

# ALLAHABAD HIGH COURT

State

Vs.

Sheo Prasad Jaiswal

Government Appeal No. 424 of 1952. against judgment of S.J. Banaras  
(Roy and Mehrotra, JJ.)

31.12.1951. 22.05.1956

## JUDGMENT

**Mohrotra, J.**

1. Sheo Prasad Jaiswal and Loknath Singh were convicted by Sri N.C. Jain, Magistrate, First Class, Banaras. The former was found guilty under Section 7, Essential Supplies (Temporary Powers) Act for violation of an order fixing prices of mustard oil and sentenced to a fine of Rs. 5000, in default to undergo rigorous imprisonment for three months. The latter was found guilty under Section 8 of the said Act for abetment of the same offence and sentenced to a fine of Rs. 500, in default to undergo rigorous imprisonment for three months. Both the parties went up in appeal to the Sessions Judge of Banaras who allowed the appeal and set aside their convictions and sentences. The present appeal has been filed by the State against the order of the Sessions Judge.

2. The prosecution case, in brief, is that Sheo Prasad Jaiswal, opposite 'party 1, is the sole proprietor of the firm Hindustan Oil Mills, Banaras which held a 'B' class licence under the U.P. Oilseeds and Oilseeds Products Control Order 1945, and Loknath Singh, opposite party 2, is his Munist working in the said firm. On 31-12-1945 the firm sold 3 seers 6 chhataks of mustard oil to one Shatrughan Prasad for Rs. 3-0-6 at the rate of Rs. 36/- per maund as against the control rate of Rs. 32 per maund and issued the cash memo. (Ex. P-1) in respect of the said transaction. The opposite parties denied the charges. Sheo Prasad Jaiswal denied that he was the sole proprietor of the firm and pleaded that he was merely a sleeping partner of 12 annas share and one Gaya Prasad, who died during the pendency of the case before the Magistrate, held four annas share in the firm, that he mostly lived at Calcutta in connection with his business there and the Hindustan Oil Mills' business was managed by Gaya Prasad. He pleaded ignorance of the transaction. Loknath Singh admitted the sale of 3 seers 6 chhataks of oil for Rs. 3-0-6. He also admitted that he issued the cash memo (Ex. P-1) in respect of it. According to him the price of Rs. 3-0-6 included the price of the empty tin also. This finds support from the statement of Shatrughan Singh P.W. 1. The Magistrate, after a consideration of the evidence, came to the conclusion that both the parties were guilty and convicted them.

3. The contention put forward by the opposite parties before the Sessions Judge in appeal was that the transaction was not a wholesale one but a retail one and there was no evidence on the record to prove the fact that retail prices of mustard oil were also controlled. Even on the finding that the transaction was entered into at a price higher than the price fixed under the two orders (Ex. P-2 and Ex. P-5) dated 6-4-1945, the opposite parties could not be convicted under Section 7, Essential Supplies (Temporary Powers) Act. The Sessions Judge held that as the sale was only of 3 seers 6 chhataks of mustard oil it was a retail sale and not a wholesale transaction and the orders dated 6-4-1945 passed by the Regional Food Controller, Banaras-Gorakhpur Region, did not fix the retail price but only the wholesale price. The Sessions Judge further held that the prosecution failed to prove the fact that these orders were duly published or that they were communicated to 'B' class licensees to whom they related. On these findings, the appeal was allowed and the conviction of the opposite parties set aside.

