

SUPREME COURT OF INDIA

Nathulal

Vs.

State of M.P.

Crl.A.No.77 of 1963

(K. Subba Rao, J. C. Shah and R. S. Bachawat, JJ.)

22.03.1965

JUDGEMENT

SUBBA RAO, J. (On behalf of himself and **BACHAWAT, J.**):

1. The appellant is a dealer in foodgrains at Dhar in Madhya Pradesh. He was prosecuted in the Court of the Additional District Magistrate, Dhar, for having in stock 885 maunds and 2 1/4 seers of wheat for the purpose of sale without a licence and for having thereby committed an offence under S. 7 of the Essential Commodities Act, 1955 (Act X of 1955), hereinafter called the Act. The appellant pleaded that he did not intentionally contravene the provisions of the said section on the ground that he stored the said grains after applying for a licence and was in the belief that it would be issued to him. The learned Additional District Magistrate, Dhar, found on evidence that the appellant had not the guilty mind and on that finding acquitted him. On appeal a Division Bench of the Madhya Pradesh High Court, Indore Bench, set aside the order of acquittal and convicted him on the basis that in case arising under the Act "the idea of guilty mind" was different from that in a case like theft and that he contravened the provisions of the Act and the order made thereunder. It sentenced the appellant to rigorous imprisonment for one year and to a fine of Rs. 2,000 and in default of payment of the fine he was to undergo rigorous imprisonment for six months. Hence the appeal.

2. Mr. Pathak, learned counsel for the appellant, mainly contended that mens rea was a necessary ingredient of the offence under s. 7 of the Act, that as on the finding given by the learned Magistrate the appellant had no intention to contravene the provisions of the Act and the Order made thereunder, the High Court went wrong in setting aside the order of acquittal.

3. The material provisions of the Act and the Order made thereunder may be read at this stage:

Section 7 of the Act.

(1) If any person contravenes any order made under S. 3 -

(a) he shall be punishable -

(ii) in the case of any other order, with imprisonment for a term which may extend to three years and shall also be liable to fine:

The Madhya Pradesh Foodgrains Dealers Licensing Order, 1958;

Section 2 - In this order, unless the context otherwise requires,-

(a) "dealer" means a person engaged in the business of purchase, sale or storage for sale, of any one or more of the foodgrains in quantity of one hundred maunds or more at any one time whether on one's own account or in partnership or in association with any other person or as a commission agent or arhatiya, and whether or not in conjunction with any other business.

Section 3 - (1) No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

(2) For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purposes of sale.

A combined reading of these provisions shows that if a dealer in foodgrains as defined in the Order carries on business as a dealer without a licence, he commits an offence under S.7 of the Act and is liable to imprisonment and fine thereunder. Sub-section (2) of S. 3 of the Order raises a rebuttable presumption that if a dealer stores foodgrains in quantity of 100 maunds or more he shall be deemed to have stored the said foodgrains for the purpose of sale. The question is whether under S. 7 of the Act a factual non-compliance of the Order by a dealer will amount to an offence thereunder even if there is no mens rea on his part. Learned counsel for the appellant contends that mens rea is an integral part of the offence whereas learned counsel for the respondent argues that the Act being one made in the interests of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities, mens rea is not one of the ingredients of the offence.

4. The law on the subject is fairly well settled. It has come under judicial scrutiny of this Court on many occasion. It does not call for a detailed discussion. It is enough to restate the principles. Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof; see *Srinivas Mill v. King Emperor*, ILR 26 Pat 460 : (AIR 1947 PC 135), *Hariprasad Rao v. State*, 1951 SCR 322 : (AIR 1951 SC 204): and *Sarjoo Prasad v. State of Uttar Pradesh*, (1963) 3 SCR 324 : (AIR 1961 SC 631). Most of the relevant English decisions on the subject were referred to in the judgment of this Court in *State of Maharashtra v. Mayer Hans George*, Cri Appeal No. 218 of 1963, dated 24-8-1964 : (AIR 1965 SC 722). How to disprove mens rea has been succinctly stated in *Halsbury's Laws of England*, 3rd Edition, Col. 10, at p. 283, thus:

"When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and prima facie proof of the existence of the intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, for example, by showing that he was justified in doing the act with which he

is charged, or that he did it accidentally, or in ignorance, or that he had an honest belief in the existence of facts which, if they had really existed, would have made the act an innocent one. The existence of reasonable grounds for a belief is evidence of the honesty of that belief.

