

MYSORE HIGH COURT'

State of Coorg

Vs

P.K. Assu

Criminal Appeal No. 108 of 1953

(Venkataramaiya, C.J. and Padmanabhiah, J.)

05.09.1955

JUDGMENT

Venkataramaiya, C.J.

1. This is an appeal filed by the State of Coorg against the acquittal of the Respondents who were tried in the Court of the Munsiff and First Class Magistrate, Virajpet, in C.C. No. 416 of 1953, for having exported food-grains out of Coorg without a permit on 19-2-1953. There were four accused in the case of whom the 3rd and 4th accused were discharged and A-1 and A-2 who are the respondents were acquitted.

2. The evidence let in by the prosecution is sufficient enough to prove that a lorry of which A-1 is the driver and A-2 the cleaner contained some bags of paddy and rice underneath some bags of charcoal when it was stopped and searched by the Police. According to the notification of the Chief Commissioner of Coorg, dated 28-2-1949, exports of food-grains without a permit is a punishable offence. Admittedly the respondents had no permit with them for removal of the rice and paddy found in the lorry outside the limits of Coorg and the lorry would have left the frontier of Coorg but for its being stopped. The learned Magistrate considered that this is not sufficient to render them guilty as there was no proof of their having had knowledge of the paddy or rice bags placed in the lorry. A-3 is the person who had hired the lorry for use, and P.W. 5, the owner of the vehicle has stated that at the time of hiring neither of the accused was present. The question therefore is whether a person is culpable for being a driver or cleaner of a lorry when there are food-grains in it without necessary permit and without their knowledge.

3. Mr. Channappa, learned Assistant Advocate-General, argued that the provision for contravention of which the accused are prosecuted is special in character and that knowledge or intention to commit the act is not essential to constitute the offence. Ordinarily, in penal statutes intention is considered to be a necessary factor for the purpose of conviction. If this is to be dispensed with, the statute must provide for it. This is enunciated in - '*Srinivas Mall v. Emperor*'¹, thus :

¹ AIR 1947 PC 135

"It is of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out 'mensrea' as a constituent part of a crime, an accused should not be found guilty of an offence against the criminal law unless he has got a guilty mind".

while dealing with a case under the Defence of India Rules in which a master was held to be liable for the acts of his servant by the Courts in India. Their Lordships of the Privy Council set aside the conviction and observed that such offences are not within the limited and exceptional class of offences which may be held to be committed without a guilty mind. This view is referred to with approval in - '*Hariprasad Rao v. The State*²', which was a case under the Motor Spirits Rationing Order. The principle to be applied to this case cannot be different as the servants are sought to be made liable for what is done by the master or the agent for the fault of the principal.

4. The evidence in this case shows that both the accused, were absolutely ignorant of what was loaded in the lorry. P.W. 5 has stated that at the time of loading the driver and the cleaner would go out to attend to their own work and that A-3 stated that the lorry was needed for carrying charcoal. Servants and carriers cannot in the absence of a rule be expected or required to ascertain the contents of the box or vehicle assigned to their charge for transit or to satisfy themselves about the nature of the articles to be carried by them, in the absence of a clear rule to that effect. For a conviction under the Arms Act it is held in several cases that possession of a gun or explosive should be conscious and that the bare fact of its, being found with a person or in his premises without the person being aware of it is not sufficient. (See - '*Bhekha Ahir v. Emperor*³', and - '*Emperor v. Santa Singh*⁴', It is rather curious that the discharge of A-3 who engaged the lorry and who got the lorry loaded, is not questioned and that A-1 and A-2 apparently ignorant of what was loaded and acted under the direction of A-3 are sought to be punished.

5. There is no reason to interfere with the acquittal. The appeal is dismissed.

Appeal dismissed.

² AIR 1951 SC 204

⁴ AIR 1944 Lah 339 (PB)

³ AIR 1947 Pat 236