance with a permit issued in this behalf by the Director:

Provided that nothing in this sub-paragraph shall apply to the movement or transport of foodgrains--

(a) not exceeding three seers in weight in the aggregate by a bona fide traveller as part of his luggage.

(b) under and in accordance with Military Credit Note, or

(c) under and in accordance with a permit issued before by the State Government or by the Director.

2. No person shall move or transport or cause to be moved or transported or offer for movement or transport by rail, road or water any foodgrain into any place within the corridor from any place in the State outside the corridor except under and in accordance with a permit issued in this behalf by the Director.

3. No person shall move or transport or cause to be moved or transported or offer for movement or transport by rail, road or water any foodgrain from any place in the corridor to any other place within the corridor except under and in accordance with a permit issued in this behalf by the Director:

Provided that nothing in this sub-paragraph shall apply to any movement of foodgrain within the corridor by road, other than by motor vehicle, if the person moving the foodgrain is a bona fide resident of such area.

4. The Director may, by general or special order, exempt from the provisions of sub-paras (1), (2) and (3), the movement or transport of foodgrains to such extent and in such manner and for such period as may be specified in the order.

5. If it appears to the Director that a permit issued by him under sub-para. (1) is not likely to be utilised or that there are sufficient reasons for requiring its cancellation, he may cancel the permit and on such cancellation the holder of the permit shall forthwith return it to the authority issuing it.'

3. In this case we are not concerned with 1st, 4th or 5th sub-para, of this Paragraph. It is necessary, however, to consider sub-paras. (2) and (3). In sub-para (2) the order in substance is that no person shall move foodgrain from outside the corridor into the corridor except under a permit. Sub-paragraph (3) regulates movement of foodgrain from one point to another point within a corridor area. The question whether a person is a bona fide resident or not of the corridor area is relevant only in connection with movement from one point of the corridor to another point in the corridor. That question is entirely irrelevant in connection with movement from, outside the corridor into the corridor. The accusation in the charge framed being that the paddy was being moved from outside the corridor into the corridor, no question arose whether the person was a bona fide resident of the area or not. The allegation in the charge that the person was not a bona fide resident of the area was, therefore, clearly wrong and confusing.

4. At the trial no attempt appears to have been made to prove that the movement of the paddy was from outside the corridor to any point inside the corridor. The evidence in substance was that the accused person was seized with paddy in a

cart at a point inside the corridor far from the line which distinguishes, the corridor area from the area outside it. Clearly therefore, no case that the accused committed an offence by contravening sub-para. (2), Para. 3 of the Order was established. We have, however, to consider in view of the circumstances of the case whether the evidence on record makes out a case of contravention of the directions in sub-para (3).

5. As we have already indicated, it was proved in each of these cases the accused person was found moving foodgrain from one place in the corridor to some otner place in the corridor. It was also proved that he was doing so without any permit. What, however, was not proved in three of these cases, namely, the one in which Sankar Ghosh, Abdul Azim Sheikh and Niranjan Ghosh are accused, was that the accused person was not a bona fide resident of the area where he lived.

6. The question arises whether there is any burden on the prosecution to prove in a case of accusation of the contravention of sub-para. 3. that the person is not a bona fide resident of the area.

7. It was contended by Mr. Sen on behalf of the State that the words in the proviso really set out an exception to the ordinary rule and therefore the burden of proving the application of the exception was on the accused person. If sub-para. (3) of the Order had itself defined an offence I might have been disposed to agree with this view. It is important to remember, however, that sub-para. (3) does not define an offence. The offence is defined in Section 3, Essential Supplies Act. If any exception was provided to the definition of the offence in Section 3 the burden of proving the existence of circumstances bringing his case within the exception would clearly be on the accused. It is equally clear that the burden of proving all the ingredients of the offence as defined is on the prosecution. The main ingredient here is that an order under Section 3 has been contravened. The order under Section 3 in the case we are considering is that: (His Lordship then quoted the text of sub-para. (3) already reproduced in para 2 of this judgment).

8. What is required by this Order? The order requires on any reasonable interpretation of the words used that a person who is not a bona fide resident of a corridor area shall not move foodgrain from one point in the corridor to another

point in the corridor without a permit. The fact that the intention of the rule-making authority is expressed by the use of a proviso to a main clause cannot altrr the position that the rule-making authority was directing the requirement of a permit for movement from one point of the corridor to another point of the corridor only for the persons who are not bona fide residents of the area. I do not know of any canon of construction which should make the Court think that though the Order states in substance that only persons who are not bona fide residents of the area would be required to take out permits for movement within the area, the mere fact that a proviso has been used should have the effect that whether or not the person is a bona fide resident of the area is not an ingredient of the offence under Section 3, for contravention of sub-para. (3) of the above Order.

9. I have no doubt in my mind that on a proper construction of the words use in the sub-paragraph, it should be held that, that the accused was not a bona fide resident of the area js as much an ingredient of the alleged offence as the facts that he moved paddy and that he did so without permit. The burden of proving that the accused person was not a bona fide resident of the area was, therefore, on the' prosecution.

10. As has already been noted, this ingredient has not been proved as regards three of the accused persons, the conviction of these three cannot, therefore, stand. I would accordingly set aside the order of conviction and sentence passed on them and order that they be acquitted. I would also set aside the order of forfeiture of the paddy seized from them.

11. There remains for consideration the case of Anil Kumar Ghosh. Against him evidence has been given by the dafadar of Korui village that Anil Kumar Ghosh lives in Korui and also Korui is well outside the corridor. In my judgment this evidence must be held to have proved the ingredient mentioned above that Anil Kumar Ghosh was not a bona fide resident of the corridor area.

12. The evidence shows that he contravened the order contained in sub-para (3) oil the Order mentioned above and has, therefore, committed an offence under Section 7(2), Essential Supplies Act. In my judgment the defect in the framing of the charge which has been pointed out above has not resulted in any prejudice to

the accused. I would, therefore, maintain his conviction under Section 7(2), Essential Supplies Act.

13. We are informed that he has served a week's imprisonment. In view of the fact that he is 20 years of age, I would reduce the sentence to the period of imprisonment already undergone. The order of forfeiture of the paddy would stand.

Debabrata Mookerjee, J.

14. I agree.

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