Having regard to the object of the Act, namely, to control in general public interest, among others, trade in certain commodities, it cannot be said that the object of the Act would be defeated if mens rea is read as an ingredient of the offence. The provisions of the Act do not lead to any such exclusion. Indeed, it could not have been the intention of the Legislature to impose heavy penalties like imprisonment for a period upto 3 years and to impose heavy fines on an innocent person who carries on business in an honest belief that he is doing the business in terms of the law. Having regard to the scope of the Act it would be legitimate to hold that a person commits an offence under S. 7 of the Act if he intentionally contravenes any order made under S. 3 of the Act. So construed the object of the Act will be best served and innocent persons will also be protected from harassment.

5. The question, therefore, is whether on the facts found the appellant had intentionally contravened the provisions of S. 7 of the Act and the Order made thereunder. Now let us look at the facts of the case.

6. The appellant is a dealer in foodgrains at Dhar. The Order was made in exercise of the powers conferred under S. 3 of the Act. Under S. 3 of the Order no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority. Under sub-s. (2) of S. 3 of the Order if a person stores any foodgrains in quantity of 100 maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale. Pursuant to that Order the appellant on September 30, 1960, made an application for a licence to the licensing authority in Form A, cl. 4 (1) of the Order and deposited the requisite licence fee. There was no intimation to him that his application was rejected. He was purchasing foodgrains from time to time and sending returns to the Licensing Authority showing the grains purchased by him. He did not sell any grains purchased by him. On September 2, 1961, when the Inspector of Food and Civil Supplies, Dhar, checked the godowns of the appellant he had stored 885 maunds and 2 1/4 seers of wheat for sale. The said storage of the foodgrains for sale would be valid if he had a licence. The learned District Magistrate found the said facts on the evidence adduced before him and the High Court did not take a different view on the said facts except that it made a remark that there was not a particle of evidence to show that he had sent the returns to the authority. Indeed the Magistrate said that the said fact was not disputed before him. We, therefore, for the purpose of this appeal ignore the remark made by the High Court. When the accused was questioned by the Magistrate he stated thus:

"I deposited the fee by challan for getting the licence for the year 1961. I submitted the application. I continued to submit the fortnightly returns of receipts and sales of foodgrains regularly. No objection was raised at the time when returns were submitted. I made continuous efforts for two months to get the licence. The Inspector gave me assurance that I need not worry, the licence will be sent to my residence. It was told by the Inspector Bage. I was asked to drop donation of Rs. 10 in the donation box for the treatment of soldiers. It was told that if the donation is dropped, the licence will be issued within a day or two. I wanted to drop Rs. 5 only. In this way licences were determined. Other dealers also continued to do the business in the like manner. The business was done with a good intention".

The answer given by the accused is consistent with the evidence adduced in the case. The

Additional District Magistrate in substance accepted the defence. If so it follows that the accused stored the goods under a bona fide impression that the licence in regard to which he had made an application was issued to him though not actually sent to him. The fact that the licensing authority did not communicate to him the rejection of his application confirmed the accused's belief. On that belief he proceeded to store the foodgrains by sending the relevant returns to the authority concerned. It was, therefore, a storage of foodgrains within the prescribed limits under a bona fide belief that he could legally under a bona fide belief that he could legally do so. He did not, therefore, intentionally contravene the provisions of S. 7 of the Act or those of the Order made under S. 3 of the Act. In the result we set aside the order of the High Court convicting the appellant and acquit him of the offence with which he was charged. The bail bond is discharged. If any fine had been paid, it shall be returned.

