

CALCUTTA HIGH COURT

A.P. Misra

Vs.

State (Calcutta)

Criminal Revn. No. 829 of 1957

(N.K. Sen, J.)

07.05.1958

ORDER

N.K. Sen, J.

1. A.P. Misra was tried along with two others R. S. Sarma and S. P. Mukherjee under Section 7, sub-section (1) of the Essential Commodities Act (Act X of 1955) for violation of the provisions of Clause 3(1) of the Calcutta Wheat (Movement Control) Order, 1956, Accused S. P. Mukherjee who was the goods' clerk at Nimtola goods office was in charge of accepting forwarding notes. The petitioner A. P. Misra was said to have produced on 1-10-1956 ninety-eight bags of wheat on behalf of accused R. S. Sarma, a school boy aged about 14 years for booking Ex-Nimtola to Kharakpur on behalf of self. S. P. Mukherjee was charged for abetment of the offence for export of wheat without a permit. The learned Magistrate who tried them acquitted the two co-accused but convicted the petitioner and sentenced him to pay a fine of Rs. 200/- in default to rigorous imprisonment for four months. The seized quantity of wheat was ordered to be confiscated. The petitioner's appeal was dismissed by the Additional Sessions Judge, Midnapore. The present Rule is directed against the aforesaid order of conviction and sentence.

2. The prosecution case was that the petitioner on behalf of co-accused R. S. Sarma produced 98 bags of wheat at Nimtola Railway Station for export to Kharagpur. The forwarding note was produced before the co-accused S. P. Mukherjee on 22-9-1956. A wagon was allotted wherein the goods were loaded for dispatch. The goods in due course reached Kharagpur on 6-10-1956 when one man approached P.W. 3 M. B. Varma, the goods clerk at Kharagpur Railway Station for taking delivery of the goods. The goods however were not delivered as there was no permit for the movement. The defense of the petitioner was that he was not guilty. He further pleaded that he acted openly and was not aware of the particular Movement Control Order. Objections were also taken in the Courts below as to the jurisdiction of the Magistrate to try the case.

3. In this Court Mr. J M. Banerjee for the petitioner has taken the following points in support of the Rule.

4. Firstly, he urges that the Courts below had no jurisdiction to take cognisance of the offence

except on a report in writing as required under S. 1b of the Essential Commodities Act. He has pointed out that there is no report in writing on record. There is however, a 'First Information Report' drawn on a letter sent by P.W. 5 Sailesh Ch. Chanda, Sub-Inspector of Police attached to the District Enforcement Branch, Howrah, G.R.P. The formal 'First Information Report' that was drawn on it is Ext. 8 in the case. The letter itself is Ext. 7. Mr. Banerjee has taken me through the evidence of P.W. 5 Sailesh Ch. Chanda and the other police officer, P. W. 10 A. N. Biswas also attached to the District Enforcement Branch, Howrah, G. R. P. Their evidence does not show that they had filed a report in writing as was required under Section 11 of the Act.

5. Mr. Hari Dev Chatterjee on behalf of the State has argued that in the present case the F.I.R. itself should be taken to be a report as contemplated under Section 11 of the Act. Section 11 of the Act is in the following terms :

"No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code."

6. It appears that cognizance of the case was taken on a charge-sheet submitted on 29-12-1956. Mr. Chatterjee appearing on behalf of the State has cited a decision by a Judge sitting singly of the Patna High Court in the case of *Sagarmal Agarwala v. Emperor*¹, While considering a case under Rule 131 of the Defence of India Rules, Sinha, J., held that where after completing his investigation the Sub-Inspector has submitted a regular written charge-sheet giving all the details for the prosecution of the accused, there is a report in writing of a public servant upon which the accused is prosecuted within Rule 130(1) of the Defence of India Rules. It may be stated that Rule 130(1) of the Defence Rules provides that no Court or Tribunal shall take cognizance of any alleged contravention of this Rule except on a report in writing of the facts constituting such contravention made by a Public servant. Mr. Chatterjee has also referred to a case of this High Court decided by Derbyshire, C.J. and Lodge J. in a case *Ganga Prosad v. Emperor*², in which also Rule 130(1) of the Defence of India Rules was considered. In that case their Lordships held that in their opinion a report in writing of the facts constituting the contravention is a condition precedent to the institution of the proceeding and without such a report the Court has no jurisdiction whatever to try a case. It was held that as there was no such report in the case before their Lordships, the Court had no jurisdiction to try the appellant on the charge on which he was ultimately found guilty. So the case cited above does not help Mr. Chatterjee at all. In view of the decision of this Court, I am unable to follow the decision of a single Judge of the Patna High Court in the case AIR 1944 Patna 390. The learned Magistrate in the present Rule has sent an explanation but has not mentioned therein that there was a report in writing on which he had taken cognizance. In my judgment, therefore, there was no legal cognizance taken and as such, the entire proceeding was without jurisdiction. If it were the intention of the Act to empower the Court to take cognizance on a charge-sheet there was, in my judgment, no necessity to specifically mention that no Court shall take cognizance of any offence under the Essential Commodities Act except on a report in writing etc.

