

Bijaya Kumar Agarwala

Vs

State of Orissa

Jagdish Prasad Agarwal

Vs

State of Orissa

Criminal Appeals No. 770 of 1996 with No. 771 of 1996

(CJI A. M. Ahmadi, Sujata V. Manohar JJ)

01.08.1996

JUDGMENT

AHMADI, C.J. -

1. Leave granted.

2. Section 3(1) of the Essential Commodities Act, 1955 (hereinafter called 'the Act') provides that if the Central Government is of the 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 3(2)(d) further clarifies that the order may provide, inter alia, for regulating by licences, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity. We may reproduce the exact words of the relevant part of Section 3 which reads as under :

"3. Powers to control production, supply, distribution, etc., of essential commodities.
- (1) * * *

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -

#(a)-(c) * * *##

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

#(e)-(f) * * *"##

Section 7 of the Act makes contravention of any order made under Section 3 punishable.

3. On 29-12-1965, the Orissa Rice and Paddy Control Order, 1965 (hereinafter referred to as 'the

Order') was issued in exercise of the powers conferred by Section 3 of the Act. Clause 3 of the Order which is relevant is reproduced below :

"3. Licensing of persons. - (1) No person shall act as a dealer except under and in accordance with a licence issued in that behalf by the licensing authority :

Provided that the Government may, by a special or general order, exempt, subject to such conditions as may be specified in the order, any class of persons from the operation of this sub-clause.

(2) For the purpose of this clause, any person who stores rice or paddy or rice and paddy taken together in quantity exceeding ten quintals inside the State of Orissa excluding the border area and exceeding two quintals inside the border area shall, unless the contrary is proved, be deemed to act as a dealer."

The term 'dealer' is defined in clause 2(b) as under :

"2. (b) 'Dealer' means any person who purchases, sells or stores in wholesale quantity rice or paddy or rice and paddy taken together :

Provided that, if such a person happens to be a cultivator or landlord, he shall not be deemed to be a dealer in respect of rice or paddy being the produce of the land cultivated or owned by him."

4. On 22-2-1980, the Supply Inspector along with CSO and others, while on duty near Hat Muniguda, stopped the Truck No. ORR 2511 and found Bijaya Kumar Agarwala, the appellant herein travelling in the truck carrying 124 bags of paddy. He was charged and tried under Section 7 of the Act as he had no licence issued to him under the Order. He was convicted and sentenced on the finding that his act amounted to 'storage' for which a valid licence was necessary. Since he had no such licence, it was held that he had violated the provisions of the Order. The conviction and the sentence were confirmed in appeal. A revision was filed in the High Court which was referred to a Division Bench; the point of reference being whether paddy loaded in a truck in excess of the permissible limit while in transit can be deemed to be 'stored' within the meaning of the expression 'storage' used in the Order. The Division Bench after examining the law on the point held by the impugned judgment dated 12-12-1988 that under the Order, transshipment in a moving vehicle or vessel amounted to 'storage'. The criminal revision was accordingly dismissed and hence the appeal.

5. The second criminal appeal also raises the same question of law. On the same day, the appellant Jagdish Prasad was found moving in Truck No. ORR 2262 with paddy in excess of the permissible quantity in contravention of the Order and was similarly charged, convicted and sentenced. His revision was also referred to a larger Bench. But after the judgment dated 12-12-1988 in the case of the appellant in the first case, his revision was dismissed following the same judgment by a Single Judge by the impugned judgment dated 7-11-1989. Thus, the question that arises for determination in both the appeals is the same, viz., whether goods found in a moving vehicle amounted to 'storage' within the meaning of the Order.

6. We find two sets of judicial opinion on this aspect : one that follows the decision of the Orissa High Court in Balabhadra Raja Guru Mohapatra v. State [AIR 1954 Ori 95] in which goods in transit in a truck were held to be 'storage' within the meaning of the Orissa Food Grains Control Order, 1947 and the other that follows the Orissa High Court judgment in the case of Prem Bahadur

v. State of Orissa [1978 Cri LJ 683 : (1977) 44 Cut LT 629] in which it was held that possession of stock of rice in a moving vehicle does not amount to 'storage' under the Orissa Rice and Paddy Control Order, 1965. The impugned judgment of 12-12-1988 as well as the previous judgment in the case of Balabhadra [AIR 1954 Ori 95] relied on in the impugned judgment are Division Bench decisions whereas the one in the case of Prem Bahadur [1978 Cri LJ 683 : (1977) 44 Cut LT 629] and those following it are all rendered by learned Single Judges.