4. Both the aforesaid findings of the Sessions Judge are challenged by the State Counsel in this appeal. As we have already discussed in the other connected appeal, the order passed by the Regional Food Controller, Banaras-Gorakhpur Region on 6-4-1945 purports to be an order passed under condition 3 of the license and not under Rule 81 (2), Defense of India Rules. Even assuming that the orders could be regarded as those passed under Rule 81 (2), Defense of India Rules, the prosecution has failed to prove that there was due publication of the said orders as required under Rule 119, Defense of India Rules. There is nothing in the orders themselves laying down the mode of their publication. The prosecution relied upon the evidence of Sharda Prasad Singh, Nazir, Regional Food Controller's Officer, Gorakhpur, to prove the fact of the due publication of the aforesaid orders. According to his statement he received many copies of the order, Ex. P-5, in 1945 and on 15-4-1943 he sent 400 copies of it to the office of the Deputy Regional Food Controller, Banaras. There is, however, no mention, as admitted by him in cross-examination, of the dispatch of these copies to the office of the Deputy Regional Food Controller, Banaras, in the Despatch Book. Even accepting his statement to be true, it does not by itself establish the fact that the order was duly published or copies of the order were sent to the licensee. The prosecution has not produced any evidence to prove the fact of the actual service of this order on the opposite parties. It has been strenuously contended by the State Counsel that once the order had been legally passed a presumption can be raised in favor of its service on the opposite parties. In this connection it is also urged that none of the opposite parties specifically raised any objection in the Courts below that they had no knowledge of the order passed by the Regional Food Controller. In fact, they justified the sale on the ground that the price charged was at the control rate and not in excess of the same. The fact that no specific point was raised by the accused that they had no knowledge of the control price or that they entered into the said transaction at the control rate does not, by itself, relieve the prosecution of its duty to prove by definite evidence the fact that the order (Ex. P-5) was duly published or that the opposite parties had knowledge of the same. In the case of '*Srinivas Mall v. Emperor*', a similar contention was

raised but was repelled by their Lordships of the Privy Council. At p. 138 of the Report it was observed as follows:

<sup>1</sup> AIR 1947 PC 135

"The High Court agreed with the appellants' contention that no orders had been proved, but held that in all the circumstances the making of an order could be presumed, since the appellants had been careful to make it appear as though no more than the controlled price had been charged and their conduct thus showed them to have been aware of the orders made. With all respect to the High Court, their Lordships cannot regard this reasoning as satisfactory.

When once the making of an order has been proved, there may well be a presumption that it has been duly promulgated, and there may of course be evidence from which such promulgation may be inferred, but the fact that a person has acted as he might have acted if an order had been in existence, and if he had been minded to disobey it, cannot be conclusive to show either that an order has been duly made or that he has had notice of it." From the mere conduct of the opposite parties neither the existence of the order nor its due publication nor its knowledge by the opposite parties could be inferred. Once the order is proved, it may be that the presumption as regards its due publication may arise. But, in the present case, as we have already pointed out, the order relied upon by the prosecution purports to be one passed under Section 3 of the license and not under Rule 81(2), Defense of India Rules. It is the prosecution which is relying upon this order passed under Rule 81(2) and, in these circumstances, strict compliance with the provisions of R. 119 is to be proved before any presumption as regards its due publication can arise. In the present case the prosecution have also attempted to prove by direct evidence the fact that a copy of the order was put up on the notice board and that there was proper service of the order on the opposite parties.

The prosecution having led evidence to prove these facts, it is not open to the prosecution to rely upon a mere presumption in proof of the fact that the order had been duly published and that the opposite parties had knowledge of it. We see no reason to differ from the finding of the Sessions Judge and in our opinion, the prosecution has failed to prove the fact that the opposite parties had knowledge of the order dated 6-4-1945 fixing the Wholesale price of the article in question. In the absence of any such finding, the opposite parties could not be convicted under Section 7, Essential Supplies (Temporary Powers) Act.

5. It is also necessary to deal with an argument advanced by the Advocate-General at one stage of the hearing. The contention of the Advocate-General was that the offence having been committed at the time when the Defense of India Rules were in force, the opposite parties could not be tried and convicted under Section 7 or 8, Essential Supplies (Temporary Powers) Act. By virtue of Section 17, Essential Supplies (Temporary Powers) Act, the orders which were passed under the Defense of India Rules were kept alive with the result that the U.P. Oilseeds and Oilseeds. Products Control Order remained in force although the Defense of India Rules came to an end, and under the provisions of the said order any contravention of the terms of the licence

was made specifically punishable under Rule 81(4), Defense of India Rules.

As such, the opposite parties could only have been tried and convicted, as they were rightly, by the trial Magistrate under the provisions of the Defense of India Rules and not under Section 7, Essential Supplies (Temporary Powers) Act. In order therefore to ascertain whether 'mens rea' was necessarily excluded from being one of the ingredients of an offence of the nature with which the opposite parties have been charged, it is necessary to interpret the provisions of the Defense of India Rules and not the provisions of Section 7 or 10, Essential Supplies (Temporary Powers) Act.