¹ AIR 1944 Pat 390

² 48 Cri LJ 557

7. The second point urged is that the trial by the learned Magistrate is vitiated because the alleged offence did not take place within his local jurisdiction. It is said that the moment, the wheat crossed the municipal limits of Howrah the offence of export was complete. The Court of appeal

below accepted this contention and held that the Magistrate who tried the case had no jurisdiction to try it as the offence was not committed at Kharagpur. The learned trying Magistrate in his explanation to this Court has accepted the position. The appellate Court, however, held that even though the trial was without jurisdiction, the order of conviction and sentence could not be set aside as, in fact, there was nothing to show that the accused suffered any substantial injuries or was prejudiced on this account. In my judgment, on this finding of fact, wrong assumption of jurisdiction was curable under the provisions of Section 531 of the Code of Criminal Procedure. This point, therefore, as raised by Mr. Banerjee cannot be accepted. Mr. Chatterjee on behalf of the State has, however, argued that the Court had jurisdiction to try the case. However, in view of what I have held above, the point need not be pursued any further.

8. The third point urged is that neither the petitioner nor the railway officials at Nimtala railway station who had accepted the goods for despatch on 1-10-1956 were aware of the existence of the Control Order. On this, Mr. Banerjee urges, that the petitioner had no guilty knowledge and as such could not have been convicted. The Courts below repelled this argument holding that ignorance of law was no excuse and that when the petitioner was dealing with food-grains it was his duty to keep abreast of any law that might come into effect at any time.

9. The Calcutta Wheat (Movement Control) Order, 1956 which was published in the Gazette of India on 5-10-1956 by Notification No. S. R. O. 2033 was re-published in the Calcutta Gazette (Extraordinary) dated 14-9-1956, in Part I A at pp. 2167-68. It is true that the railway officials who accepted the goods for despatch on 1-10-1956 would not have done so if they were aware of this Control Order. Mr. Banerjee has drawn my attention to Ext. A, a cyclostyled circular letter in which was incorporated the Calcutta Wheat (Movement Control) Order, 1956. This Ext. A contains the endorsement of P.Ws. 6, 7 and 8, the Goods Clerks at Nimtala Goods Shed, bearing date 3-10-56. It is argued that it was on 3-10-1956 that the existence of the Control Order was brought to their notice. While I am fully aware of the proposition that the ignorance of law cannot be pleaded as an excuse it is to be seen how far absence of mens rea will absolve the petitioner from his liability. My attention was drawn to the well known case of *Srinivas Mal v. Emperor*³, It is argued on the authority of the above decision that the question of mens rea was relevant to the offence with which the petitioner was charged. It was held in the above case by their Lordships of the Judicial Committee that unless the statute either clearly or by necessary implication ruled out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence under the criminal law unless he got a guilty mind. The same view was also taken by the Supreme Court in the case of *Hariprasad Rao v. The State*⁴, Mr. Chatterjee on behalf of the State has argued that there is no question of mens rea where ignorance of law is pleaded. It is to be observed that while acquitting the co-accused S. P. Mukherjee the trying Magistrate held that he was careless and the fact that the movement of the goods referred to restricted commodity escaped his notice. In other words, he held that he did not have the necessary guilty mind.

³51 Cal WN 900: (AIR 1947 PC 135)

⁴1952 SCA 139: AIR 1951 SC 204

In my judgment, the same principle can be applied with greater force to a member of the public when it is found that even the railway officials whose duty it was to despatch the goods could omit to notice that a Control order was in operation. I am of the view that the petitioner cannot be convicted as it has not been, in my judgment, established beyond reasonable doubt that he had the necessary guilty mind.

10. The fourth point urged is that from the evidence of P.W. 8 Gajendra Nath Joardar, the Chief Goods Clerk, Nimtala Ghat, it appears that the person who accepted the forwarding note gave the start for the movement of the goods. Since the co-accused S. P. Mukherjee accepted the forwarding note it was he who gave the start for the movement of the goods and not the petitioner. It is not however necessary for me to investigate this point as I have already held that the petitioner cannot be convicted in this case. In view of my finding above it is not necessary to decide whether the petitioner should have been inflicted a substantive sentence of imprisonment which according to Mr. Chatterjee was compulsory in a conviction under this Act, unless, of course, the Court for reasons to be recorded in writing found that a sentence of fine would meet the ends of justice.

11. I, therefore, set aside the order of conviction and sentence passed on the petitioner and acquit him. The fine, if paid, will be refunded.

12. Mr. Chatterjee in the last place urges that under the Appellate Side Rules of this Court, I am not competent to deal with a case where there is an order of forfeiture of property. I do not think that in the facts of this particular case that question really arises. An order for forfeiture of property can only be made on the termination of the trial and upon the conviction of the accused. It will be seen from the order sheet of the present case that during the trial the goods seized were sold as they were of a perishable nature and subject to speedy or natural decay. Since the goods seized were converted into money even before the conclusion of the trial, there was nothing in Court which could be confiscated. To my mind by the order of confiscation of the goods, the learned Magistrate only meant that the money in deposit with the Court was to be confiscated. The only section under which the Magistrate was entitled to sell any property pending the conclusion of the trial is Section 516-A of the Code of Criminal Procedure. There is no such corresponding provision in Act X of 1955. Section 516-A of the Code empowers a Court to pass an order regarding the disposal of property pending trial in certain cases. I am, therefore, of the opinion that the learned Magistrate purported to act under the provisions of this section when he ordered the sale of the goods. The conclusion therefore is that I am empowered to deal with an order passed under Section 516-A of the Code. In the result, the petitioner will now get back the money held in Court as the price of the goods sold.

13. The Rule is made absolute.

Rule made absolute.