

(1945) 12 AHC CK 0006**Allahabad High Court****Case No:** None

Guttoo Mal

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Dec. 11, 1945**Citation:** AIR 1946 All 351 : (1946) 16 AWR 89**Hon'ble Judges:** Mulla, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Mulla, J.

This is a reference made by the learned Sessions Judge at Agra. It arises out of a case in which one Guttomal, the proprietor of a big General Merchandise shop in Agra, was tried by a learned Magistrate for an offence u/s 6/13, Hoarding and Profiteering Prevention Ordinance (No. 35 [XXXV] of 1943). The case against Guttomal, as put by the prosecution, was that on a certain date when a supply inspector visited his shop it was found that no price-list had been put up at a prominent place in the shop as required by an order passed by the Controller General of Civil Supplies which was duly notified in the Gazette. It is admitted that Guttomal dealt in boot polishes amongst other things but not in boot polishes of any foreign brand. It is clear from the judgment of the learned trying Magistrate himself that no boot polish of any foreign brand was in stock in the shop of Guttomal on the date in question. The notification in the Gazette which contains the order passed by the Controller General runs as follows:

In exercise of the powers conferred upon me by Section 11, Hoarding and Profiteering Prevention Ordinance, 1943 (35 [XXXV] of 1943), I call upon all dealers in boot polishes, wholesalers and retailers, to exhibit a price-list at a prominent place in the shop showing clearly the retail selling prices as fixed by the Central

Government under Notification No. 1/2 (24)-44/C.G. (C.S.), dated 4th April 1944, subject to the following conditions.

The notification made by the Central Government to which reference is made here related to three boot polishes which are admittedly of foreign brands. There is no suggestion that Guttomal was ordinarily dealing in boot polishes of these foreign brands or that he had any boot polish of any one of these brands in his shop at the time when it was visited by the supply inspector. Now, upon a simple common-sense view of the notification containing the order passed by the Controller General, it would appear that the order could not have been meant to apply to any dealer or retailer who did not have any boot polishes of the brands referred to in the notification made by the Central Government. The clear object of the order made by the Controller General was to compel every dealer or retailer in boot polishes to put up a list containing the prices fixed by the Central Government. This object could have no meaning at all if the order applied to a dealer or retailer who did not have any boot polish of any of the brands referred to in the Central Government Notification in his possession for sale. The learned trying Magistrate, however, thought that the terms of the notification containing the order made by the Controller were so wide that they must be deemed to apply to every dealer or retailer whether he did or did not have in his possession any of the boot polishes referred to in the Central Government Notification. The learned Sessions Judge has taken the commonsense view and arrived at the conclusion that the order of the Controller General should be interpreted to mean that it applies only to those dealers and retailers who have in their possession any of the boot polishes of the brands referred to in the Central Government Notification. The learned trying Magistrate convicted Guttomal upon a strict interpretation which he placed upon the notification containing the order made by the Controller General and sentenced him to a fine of Rs. 30. The learned Sessions Judge has made this reference in which he recommends that the conviction and the sentence of Guttomal should be set aside. I have no hesitation in agreeing entirely with the view taken by the learned Sessions Judge. It appears to me that the learned Magistrate seems to think that a provision of law can be so interpreted as to divorce it entirely from commonsense and to make it mean something which was never in the contemplation of the authority responsible for making the law. That is not, however, the correct manner in which the legal provisions and particularly penal have to be interpreted. The law is not quite so divorced from commonsense as the learned Magistrate thinks. In support of the view taken by the learned Sessions Judge I may point out to Section 11(1) of the Ordinance which runs as follows:

The Controller General may direct any dealer or producer to mark articles exposed or intended for sale with the sale prices or to exhibit on his premises a price-list of articles held by him for sale....

From this it is clear that the Controller General can issue a direction to the dealers and the retailers only in respect of the articles which they hold for sale, and it was admittedly in exercise of the power given to the Controller General by Section 11(1-A) that the order in question was made. The order must, therefore, be interpreted in the light of Section 11 and its meaning thus becomes quite clear and is obviously in accordance with commonsense, for there is obviously no point in the Controller General directing a dealer or retailer who never deals in a particular article to put up a price-list in respect of such an article only because its price has been controlled and declared by the Central Government. In the present case it is admitted that Guttomal did not hold for sale any boot polishes of the brands referred to in the Central Government Notification the price of which had been fixed. I, therefore, agree with the learned Sessions Judge that Guttomal was wrongly convicted and I accept this reference and set aside the conviction and sentence of Guttomal. The fine, if paid by him, shall be refunded.