7. The decision in Balabhadra case [AIR 1954 Ori 95] is based on the Orissa Food Grains Control Order, 1947 issued under Section 3(1) of the Essential Supplies (Temporary Powers) Act, 1946. Clause III(1) of the said Order was very similar to the Order of 1965 and read as follows :

"III. (1) No person shall engage in any undertaking which involves the purchase, sale or store for sale in wholesale quantities of any foodgrains except under and in accordance with a licence issued in that behalf by the Director of Food Supplies :

Explanation (2). - For the purpose of this clause any person who stores mung and biri or their products in quantities exceeding 20 standard mounds and other foodgrains in quantities exceeding 50 standard mounds, shall unless the contrary is proved be deemed to store the foodgrains for purposes of sale."

8. The case involved similar facts in which possession of goods in transit in a truck were held to be 'storage'. The High Court observed that "there may be a case in which the seller may be carrying goods for purposes of sale in a vessel and may be selling all along the route". The High Court held that keeping such goods in a truck would amount to 'storing'.

9. For the same reasons, the impugned judgment also holds that transshipment in a moving vehicle or vessel will amount to 'storage' within the meaning of the Order.

10. As against this, the judgment in Prem Bahadur case [1978 Cri LJ 683 : (1977) 44 Cut LT 629] without reference to the decision in Balabhadra case [AIR 1954 Ori 95] adopts the common parlance meaning of the word 'storage' and holds that it envisages continued possession spread over some time and did not include goods in transit.

11. Before we proceed further, it will be worthwhile to examine the dictionary meaning of the word 'store'. In Black's Law Dictionary 'store' as a verb means :

"To keep merchandise for safe custody, to be delivered in the same condition as when received, where the safe keeping is the principal object of deposit, and not the consumption or sale."

12. In Webster's Comprehensive Dictionary (International Edn.) 'store' as a verb transitive means :

"(1) To put away for future use; to accumulate (2) to furnish or supply; provide (3) to place in a warehouse or other place of deposit for safe keeping."

13. As per Concise Oxford Dictionary 'store' as a verb transitive means as under :

"Store 8. v.t. stock or furnish adequately with, or with something useful (usually with knowledge or the like; store your mind with facts; a well-stored memory). 9. put in store, lay up or up or away for future use; deposit (furniture etc.) in a warehouse for

temporary keeping. 10. (Of receptacle) hold, keep, contain, have storage accommodation for (a single cell can store enough energy for 12 months' operation)."

14. The dictionary meanings suggest that 'storing' has an element of continuity as the purpose is to keep the commodity in store and retrieve it at some future date, even within a few days. If goods are kept or stocked in a warehouse, it can be immediately described as an act of 'storage'. A vehicle can also be used as a storehouse. But, whether in a particular case, a vehicle was used as a 'store' or whether a person had stored his merchandise in a vehicle would be a matter of fact in each case. Carrying goods in a vehicle cannot per se be 'storing' although it may be quite possible that a vehicle is used as a store. Transporting is not storing. Section 3(2)(d) of the Act extracted earlier in the judgment uses the expressions 'storage' and 'transport' as two separate acts which could be regulated by licences, permits or otherwise. The Order could as well prohibit transporting of large quantities of rice or paddy within the sanction of Section 3 of the Act. Was it the intention of the framers of the Order to prohibit 'transport' per se? Unless the facts in a particular case reveal that the vehicle was used not merely for transporting the goods but also for 'storing' as understood in the English language or even in common parlance, it is difficult to hold in the affirmative.

15. Now let us examine the judgment in Balabhadra case. [AIR 1954 Ori 95] The impugned judgment has quoted the relevant portion of the judgment thus :

"There may be a case in which a seller may be carrying goods for purpose of sale in a vessel and may be selling all along the route. It cannot be said that the goods kept by him are not stored by him. I would, therefore, agree with the Sessions Judge that the find of the goods in the truck was a storage within the meaning of the Control Order. ... Both the Courts have held as a fact that the petitioner was transporting goods for sale within the Madras area."

16. The hypothetical fact-situation of a seller carrying goods for sale from station to station, halting at stations en route may indicate that the vehicle or vessel was used for 'storage' as well as 'transport'. The decision in such a case would turn on the facts of the case. That is why in the Balabhadra case [AIR 1954 Ori 95] the courts below had held that the accused was transporting goods for sale.

