

SUPREME COURT OF INDIA

Shrinivas Pannalal Chokhani

Vs.

State of M.P.

CrI.A.No.1 of 1952

(M. Patanjali Sastri, C.J.I., B. K. Mukherjea, S. R. Das, Ghulam Hasan and N. H. Bhagwati, JJ.)

29.05.1953

JUDGEMENT

BHAGWATI, J. :

1. This was appeal by special leave from the decision of the High Court of Judicature at Nagpur confirming the conviction and sentence passed upon the appellant by the Court of the Magistrate First Class, Akola.

2. The appellant was charged :

(i) Under S. 7, Essential Supplies (Temporary Powers) Act 24 of 1946, read with Cl. 2(1) (a), Central Provinces and Berar Food-grains Export Restriction Order 1943 for exporting 1405 bags of uncleaned tur dal on 26-12-1946 from Yeotmal to Kalyan without permit in that he had no permit to export uncleaned tur dal and was not the holder of permit No. 10315 which moreover was exhausted before that day;

(ii) Under S. 420, Penal Code for cheating the Railway authorities and thus obtaining seven wagons to load 1405 bags to Kalyan; and

(iii) Under S. 471/465, Penal Code for fraudulently using as genuine permit No. 10315 knowing or having reason to believe at the time of using it to be a forged document in certain matters. The appellant's father. Pannalal Gulraj Chokhani and the broker Krishnarao Shankarrao were also charged with abetment of the first offence. The Magistrate convicted the appellant of all these offences and sentenced him to various terms of imprisonment and fine. The appellant's father and the broker were also convicted of the offence with which they were charged and sentenced to imprisonment and fine. The 1405 bags which were the subject-matter of the charge were ordered to be forfeited.

3. The appellant and the other accused took an appeal to the High Court of Judicature at Nagpur. The High Court quashed the conviction of the appellant in regard to the second and the third offences but confirmed his conviction in respect of the first offence and maintained the sentence of imprisonment and fine as also forfeiture of the property. The conviction of the appellant's father and the broker was quashed. The High Court rejected the application filed by the appellant for leave to appeal to this Court. The appellant however obtained from this Court special leave to appeal which was granted on 25-9-1950.

4. It is common ground that on 24-11-1944 the appellant's father had obtained in his name a permit No. 10315 for the export of 500 tons of chuni. He exported 130 tons under the permit within the extended date, the 30th April 1945 but no further extension was asked for nor was the permit returned by him to the Deputy Commissioner. It appears that in October 1946 the appellant applied to the Deputy Commissioner and certain alterations were made in the permit including the following :

- (a) The name of the appellant was substituted as consignor in place of that his father.
- (b) The term was extended upon 31-12-1946;
- (c) The word 'bharda' was added after the word 'Chuni' in the description of the commodity allowed to be exported;
- (d) The destination was changed from Wadi bunder to Kalyan;
- (e) The words "to Kalyan for 500 tons" were added.

On the basis of this permit the appellant obtained seven wagons from the Railway authorities and on 25-12-1946 he despatched from Yeotmal to Kalyan 1405 bags of a commodity which has been variously described as 'chuni'. 'Chuni bharda' and 'bharda'. During transit at Murtazapur Railway station, when the bags were being transhipped from the metre gauge to the broad gauge wagons, a small quantity of grain fell down from some of the bags. The Railway staff suspected that "tur dal" was being exported and reported the matter to the police. The police detained the wagons, took specimens of the stuff contained in the bags and after investigation challenged the appellant, his father Pannalal Gulraj Chokani and the broker Krishna Rao Shankarrao, charging them with the several offences mentioned above.

5. Under Section 15, Essential Supplies (Temporary Powers) Act 1946, where any person is prosecuted for contravening any order made under S. 3 which prohibits him from doing an act without a permit, the burden of proving that he has such a permit shall be on him. Clause (2) (1) (a), Central Provinces and Berar Foodgrains Export Restriction Order 1943, prohibits export of tur and its products outside the province without a permit issued in that behalf by the Director of Food Supplies, Central Provinces and Berar. It is not disputed that what was exported by the appellant was a tur product and the burden was therefore on him to prove that he had the required permit.

6. The prosecution challenged the validity of the permit on various grounds all of which were negated by the High Court and the High Court found that the appellant was in possession of a valid permit which was altered as above and was operative up to 31-12-1946 and which authorised him to export 500 tons of chuni bharda to Kalyan. Once that permit was produced by him the appellant discharged the onus which lay upon him to prove that he had the required permit. The only thing which survived for the consideration of the Court was whether the commodity which was being exported fell within the description of chuni bharda.

7. The appellant was charged with having exported 1405 bags of uncleaned tur dal without permit and even though the initial burden lay on the appellant to prove that he had the required permit, once he produced the permit authorising him to export chuni bharda and showed that the commodity which he was exporting fell within the description of chuni bharda, the burden lay upon the prosecution to prove that the commodity which was being exported was not chuni bharda but was uncleaned tur dal and unless and until the prosecution discharged that burden the conviction of the

appellant could not be sustained. It was not for the appellant to prove that the commodity which he was exporting was not uncleaned tur dal. This is the fallacy which the High Court fell into when it observed.

