

Om Prakash

Vs

The State of Haryana and Another

Criminal Appeal No. 54 of 1967

(CJI M. Hidayatullah, A.N. Grover, A.N. Ray, I.D. Dua JJ)

24.11.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. The appellant Om Prakash, who appeals by special leave, has been convicted under sub-rule (9) of Rule 125 of the Defence of India Rules, 1962 read with Section 3(1) of the Gur (Movement Control) Order, 1963 and sentenced to six months' rigorous imprisonment. The case against the appellant is that on January 14, 1964 at or about 10 a.m. he was attempting to export from Punjab State to Rajasthan State Gur in truck No. PNR 6020. This truck was stopped near the border between Punjab and Rajasthan States at village called Khandewara. The truck was found loaded with 59 quintals of Gur and 22 quintals of Desi Khand which under the Gur (Movement Control) Order could not be exported from the State of Punjab. Under the definition of "export" in the said Order, it is stated inter alia that "export" means to take or cause to be taken from the State of Punjab. Clause (3) of the Order states that no person shall export or attempt to export or abet the export of Gur except under and in accordance with a permit issued in this behalf by the Chief Director or by the Government of the State or, as the case may be, by the Administrator or the Union territory, from which the Gur is to be exported, or any office authorised in this behalf by that Government or Administrator. No such permit was produced in the case. It would appear, therefore, that an offence under sub-rule (9) of Rule 125 of the Defence of India Rules, 1962 was being committed in attempting to export Gur from the territory of Punjab. Om Prakash was not the actual driver of the truck. The driver of the truck was one Sunder Lal who was also convicted but who has not been granted special leave by this Court. Om Prakash was only seated by the side of the driver Sunder Lal. He denied all connections with the export.

2. Three defences were raised in the case. The first was that the Gur (Movement Control) Order which came into force on October 30, 1963, was repealed on July 27, 1964, and the prosecution therefore could not continue beyond July 27, 1964, on which date the order was repealed. This argument is not acceptable, because the repealed (sic repealing) order itself provides for saving of prosecutions commenced by the State in respect of offences committed while the Order was in force. It states that the repeal shall not affect anything done or omitted to be done under the Order. The prosecution could therefore continue. Authority for this proposition was cited in the High Court from the House of Lords case *Wicks v. Director of Public Prosecutions*. (1947 AC 362) Indeed this was also laid down in an earlier case which is considered as the leading authority on the subject *Stevenson v. Oliver*. (1841(8) M&W 234)

3. The second defence was that the truck was not intended to cross the border into Rajasthan but was going to village Bawal within the State of Punjab. The case of the defence was that the truck

was stopped at a place three miles from the border where the road bifurcates, one limb going to Rajasthan and the other going to Bawal. This part of the case was not believed by the tribunal itself and that being a question of fact, we cannot interfere.

4. The third defence is that there was nothing to show that the appellant was in any way connected with or privy to the export of Gur in violation of the Gur (Movement Control) Order. His case is that he was merely sitting by the side of the driver, suggesting thereby that he was not taking the Gur, but was only taking a lift in the truck. It seems difficult to believe that he was an innocent passenger in the truck. The truck was loaded with large quantity of Gur and Desi Khand and was making its way towards the border. Evidence shows that it was about to cross the border when it was stopped. In these circumstances, we are not prepared to hold, in disagreement with the High Court and the tribunal below, that Om Prakash had joined as an innocent party. The fact, however, remains that no connection between him and the Gur had been established and therefore it is difficult to think that he was more than an abettor in the case. It may be that he was accompanying the truck merely to say that the driver did not take the truck to another place or deploy the truck. However, we think a more lenient view can be taken in his case, because of lack of proof of direct connection with the Gur. We accordingly dismiss his appeal, but think that in the circumstance of the case the ends of justice will be met by reducing the sentence to imprisonment already undergone by the appellant.

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