

(1985) 11 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 654-SB of 1984

Baldev Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: Nov. 21, 1985

Acts Referred:

- Essential Commodities Act, 1955 - Section 7

Hon'ble Judges: S.S. Dewan, J

Bench: Single Bench

Advocate: Harbans Singh and Mr. M.P. Gupta, for the Appellant; S.K. Sayal, AG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Dewan, J.

Baldev Singh Appellant stands convicted u/s 7 of the Essential Commodities Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 1000/- by the special Judge, Ropar, on 6th November, 1984. He appeals.

2. The prosecution case is in a very narrow compass. On 10th January, 1984, Sub Inspector Gurdial Singh of Police station Mubarikpur, alongwith Assistant Sub-Inspector Satpal Singh and other police officials was on patrol duty in a Government jeep. While he was going from Zirakpur towards Sohaha at about 715 p.m. he saw a truck crossing the Sohana barrier at a fast speed. At that time, the police party was at a distance of 70 yards from the barrier. The Sub Inspector Gurdial Singh signalled the driver of the truck to stop it but the driver did not respond to the signal and sped away towards Chandigarh side with the result that the police party chased it and successfully intercepted it beyond Gurdwara Dhanna Bhagat from where the Union Territory Chandigarh is at a distance of about 30 karams. The police party had to chase the truck for a distance of about 11/2 miles before it could be made to stop. The truck bearing registration No. CHW-4391 was

being driven by Baldev Singh accused and it was found loaded with 150 bags of rice for export of which the accused had no permit. The Sub Inspector Gurdial Singh sent Ruqa Ex. PB on the basis of which first information report Ex PB/1 was registered at the police station. The truck and the bags of rice were taken into possession vide memo Ex. PA. After necessary investigation, the accused was challaned and sent up for trial. The Special Judge found a prima facie case against the accused and accordingly charged him for the offence u/s 7 of the Essential Commodities Act to which he pleaded not guilty and claimed trial.

3. In support of its case, the prosecution examined Satpal Singh Assistant Sub Inspector P.W. 1 and Gurdial Singh Assistant Sub Inspector P.W. 2. When examined u/s 313, Cr. P. C, the accused denied the prosecution allegations. He, however, admitted having driven the truck loaded with 150 bags of rice for which he had no export permit. He pleaded that he had brought the rice from the dealer at Chandigarh and the same was to be delivered at Mohali. Besides tendering into evidence Ex. D.1, he examined Karam Chand and Bahadur Singh in defence. The trial Court on the basis of the material before it convicted and sentenced the accused as indicated above.

4. The only contention advanced by the learned Counsel for the Appellant is that no case of attempted commission of offence has been made out and that at best the action of the Appellant would only amount to preparation for the offence and therefore, the Appellant had neither exported nor attempted to export rice in contravention of S. 7 of the Essential Commodities Act. To buttress his argument reliance is placed on a Supreme Court decision in [Malkiat Singh Vs. The State of Punjab](#). What constitutes an attempt to commit an offence is pointed out in the following terms:

As a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the Actus Reus of a criminal attempt. The sufficiency of the Actus Reus is a question of law which has led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however, clearly it may be proved that he intended to set fire to a haystack at the time of purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt

to burn it. The test for determining whether the act of the accused person constituted an attempt for preparation is whether the over acts already done are such that if the offender changes his mind and does not proceed further in its progress the act already done would be completely harmless.

5. As can be seen from the above remarks the line of separation between the preparation and attempt may in some cases be verifying and the question whether what has been done amounts only to preparation or constitutes an attempt must depend upon the circumstances of each case. Preparation after a stage amounts to an attempt but it still retains the character of preparation. An attempt is, therefore, a stage of preparation to commit an offence which is very near the stage of actual commission of the offence and from which an intention to commit the offence can be inferred. Therefore, an attempt to commit an offence is an intentional preparatory action which fails in its object; which so fails through circumstances independent of the person who seeks its accomplishment. In other words, for purposes of criminal liability, it is sufficient if the attempt had gone so far, that the crime would have been completed, but for extraneous intervention which frustrated its consummation. In the circumstances of each of these cases, we have got to consider whether such an attempt has been committed.

6. It is an admitted fact that on the fateful day at about 7 P.M. the Police party headed by Sub Inspector Gurdial Singh saw a truck driven by the Appellant at a fast speed and when the Sub Inspector signal led the Driver to stop the truck, he did not respond and rather sped away towards Chandigarh with the result that the police party had to chase the truck for a distance of about 11/2 miles before it could be made to stop. These facts are by themselves sufficient to show that if the Appellant had not been stopped, he would have crossed the border of Union Territory of Chandigarh within a few seconds because the truck was stopped at a distance of about 30 Karams from the border. The theory propounded by the learned defence counsel that since the truck was stopped at a distance of about 30 Karams from the border of the Union Territory of Chandigarh, the Appellant might have changed his mind not to take his truck any further and not commit the crime, does not hold water. The fact that the truck was chased by the Police party for a distance of about 11/2 miles and if could be stopped hardly at a distance of about 30 Karams from boundary of the U. T. Chandigarh is a clear indication that it had intended to cross the border. I am, therefore, satisfied that the Appellant was rightly convicted.

7. Inevitably, a prayer has been made on behalf of the Appellant that sentence awarded to him is excessive. Emphasis is laid on the facts that the occurrence took place in the year 1984 and the Appellant is a first offender. Keeping in view the facts and circumstances of the case I think that the ends of justice would be met if the sentence of imprisonment awarded to the Appellant is reduced to the one already undergone by him. In lieu of the sentence so remitted, I, however, impose a fine of Rs. 2000/- on him in addition to the fine imposed by the trial court. In case of default

of payment of fine, he shall suffer further rigorous imprisonment for one year

8. With this modification in the sentence, the appeal fails and is dismissed.