"It is also true that the accused have been able to elicit from the prosecution witnesses in their cross-examination that the samples of the consignment dated 26-12-1946 (Articles A to E) were of chuni bharda. None of them were asked to define what exactly they meant by chuni bharda, nor were they asked to distinguish between the unsorted product of the first grinding of tur and the products of the several subsequent processes."

8. It is significant to observe that the appellant succeeded in eliciting from the witnesses whose evidence was led by the prosecution the fact that the commodity which he was exporting fell within the description of bharda or chuni bharda. Rambilas, P. W. 6, and grain dealer stated in cross-examination; I accept that grain of the description given in Ex. P-3 is called bharda". Laxmi-narayan P. W. 7 a grocery shop-keeper and cultivator stated in cross-examination :

"The sample Article E had tur dal with husk but it had powdered dal with bhusa in it. This type of grain is usually known as bharda"

Krishna, P. W. 9 a foreman at the Yeotmal railway station and who used to do the work of weighment, loading, unloading and preparation of railway receipts in connection with railway consignments, stated in cross-examination :

"I do not know what is meant by bharda. By bharda I mean chunibharda. By grinding tur in pieces and I mean chunibharda. By grinding tur in pieces and mixing it with husk, bharda is formed. I cannot give the percentage of dal pieces and husk in bharda. I have been loading bags of chuni and chunibharda all my life."

Ramchandra, P. W. 10, Assistant Food Officer at Yeotmal state in cross-examination ;

"When tur is grinded then the pieces of tur along with the husk form what is known as bharda I know the word bharda from my childhood. Chuni might be containing about one per cent of husk and it contains about 89 per cent of powdered dal and the remaining per cent of dal pieces. I cannot give what percentages of husk, dal and dal pieces is in bharda." Ratanchand, P. W. 17, stated in cross-examination: "I have sent chuni, chuni bharda and tur and tur dal on many occasions from Darwha. (Article E sample shown to the witness). I call this sample as 'chuni bharda'.

The evidence of these witnesses is sufficient to establish that the commodity which was being exported by the appellant came within the description of bharda or chuni bharda and if the appellant was able to prove though the evidence of the prosecution witness themselves that what he was exporting was a commodity which fell within the description of chuni bharda had discharged the onus of proving that he was exporting the commodity in question under a valid permit.

9. The prosecution however relied upon the report of their Analyser, one Moharikar, P. W. 23, a Testing Bureau Officer attached to the Food Department of the Central Provinces Government and stationed at Nagpur. The sample of the commodity which was being exported was submitted to him for analysis and he reported the result of his analysis as under :

Refraction factors	Percentage
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(1) Foreign matter and dust	1.1
(2) Phol	7.0
(3) Chuni	10.5
(4) Khanda	4.4
(5) Whole tur grains	5.0
(6) Dal with husk on	25.0
(7) Dal	47.0
	100.0

In his opinion the sample seemed to be of grinded tur uncleaned i.e. tur which had undergone the first process in the manufacture of dal. This witness grouped up items (5), (6) and (7) and stated that the dal portion in the sample was approximately 77 per cent.

In his cross-examination however he stated that when tur dal is purchased by Government, the following allowance is made; one per cent for bhusi, husk and dirt, one per cent for other food grain, two per cent for brokens and one per cent for split with husk on. According to him the tur dal purchased by Government would contain 95 per cent of tur dal and would not fall within the description of tur dal unless it contained that percentage of tur dal. The tur dal taken for sample analysis by him however contained only 77 per cent of tur dal as above stated and would therefore not fall within the description of tur dal whether cleaned or uncleaned.

R. D. Joshi, P. W. 31, the Food Officer at Yeotmal was another important witness for the prosecution and he stated in his cross-examination.

"There is no order or circular which mentions the percentage of tur dal in chuni. I have heard the word bharda for the last five or six years. There is no circular or rule stating the percentage of tur dal in bharda. I did not collect any information to entitle me to say what percentage of tur dal shall make a commodity chuni or bharda. The stuff chuni bharda as also bharda is not defined. I have only seen the permits of chunibharda bags being despatched from Yeotmal station. I have heard the stuff called chunibharda but have never seen it. Chuni is not an essential food stuff, but I am not sure about it. I find from page 257 of the Food Administration Manual that chuni is an essential food stuff. Bharda is whole tur split into two, mixed along with husk. There cannot be bharda without husk. There cannot be chuni without husk. Tur is the genus and when tur is ground, the product is bharda or tur dal when the husk is removed. If bharda is further ground, the product will be chuni. I have not seen chuni bharda. When bharda is ground further, it gives chuni bharda."

