

**Kedarnath Agarwalla Vs. the State**

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**Court :** Kolkata

**Decided On :** Jul-07-1950

**Reported in :** AIR1951Cal303,54CWN829

**Judge :** Harries, C.J. and ;J.P. Mitter, J.

**Acts :** Essential Supplies (Temporary Powers) Act, 1946 - Section 7(1); ;Essential Supplies (Temporary Powers) (Amendment) Act, 1948

**Appeal No. :** Criminal Revn. No. 426 of 1950

**Appellant :** Kedarnath Agarwalla

**Respondent :** The State

**Advocate for Def. :** J.M. Banerjea, Adv.

**Advocate for Pet/Ap. :** Ajit Kumar Dutt and ;Jnanendra Kumar Dutt, Adv.

**Disposition :** Criminal revision allowed

**Judgement :**

Harries, C.J.

1. This is a petition for revision of orders made by a learned Magistrate and a learned Sessions Judge confiscating certain flour.

2. It appears that a motor truck carrying flour was held up on the border of the district of Burdwan. It was suggested by the prosecution that a consignment was being imported into Bihar in contravention of the Bengal Food-grains Movement Control Order. Proceedings were commenced against two persons, namely, the person who claimed to be the owner of the flour and the driver of the motor truck in which the flour was found. The owner of the flour was discharged as no case whatsoever could be made out against him. The driver of the truck was tried and after a full hearing he was found not guilty and acquitted. It is, therefore, clear that the prosecution failed to establish any offence in connection with this flour. Though no offence had been established the learned Magistrate who tried the driver ordered the flour to be confiscated. The learned Sessions Judge was moved in revision, but in his view the order of confiscation was properly made and he refused to refer the matter to the High Court. A petition has now been preferred to challenge these orders.

3. Mr. Ajit Kumar Dutt has contended that no order of confiscation could be made except where it was found that the Order and the Essential Supplies Act under which such Orders were made had been contravened. The acquittal of the driver and the discharge of the owner clearly established, according to Mr. Dutt, that there had been no contravention whatsoever of the Order. That being so, he argued that the Court had no power to order confiscation of the flour in question.

4. Mr. Banerjea on behalf of the State has urged that the flour could have been confiscated though no offence in relation to it had been committed. It is urged that even if a person innocently moves flour from one district to another or from one province to another contrary to these Foodgrains Control Orders nevertheless the commodity can be confiscated though no offence has been committed. According to Mr. Banerjea what constitutes a contravention of the Food-grains Movement Control Order is the moving of the goods, not the moving of the goods with such intent as to make the movement an offence against these orders. If Mr. Banerjea's argument was sound extraordinary results would follow. For example, if a person, without any intention whatsoever of proceeding from one district to another, by mischance takes a wrong road finds that he has crossed the border of his district or province which he never intended to do, the goods which he carried, if their

import into another district or province was prohibited, could according to Mr. Banerjea be confiscated though the person who inadvertently crossed the border and took the goods across the border was not guilty of any offence whatsoever.

5. Again goods might be confiscated, according to Mr. Banerjea's argument, where they were imported into another district or province by sheer accident. For example, if a lorry with somewhat defective brakes, containing goods which could not be imported into another district or province, was stopped on the top of a long hill and owing to defective brakes ran out of control down the hill and crossed a district or provincial boundary, the goods according to the argument of Mr. Banerjea would be liable to confiscation, though of course the owner of the lorry should never be held to have committed an offence. According to the argument for the State importation of goods into a prohibited area is a contravention of the Food-grains Movement Control Order whether that importation is intentional or purely accidental. In my view it is quite impossible to accede to this argument.

6. It is provided by Section 7, Essential Supplies Act of 1946 that contravention of orders made under the powers given by Section 3 of the Act shall be punishable with substantial terms of imprisonment. Sub-section (1) of Section 7 is in these terms:

'If any person contravenes any order made under Section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty:

Provided that where the contravention is of an order relating to foodstuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be a part, of the property.'

The order prohibiting the movement of food-grains from one province to another is made under the provisions of Section 3 (2) (d) of the Act. It is quite clear that the

word 'contravention' is used as meaning acting in a manner prohibited by the order and in a manner which makes the act an offence.

7. The proviso to Section 7 (1) of the 1946 Act has been amended by the Essential Supplies (Temporary Powers) (Amendment) Act, 1948. For the proviso of the old Section 7 (1) the following has been substituted:

'Provided that --

(a) where the contravention is of an order relating to cotton textiles, the Court shall:

(i) sentence any person convicted of such contravention to imprisonment for a term which may extend to three years and may, in addition, impose a sentence of fine, and

(ii) direct that any property in respect of which the order has been contravened or such part of it as the Court may deem fit shall be forfeited to His Majesty; and

(b) where the contravention is of an order relating to food-stuffs which contains an express provision in this behalf, the Court shall direct that any property in respect of which the order has been contravened shall be forfeited to His Majesty, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.'

8. The word 'contravention' appears in both sub-paras, (a) and (b) of this substituted proviso. In sub-para, (a) the contravention is a contravention amounting to an offence and it appears to me that the word 'contravention' as used in sub-para, (b) must have been used in the same sense. It would be most unusual to give the word 'contravention' a different meaning when it has been used more than once in a section or a proviso to a section.

9. It is clear, therefore, from the terms of the amended proviso that confiscation can only be ordered when a particular order has been contravened and where there has been no contravention no order for confiscation can be made.

10. In the present case the trial Court held that neither the owner of these goods nor the driver were guilty of any offence. In other words, they had not contravened the order because if they had, they would have Committed an offence and would be liable to punishment for such offence. The findings of the trial Court amount in my view to findings that there has been no contravention of the Food-grains Movement Control Order. If there has been no contravention then it appears to me that an order for confiscation cannot be made. It must be remembered that confiscation is a punishment and when there is no offence there can be no punishment.

11. Mr. Banerjea contended that the owner and the driver had been discharged because no mens rea had been established. If no mens rea had been established, then it appears to me that there was no contravention of the Order. The Food-grains Movement Control Order does not make it an offence accidentally to move food-grains in a manner prohibited by the Act. Before there can be a contravention or an offence there must be a degree of mens rea which would make the movement a criminal offence. Unless such a construction is given to the word 'contravention' the most startling results would arise. For example, a shop-keeper might be asked to deliver goods purchased by customers near a provincial or a district boundary. Whilst delivering goods to a particular customer horses or bullocks drawing the vehicle carrying the articles might bolt and cross the boundary though the owner of the goods never had any intention whatever of crossing the boundary, According to the State this crossing of the boundary which was purely accidental and not intended by the owner of the goods would amount to a contravention of the Order and though the owner of the goods would be not guilty of any offence, the State contends that the goods would be liable to confiscation. It appears to me that in such a case the taking of the goods across the boundary would be purely accidental and no offence could possibly be established against the owner. That being so, it could not in my view be said that any order had been contravened unless the order covered all movements across a border whether intentional or not or whether such movement was purely accidental and even against the wishes and intentions of the owner. I cannot give these orders such a construction and in my view once it is held that there was no mens rea on the part of persons moving the goods it must be held that the order

prohibiting movement was not contravened and that being so the goods could not be confiscated.

12. In the result, therefore, I would allow this petition, set aside the order of confiscation and direct the goods to be returned to the petitioner. If the goods have been disposed of the value of the same must be paid to the petitioner. The Rule is made absolute.

**Mitter, J.**

13. I agree.

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