

Malkiat Singh and Another

Vs

The State of Punjab

Criminal Appeal No. 186 of 1966

(J. C. Shah, V. Ramaswami I, A. N. Grover JJ)

08.11.1968

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought, by special leave, from the judgment of the Punjab High Court, dated November 4, 1965, by which Criminal Revision Petition No. 263 of 1965 and Criminal Miscellaneous Case No. 224 of 1965, were dismissed.

2. The case of the prosecution is that on October 19, 1961, Sub-Inspector Banarasi Lal of Food and Supplies Department was present at Samalkha Barrier along with Head Constable Badan Singh and others. The appellant Malkiat Singh then came driving truck No. P. N. U. 967. Babu Singh was the cleaner of that truck. The truck carried 75 bags of paddy weighing about 140 maunds. As the export of paddy was contrary to law, the Sub-Inspector took into possession the truck as also the bags of paddy. It is alleged that the consignment of paddy was booked from Lakerkotia on October 18, 1961, by Qimat Rai on behalf of Messrs. Sawan Ram Chiranhi Lal. The consignee of the paddy was Messrs Devi Dayal Brij Lal of Delhi. It is alleged that Qimat Rao also gave a letter, Ex. P-3, addressed to the consignee Sawan Ram and Chiranji Lal were partners of Messrs. Sawan Ram Chiranji Lal and they were also prosecuted. In the trial court Malkiat Singh admitted that he was driving the truck which was loaded with 75 bags of paddy and the truck was intercepted at Samalkha Barrier. According to Malkiat Singh, he was given the paddy by the Transport Company at Malerkhotla for being transported to Delhi. The Transport Company also gave him a letter assuring him that it was an authority for transporting the paddy. But is later transpired that it was a personal letter from Qimat Rai to the Commission agents at Delhi and it was not a letter of authority. Babu Singh admitted that he was sitting in the truck as a cleaner. The trial court convicted all the accused persons, but on appeal the Additional Sessions Judge set aside the conviction of Sawan Ram and Chiranji Lal and affirmed the conviction of Qimat Rai and of the two appellants. The appellant took the matter in revision to the High Court but the revision petition was dismissed on November 4, 1965.

3. It is necessary at this stage to reproduce the relevant provisions of the Essential Commodities Act, 1955 (Act 10 of 1955). Section 3(1) is to the following effect :

"3. (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

Section 7 states :

"7. (1) If any person contravenes any order made under Section 3 -

(a) he shall be punishable -

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine; and

(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 :

Provided that the Court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment; and

(b) any property in respect of which the order has been contravened or such part thereof as the Court may deem fit including, in the case of an order relating to food-grains, any packages, coverings or receptacles in which they are found and any animal, vehicle, vessel or other conveyance used in carrying foodgrains shall be forfeited to the Government :

Provided that if the Court is of opinion that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property or any packages, coverings or receptacles or any animal, vehicle, vessel or other conveyance, it may, for reasons to be recorded, refrain from doing so.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of Section 3 fails to comply with the direction he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

4. By Section 2 of Punjab Act No. 34 of 1959 the Punjab Legislature added a new section, Section 7-A in the Central Act No. 10 of 1955 which reads as follows :

"Forfeiture of certain property used in the commission of the offence.-Whenever any offence relating to foodstuffs which is punishable under Section 7 has been committed, the court shall direct that all the packages, covering or receptacles in which any property liable to be forfeited under the said section is found and all the animals, vehicles, vessels or other conveyance used in carrying the said property shall be forfeited to the Government."

5. On January 3, 1959, the Central Government promulgated the Punjab Paddy (Export Control) Order, 1959, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955. Para 2 of this Order states :

"2. Definition. - In this Order, unless the context otherwise requires, -

(a) 'export' means to take or cause to be taken out of any place within the State of Punjab to any place outside the State;

(b) 'paddy' means rice in husk;

(c) 'State Government' means the "Government of the State of Punjab".

Para 3 of the order provides as follows :

"Restrictions on export of paddy. - No person shall export or attempt to export or abet the export of paddy except under and in accordance with a permit issued by the State Government or any Officer authorised by the State Government in this behalf :

Provided that nothing contained herein shall apply to the export of paddy, -

(i) not exceeding five seers in weight by a bona fide traveller as part of his luggage;
or

(ii) on Government account; or

(iii) under and in accordance with Military Credit Notes."

6. The question to be considered in this appeal is whether upon the facts found by the lower courts any offence has been committed by the appellant. It is not disputed that the truck carrying the paddy was stopped at Samalkha Barrier which is 32 miles from Delhi. It is also not disputed that the Delhi-Punjab Boundary was, at the relevant point of time, at about the 18th mile from Delhi. It is, therefore, evident that there has been no export of paddy outside the State of Punjab in this case. The truck with loaded paddy was seized at Samalkha well inside the Punjab Boundary. It follows therefore that there was no export of paddy within the meaning of Para 2(a) of the, Punjab Paddy (Export Control) Order, 1959. It was however, argued on behalf of the respondent that there was an attempt on the part of the appellants to transport paddy to Delhi and so there was an attempt to commit the offence of export. In our opinion, there is no substance in this argument. On the facts found, there was not attempt on the part of the appellants to commit the offence of export. It was merely preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arrange the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparation made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempts. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiency proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and light a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. Sir James Stephen, in his Digest of Criminal Law, Article 50, defines an attempts as follows :

"an act done with intend to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of act begins cannot be defined, but depends upon the circumstances of each particular case."

7. The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey. Section 8 of the Essential Commodities Act states that "any person who attempts to contravene, or abets a contravention of, any order made under Section 3 shall be deemed to have contravened that order". But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore that the appellants should not have been convicted under Section 7 of the Essential Commodities Act.

8. For these reasons we allow this appeal and set aside the conviction of the appellants under Section 7 of the Essential Commodities Act and the sentence of fine imposed upon each of them. We also set aside the conviction and sentence of Qimat Rai and the order of forfeiture passed by the trial Magistrate with regard to 75 bags of paddy and truck No. P.N.U. 967. The fines, if paid by any of the convicted persons must be refunded.

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