If this argument of the Advocate-General is accepted, unless we come to the conclusion that even after the expiry of the Defense of India Rules the prosecution can be continued under the provisions of the said rules in respect of offences committed when the said rules were in force, the prosecution in the present case must fail, and that will be an additional ground in support of the decision of the Sessions Judge. In exercise of the powers granted under Section 102, Government of India Act, 1935, the Defense of India Act was enacted and the U.P. Oilseeds and Oilseeds Products Control Order related to the subject-matter contained in the Provincial List of the Seventh Schedule of the Government of India Act 1935, and therefore but for the proclamation of emergency the Central Government would not have been competent to make that order. The emergency which existed in 1939 when the Defense of India Act was passed continued when the said-Control Order was passed in 1945. Section 1(4), Defense of India Act provided that the Act shall remain in force during the continuance of the war and for a period of six months thereafter. The war came to an end on 1-4-1946 and the Act expired on 30-9-1946 together with all rules and orders made there under. As the Defense of India Act expired on 30-9-1946, in the absence of any saving clause, no-prosecution for the infringement of its provisions could be commenced after the expiry of the life-of the Act Section 6, General Clauses Act not being applicable to such a case, this clause applies only to cases where an Act is repealed and not where an Act comes to an end by efflux of time. Such a saving clause however was provided by Ordinance 12 of 1946. That Ordinance was subsequently repealed by Act 2 of 1948 which came into force on 5-1-1948.

Unless something had already been done prior to that date, no prosecution could commence under the Defense of India Rules after that date. Section 102, Sub-Section (4), Government of India Act, under the provisions of which the prosecution which had already commenced may have been justified and continued, was itself repealed by the Constitution, on 26-1-1950. Section 6, General Clauses Act has no application to the repeal of a statute made by Parliament in England and the repeal of which has been brought about by the Constitution of India. For this purpose Article 372 of the Constitution provided for the continuance in force in the territory of India, notwithstanding the repeal of the enactments referred to in Article 395, of the laws in force immediately before the commencement of the Constitution until altered, amended or repealed by competent Legislature or authority. But that Article in terms does not apply to the laws which had already been repealed or terminated or died a natural death by efflux of time. The result therefore is that Section 6, General Clauses Act will not be available to keep alive or continue the prosecutions in respect of offences committed under the Defense of India Rules after the coming

into force of the Constitution as in terms Section 6 applies to the repeal by Legislature and not by the Constitution.

6. Reference may in this connection be made to the case of '*State v. Jagamander Das*<sup>2</sup>', The Advocate-General tried to distinguish this case on the ground that in the case of non-ferrous metals the Control order may have itself come to an end at the time when the prosecution was going on, while in the present case under Section 17, Essential Supplies (Temporary Powers) Act the U.P. Oilseeds and Oilseeds Products

<sup>2</sup> AIR 1954 SC 683

Control Order continued to be operative even at the time when the prosecution was going on, and thus the principle laid down in that case does not apply to the present case. We see no reason to accept this argument. As we have already pointed out, ordinarily after an Act has come to an end no prosecution can be commenced or continued under the said Act unless there is something in the nature of a saving clause in the repealing Act or it is covered by the provisions of Section 6, General Clauses Act. Section 6, General Clauses Act empowers the continuance of prosecution of an offence under an Act which has been repealed by a subsequent statute. But Section 3, General Clauses Act does not apply to a case where the earlier Act dies a natural death. In the present case, however, Section 6, General Clauses Act will not apply in terms as the Government of India Act, under which the Defense of India Act was kept alive, was itself repealed by the Constitution and not by any subsequent enactment of the Legislature. After the coming into force of the Constitution the prosecution of offences under the Defense of India Rules could not continue. Although the Advocate-General contended that the opposite parties could not be tried under Section 7, Essential Supplies (Temporary Powers) Act, but as no objection has been taken by the opposite parties to their trial under Section 7 of the said Act, we do not at this stage think it necessary to examine the question as to whether after the expiry of the Defense of India Rules they could or could not be tried under Section 7 of the said Act when the offence was committed at a time when the Defense of India Rules were in force.

7. In the result, we see no force in this appeal. It is rejected.  
Appeal dismissed.