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**(1951) 04 P&H CK 0002**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 1147 of 1950

Kanhaya Lal Nand Lal

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** April 11, 1951

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 173, 190, 190(1)
- Essential Supplies (Temporary Powers) Act, 1946 - Section 11
- Penal Code, 1860 (IPC) - Section 21

**Citation:** AIR 1951 P&H 134

**Hon'ble Judges:** Kapur, J

**Bench:** Single Bench

**Advocate:** H.R. Sachdeva, for the Appellant; Kartar Singh, Asst. A.G., for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Kapur, J.

This is a rule directed against an order of Mr. P.N. Bhanot convicting the Petitioner and sentencing him to imprisonment till the rising of the Court and to a fine of Rs. 10,000/- and of confiscation of the cotton cloth. On appeal the learned Additional Sessions Judge upheld the conviction and the order of confiscation of cloth, but the amount of fine was reduced to Rs. 7,000/-.

2. The sole point for determination in this case whether the provisions of Section 11 of the Essential Supplies (Temporary Powers) Act have been implied with.

3. On the 31st of March, 1948, Nawal Kishore, Assistant Director of Civil Supplies, Delhi, received information through one Mr. Tandon of the Hindustan Mercantile Association that some mill made cotton cloth had been booked from the Delhi Railway Station. At 11 P.M. he went to the Railway Station and he asked the Station Superintendent not to allow the packages to be moved out of Delhi. On the

following day, i.e., the 1st of April, 1948, he along with Ors. went to the Railway station and had the packages opened and found that it contained "dhoties". As there was no permit the Petitioner and some Ors. were arrested. It was alleged that Murari Lal Vaish had booked the packages of which the owner was Kanhya Lal Petitioner. Seven persons, Kanhya Lal, Murari Lal and five Ors. were prosecuted and there was a protracted trial. On one excuse or Anr. the accused persons got postponement of their cases and record shows lamentable lack of vigilance on the part of the trial Court. The case was allowed to be unnecessarily prolonged and it was not until the 12th of September, 1950, that the trial finished. The learned Magistrate should have realised that cases of this kind require an early, though not a hurried, decision and the way the trial proceeded shows that nobody was anxious to finish the case. The accused persons were on bail and it gives me an impression as if they were bent upon prolonging the trial as long as possible. It is things of this kind, in cases under the Essential Supplies (Temporary Powers) Act and other Acts of similar kind, which give a bad name to the judiciary and produce, in the minds of people, a suspicion as regards the efficacy of trials by magistrates. The prosecution produced three witnesses and other important witnesses became untraceable, I suppose due to the prolonged trial. Six of the accused persons were acquitted and Kanhya Lal pleaded guilty and admitted that he had booked the cloth from Delhi to Lilwa without any permit and he was convicted and sentenced as I have stated above.

4. The only point pressed before me in revision is that there was no jurisdiction in the Court to try the Petitioner because Section 11 of the Essential Supplies (Temporary Powers) Act, 1946, had not been complied with Section 11 is as follows:

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

It is submitted that the Court could not take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting the offence made by a public servant. This point was never taken at any stage of the case. I find there are two reports on the file, one is the police report u/s 173 of the Code of Criminal Procedure and the other is by one Jagat Singh, Enforcement Officer, dated the 3rd of April, 1949. The learned Advocate submits that the report contemplated by Section 11 is something special which in this case does not exist. I am unable to agree with this submission. All that the section requires is that there should be a report in writing by a public officer so that no private person may be able to initiate proceedings under this Act and in the case now before me there is not only a report in writing by an Enforcement Officer, but there is also one by the police u/s 173 of the Code of Criminal Procedure.

5. The learned Advocate then submits that these reports have not been proved and should have been put to witnesses. I do not see under what law that is required. A report is made by a public servant to a magistrate which gives him jurisdiction to proceed. Even as regards reports made u/s 173 of the Code of Criminal Procedure upon which magistrates can take cognizance u/s 190 of the Code it has never been said that the Court cannot take cognizance merely because the report u/s 173, Code of Criminal Procedure, is not proved. The wording of Section 190(1), (b), Code of Criminal Procedure, is almost identical with Section 11 of the Essential Supplies (Temporary Powers) Act, 1946, excepting that in the latter a report has to be made by a public officer who may be a person other than a police officer.

6. In my opinion, there is no force in the contention raised by the learned Advocate for the Petitioner and the Magistrate has rightly taken cognizance of this case and there is no defect in the trial. I therefore dismiss the petition for revision, uphold the order of conviction and sentence and discharge the rule.