7. **SHAH, J.:** Definitions of diverse offences under the Indian Penal Code state with precision that a particular act or omission to be an offence must be done maliciously, dishonestly, fraudulently, intentionally, negligently or knowingly. Certain other statutes prohibit acts and penalise contravention of the provisions without expressly stating that the contravention must be with a prescribed state of mind. But an intention to offend the penal provisions of a statute is normally implicit, however, comprehensive or unqualified the language of the statute may appear to be unless an intention to the contrary is expressed or clearly implied, for the general rule is that a crime is not committed unless the contravenor has mens rea. Normally full definition of every crime predicates a proposition expressly or by implication as to a state of mind: if the mental element of any conduct alleged to be a crime is absent in any given case, the crime so defined is not committed.

8. I have no doubt that an offence under S. 7 of the Essential Commodities Act, 10 of 1955 for breach of S. 3 of the Madhya Pradesh Foodgrains Dealers Licensing Orders, 1958 necessary involves a guilty mind as an ingredient of the offence. In terms, S. 3 of the Order, prohibits every person from carrying on business as a dealer except under and in accordance with the terms and conditions of a licence issued in that behalf of the Licensing authority. A dealer is defined by S. 2 (a) of the Order as meaning a person engaged in the business of purchase, sale or storage for sale, of any one or more of the foodgrains in quantity of one hundred maunds or more at any one time whether on one's own account or in partnership or in association with any other person or as a commission agent or arhatiya, and whether or not in conjunction with any other business. By sub-s. (2) of S. 3 a presumption is raised that "any person who shares any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purposes of sale." The Order prohibits every person from carrying on business as a dealer otherwise than in accordance with the terms and conditions of the licence and a dealer is a person who carries on business of purchase, sale or storage for sale of foodgrains in excess of the specified quantities. For the contravention of such a prohibition to be an offence, mens rea is necessary condition.

9. But the appellant at the material time did store foodgrains considerably in excess of hundred maunds and held no licence to carry on the business as a dealer under the Licensing Order. His defence at the trial for contravention of S. 3 of the Order was that he had applied for a licence and had deposited the requisite fee for obtaining a licence and had submitted an application in that behalf and had since that date continued to submit fortnightly returns of receipts and sales of foodgrains regularly. He also submitted that he had "made efforts for two months to get the licence" and the Inspector had assured him from time to time that he (the appellant) "need not worry and the licence would be sent to him at his residence". This clearly amounts to an admission that the appellant knowingly carried on business as a dealer without a licence. It is true that he carried on the

business as a dealer in the expectation based on assurance given to him by the Inspector that a licence will be issued to him, but in carrying the business as a dealer he contravened S. 3 of the Order, because he held no licence. The authorities under the Order are not bound to issue a licence merely because it is applied for, nor is there any provision in the Order, as is to be found in certain statutes relating to administration of Municipalities, that permission shall be deemed to be issued if for a period specified in the statute no reply is given by the prescribed authority to an application for grant of permission.

10. On the facts found, I am of the opinion that the appellant had contravened S. 3 of the Order with the knowledge that he did not hold a licence. But there can be no doubt that the State authorities acted negligently: they did not give the appellant a hearing before rejecting his application for a licence, and did not even inform him about its rejection. They continued to accept the returns submitted by him from time to time, and there is no reason to disbelieve the statement of the appellant that the Inspector had given him assurance from time to time that a licence would be issued to him. I am, therefore, of the view that no serious view of the contravention of the provisions of the Madhya Pradesh Foodgrains Dealers Licensing Order, 1958, may be taken, and a fine of Rs. 50 would meet the ends of justice. The order forfeiting the stocks of foodgrains must be set aside.

ORDER

11. Following the judgment of the majority, the appeal is allowed, the order of the High Court convicting the appellant is set aside and the appellant is acquitted of the offence with which he was charged. The bail bond is discharged. If any fine has been paid, it shall be returned.

Appeal allowed.