This witness could not give the proportions of true dal in bharda or chuni bharda and did not depose to any standard for determining whether a commodity which was being exported was chuni or bharda, or chuni bharda as distinct from tur dal. Gangrade, P. W. 27, the Deputy Commissioner himself stated in cross-examination :

"I cannot say whether bharda is a form of chuni. I learnt about bharda while I was inspecting pulse purchases at Wun district Yeotmal in August or September 1946. Merchants at Wun applied the

term bharda to tur dal which had a very large percentage of husk tur dal in it. Chuni should contain at the most four or five per cent of dal or big pieces of dal which do not properly come under chuni. Bharda might contain about eighty to ninety per cent of dal. My knowledge about this percentage of dal in bharda is based upon the information I was given by the merchants at Wun. I have no other source of information with regard to the percentage of dal in bharda.

I have no idea whether consignments except that of accused Shrinivas were despatched from Yeotmal outside the district and province under the name 'bharda'. I cannot say what percentage of dal is contained in chuni-bharda. I am not an expert about the composition of chuni and chuni-bharda or bharda. I gave the opinion in Ex. P-6 that the stuff cannot be called chuni because the stuff contained chaff and dal. By chuni in Ex. P-6 I meant some broken pieces of dal, and by bhusi therein, I meant husk and powdered dal."

The evidence of this witness makes it abundantly clear that even if the commodity contains 80 to 90 per cent. of dal it might still be bharda and he was not in a position to say what percentage of dal was contained in chuni bharda.

10. The evidence of the last three witnesses apart from the admissions contained in the evidence of the witnesses P. W. 6, P. W. 7, P. W. 9, P. W. 10 and P. W. 17 discussed above is sufficient to establish that the commodity which was being exported by the appellant could as well come within the description of chuni or bharda or chuni bharda. The words Chuni or bharda or chuni bharda appear to have been used by these witnesses as interchangeable and it would be impossible in this state of the evidence to come to the conclusion that even though the commodity could fall within the description of chuni bharda for the export of which the appellant had the necessary permit the commodity which was being actually exported was not chuni bharda but uncleaned tur dal as alleged.

11. Chuni is stuff which is meant for the consumption of animals. It is unfit for human consumption. Bharda is the result of the grinding process and the bharda of tur would be the result of the first grinding process to which tur would be submitted. That bharda might however contain tur dal with husks, tur dal broken into more than three or four pieces described as Kanda, phol i.e. the husks and certain extraneous matters. Bharda in order to come within the description of tur dal cleaned or uncleaned must contain according to the evidence of Moharikar, P. W. 23, 95 per cent of tur dal and even according to the evidence of Gangrade, P. W. 27, 80 to 90 per cent of tur dal. This bharda would be fit for human consumption. But when you have a description of the commodity as chuni bharda it is a bharda of tur which does not come within the category of bharda simpliciter but is chuni-bharda that is bharda which is only fit for consumption by animals.

The prosecution itself and evidence of two grain merchants, Ratanchand, P. W. 17 and Brindawan, P. W. 19 which showed that the tur which had been supplied by them to the appellant was of the old stock of 1944-45 and was weevilled. This was ground by the appellant at the flour - of Narayan, P. W. 25 and Sheikh Karim, P. W. 26 and was filled in the bags which were being exported. This evidence goes to show that the commodity was the product of weevilled tur, which was not fit for human consumption and was only fit for consumption by animals. Even if it was bharda being the result of the first grinding of the weevilled tur, it would not come within the description of bharda simpliciter which would be fit for human consumption but was rightly described as chuni bharda, a commodity only fit for consumption by animals. The only thing which was urged by the learned Advocate-General of Madhya Pradesh against this position was that the price of the commodity to be exported was mentioned in the permit as Rs.8/per Bengal maund whereas the price of the

commodity which was being exported was over Rs. 14/- per Bengal maund.

This argument based on the price of the commodity is of no avail to the prosecution for the simple reason that there is no satisfactory evidence on the record to show what was the price of chuni or bharda or chuni bharda or even tur dal in about December 1946 which is the relevant period nor is there any evidence to show what was the price of chuni bharda in Kalyan at or about this time. In the absence of these materials it is difficult to come to the conclusion that what the appellant was exporting was really uncleaned tur dal under the guise of chuni bharda.

12. Having regard to the evidence led on behalf of the prosecution it is abundantly clear that the appellant was exporting a commodity which came well within the description of chuni bharda. In any event having regard to the confusion in the minds of the prosecution witnesses themselves it was not legitimate to convict the appellant of the offence of having exported uncleaned tur dal as distinct from chuni bharda, chuni bharda being a commodity which could not be definitely and clearly defined or described by any of the prosecution witnesses. The appellant was certainly under the, circumstances entitled to the benefit of the doubt and it could not be stated that the prosecution had succeeded in establishing the case against the appellant beyond reasonable doubt.

13. The case of the appellant really falls within the ruling of this Court in "*Pritam Singh v. The State*", A. I. R. 1950 S. C. 169 (A) and we are of the opinion that substantial and grave injustice has been done to the appellant and there is sufficient cause for interference by this Court. In the result we allow the appeal, quash the conviction and set aside the sentence of fine as well as the order of forfeiture passed by the Magistrate and the High Court and order that the fine if paid be refunded and the 1405 bags or the sale proceeds thereof be handed to the appellant.

Appeal allowed.

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