17. Strict construction is the general rule of penal statutes. Justice Mahajan in Tolaram Relumal v. State of Bombay [AIR 1954 SC 496 : (1955) 1 SCR 158] (AIR at pp. 498-99) stated the rule in the following words :

"(I)f two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature."

18. The same principle was echoed in the judgment of the five-Judge Bench in the case of Sanjay Dutt v. State through CBI [(1994) 5 SCC 402 : 1994 SCC (Cri) 1426 : JT (1994) 5 SC 225] which approved an earlier expression of the rule by us in Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] : (SCC p. 86, para 8)

"Therefore, when a law visits a person with serious penal consequences extra care

must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

Keeping in view the rules of interpretation of criminal statute and the language and intent of the Order and the Act, we find ourselves in agreement with the view expressed by Ranganath Misra, J. as he then was, in Prem Bahadur case [1978 Cri LJ 683 : (1977) 44 Cut LT 629] : (Cri LJ p. 685, para 4)

"The Orissa Order does not make possession without a licence an offence. Storage, however, has been made an offence. Between 'possession' and 'storage', some elements may be common and, therefore, it would be appropriate to say that in all instances of storage there would be possession. Yet, all possession may not amount to storage. 'Storage' in the common parlance meaning connotes the concept of continued possession. There is an element of continuity of possession spread over some time and the concept is connected with the idea of a regular place of storage. Transshipment in a moving vehicle would not amount to storage within the meaning of the Orissa Order."

19. There is no doubt that, in a given situation, a truck could be used as a store, but we cannot agree with the view that the mere fact that goods were found in a moving truck could prove that the goods were 'stored' in violation of the Order which makes such an act (when goods stored were rice or paddy in excess of the limit) a penal offence.

20. It will be proper at this stage to refer to two judgments of this Court in the case of Sk. Amir v. State of Maharashtra [(1974) 4 SCC 210 : 1974 SCC (Cri) 379 : (1974) 3 SCR 84] and in the case of Swantraj v. State of Maharashtra [(1975) 3 SCC 322 : 1974 SCC (Cri) 930 : (1974) 3 SCR 287]. In Sk. Amir case [(1974) 4 SCC 210 : 1974 SCC (Cri) 379 : (1974) 3 SCR 84] the appellant was apprehended by a railway constable immediately after he had obtained delivery of a parcel from the railway authorities. The parcel contained 95,000 capsules of a sedative agent commonly used for intoxication called "Lal Pari". The Court confirmed the finding of the High Court that the appellant (i.e. the accused) was guilty of 'stocking' the drug "for sale" without licence, which was an offence under the Drugs and Cosmetics Act, 1940. Apart from the fact that the contextual setting in which the expression "stocking for sale" is used in the Drugs and Cosmetics Act is different from that in which the expression 'storing' is used in the Act, we find that on facts both the trial court and the High Court relied upon various circumstances, particularly the circumstance that the appellant was found in possession of as many as 95,000 capsules to support their conclusion that the appellant had stocked the drug for sale. Before this Court, the appellant took a new argument that the drug was found on his person and, therefore, the act did not amount to "stocking for sale". This Court did not accept the argument and cited the example of hawkers who display their wares on their person and thus stock them for sale. Sk. Amir case [(1974) 4 SCC 210 : 1974 SCC (Cri) 379 : (1974) 3 SCR 84] does not deal with the problem involved in the present case and is not in conflict with the view that we propose to take.

21. The other decision, Swantraj [(1975) 3 SCC 322 : 1974 SCC (Cri) 930 : (1974) 3 SCR 287] which finds mention in the impugned judgment, merely rules that temporary storing of drugs was also covered by the term "stocking for sale" within the meaning of Drugs and Cosmetics Act. This judgment has no application to the present facts.

22. Both the appellants before us were merely found moving in trucks with paddy in excess of the quantity permitted to be 'stored'. Nothing more was proved. That by itself cannot amount to 'storing' of goods and hence they cannot be said to have contravened any of the provisions of the Order. Therefore, they are not liable to be convicted or sentenced under Section 7 of the Act. The appeals are allowed.

23. The convictions of the appellants are therefore set aside, and they are acquitted. Their bail bonds shall stand discharged.