

BOMBAY HIGH COURT

Emperor

Vs.

Leslie Gwilt

Criminal Application in Revision No. 302 of 1944

(N.J. Wadia and Sen, JJ.)

10.08.1944

JUDGMENT

Sen, J.

1. The applicant, who is managing director of Messrs. H.J. Foster & Co. Ltd., and another were tried for an offence under Rule 116(2) and Rule 122 of the Defense of India Rules, read with notification No. 383-II(A) published in the Bombay Government Gazette on August; 12, 1943. Accused No. 2, who is a clerk in the grain shop of the said company, was acquitted. The applicant, who is accused No. 1, was sentenced to pay a fine of ₹ 20 or in default to simple imprisonment for one week. The case against him was that on August 12, 1943, a Government Notification in the Finance Department of the Government of Bombay was published in the Bombay Government Gazette, the notification being issued in exercise of the powers conferred on the said Government by Rule 116 of the Defense of India Rules, ordering that every person holding any stock of certain specified food grains should furnish on every Man day to the Director of Civil Supplies (Statistics Section), Secretariat, Bombay, a full and correct statement of the stocks of any of those articles held by him, and that thereafter no such statement as required by the notification was sent by the accused's company to the authority named for the three weeks beginning with September 18 and 25, and October 2, 1943. On January 20, 1944, the grain shop run by Messrs. Foster & Co. for the benefit of their employees was visited by Mr. S.I. Achreker and on examining the books of the said shop he found that the shop had considerable quantities of rice, wheat and bajri, which were the food grains specified in the notification referred to above, and that no declarations in respect of the said stocks had been sent for those three weeks. The defence of the accused was that they had had no notice of the Government Notification No. 383-II-A requiring his company to send weekly returns. The company holds a wholesale license which originally provided that it should submit by the 15th of each month a return of the stocks, receipts and deliveries of the food grains in question. The evidence in this case shows that the company had been regularly submitting every month the

returns required by the said terms of their license. After the publication of Government Notification No. 383-II-A the Assistant Director, Civil Supplies, (Inspectorate), informed the company on November 1, 1943, that they had not submitted weekly returns every Monday to the Director of Civil Supplies in accordance with the said notification, and thereafter it seems that the required returns were regularly sent by the company. The learned Presidency Magistrate, 4th Additional Court, who tried the case, held that as the notification was published in the Government Gazette under Rule 119 of the Defense of India Rules, the accused could be deemed to have been duly informed of the said notification. Accordingly he found the applicant guilty and convicted and sentenced him.

2. The point taken on behalf of the applicant in this application is that there is no evidence as to the manner which in the opinion of the issuing authority was best adapted for informing the persons whom the notification concerned, and that being so, no presumption could arise under Rule 119(1) that the accused was duly informed of the said notification. Sub-rule (2) of Rule 119, so far as material, reads thus:

Save as otherwise expressly provided in these Rules, every authority, officer or person who makes any order in writing in pursuance of any of these Rules, shall, in the case of an order of a general nature or affecting a class of persons, publish notice of such order in such manner as may, in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns

... and thereupon the persons, corporation, firm or person concerned shall be deemed to have been duly informed of the order. In this case no evidence of the publication of the notification, except a copy of the Bombay Government Gazette in which it was published, was produced ; and there was no evidence showing that the authority issuing the notification had decided in what manner the notification should be published and if so what that manner was. The requirement that such authority should decide as to the manner of publication is clearly indicated in Sub-rule (2) of Rule 119. There is no evidence that the notification in question was published anywhere except in the Bombay Government Gazette or that the accused subscribed to the Bombay Government Gazette, the accused having stated definitely that he is not a subscriber. The result mentioned at the end of Sub-rule (1), namely, that the persons concerned shall be deemed to have been duly informed of the order, is the consequence of the publication of the order in a particular manner, namely, such manner as may, in the opinion of the issuing authority, be best adapted for informing the person whom the order concerns. Unless the prosecution shows in what manner the publication, was decided upon, it would not be entitled to the presumption regarding notice to the accused mentioned in the last part of Sub-rule (1). If it was shown that the issuing authority had in this instance decided that the notification in question was to be published only in the Bombay Government Gazette and that such publication was best adapted for informing the persons concerned by the notification, such publication, though obviously inadequate, would give rise to the presumption that

the accused had been duly informed of the notification. There is, however, an entire absence of evidence as to how in the opinion of the authority issuing the notification, the notification was to be published. We do not think that in a case of this nature recourse should be had to the provisions of Section 114 of the Indian Evidence Act and that the presumption arises that the issuing authority had decided that the notification was to be published in the Bombay Government Gazette alone. As pointed out by Woodroffe J. in *Narendra Lal Khan v. Jogi Hari*¹ the meaning of Section 114, ill. (e). of the Indian Evidence Act, is that if an official act is proved to have been done, it will be presumed to have been regularly done, and that it

¹ I.L.R (1905) Cal. 1107

does not raise any presumption that an act was done of which there is no evidence and the proof of which is essential to the case. It seems to us that the burden of proving the manner which in the opinion of the authority issuing the notification was best adapted to inform the persons concerned was on the prosecution and that that burden has not been discharged. In *Shakoor Hasan v. Emperor*², it was held that if the issuing authority adopts a mode of publication, however inadequate or unreasonable, it is not liable to be questioned in any Court of law, but that it must be shown that the officer making the order himself prescribed the manner of its publication and that the publication was made in that manner, also that the prosecution cannot in such a case merely rely on the presumption of Section 114, ill. (e), of the Indian Evidence Act, for the only reason that the making of the order and the direction to publish notice of it were official acts. As it cannot be presumed, therefore, that the accused was duly informed of the notification, his conviction which must depend on his knowledge of the notification, real or fictionally presumed, was not justified by the evidence in this case. It is, however, argued by the learned Government Pleader that the notification having been published more than a month before the period in respect of which the accused was prosecuted, it should be presumed that during that period that accused must have come to know of this notification. The accused has stated that he is not a subscriber to the Bombay Government Gazette and it seems to us, therefore, there being no evidence suggesting his knowledge of the issue of the notification in any other way, that this contention cannot be sustained.

3. We, therefore, make the rule absolute, set aside the conviction and the sentence passed on the applicant and acquit him. The fine, if paid, should be refunded.

Appeal allowed.

² AIR 1944 Nag 40