(1967) 10 AHC CK 0007

Allahabad High Court

Case No: Criminal Revision No''s. 366 and 608 of 1966

Panna Lal		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Oct. 25, 1967

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 173, 190, 251, 251A, 252
- Essential Commodities Act, 1955 - Section 3, 5, 7, 7(1)

Citation: AIR 1969 All 123 : (1969) CriLJ 354

Hon'ble Judges: S.D. Singh, J

Bench: Single Bench

Advocate: D.N. Misra, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.D. Singh, J.
This revision and revision No. 608 of 1966 are based on similar facts and the questions of law which have been raised in the two revisions are also the same and I, therefore, propose to deal with both the cases in this judgment.

2. According to the prosecution case, Parma Lal, who is applicant in this revision, and Prabhu Nath, who is applicant in Criminal Revision No. 608 of 1966, are dealers in foodgrains. A search of their premises was taken at about 10-30 or 11 a. m. on 26th September, 1964, in the presence of Sri R. K. Dubey, Sub-Divisional Magistrate, Phulpur, by the Station Officer of Phulpur Police Station. Several witnesses were also present at the time of the search. Fifteen bags of wheat, weighing 37 maunds, was recovered from the premises in the possession of Panna Lal, and 37 bags containing 92 maunds of wheat from the possession of Prabhu Nath. The wheat found with Panna Lal would be near about 15 quintals and that found with Prabhu Nath 37

quintals.

3. Under Sub-section (1) of Section 3 of the Essential Commodities Act (X of 1955) "if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein." Under Sub-section (2) Clause (a) of the same section, an order under Sub-section (1) aforesaid may provide for "regulating by licences, permits or otherwise the production or manufacture of any essential commodity. "Under Section 5 of the same Act the powers of the Central Government may be delegated to the State Government. Under the powers so delegated, the Uttar Pradesh Foodgrains Dealers Licensing Order, 1964, was promulgated and published in the Gazette Extraordinary dated 29th February, 1964. Clause 3 of this order reads:

"3. Licensing of Dealers -- (1) No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

(2) For the purpose of this clause, any person who stores any foodgrains in quantity of ten quintals or more of any one of the foodgrains or twenty-five quintals, of all foodgrains taken together at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purposes of sale."

The quantity of wheat found with both the applicants was in excess of the quantity mentioned in Sub-clause (2) of Clause 3 aforesaid and they, therefore, according to the prosecution case, committed a breach of Sub-clause (1) of this Clause 3.

4. u/s 7(1)(a) of the Essential Commodities Act 1955, any person who contravenes an order made u/s 3 shall be liable to be convicted and punished, if the order is one under Clause (h) of Clause (1) of Sub-section (2) of Section 3, with imprisonment for a term which may extend to one year, and in other cases to three years and in either case he shall also be liable to fine. In this particular case the order which is said to have been contravened was one which was passed under Clause (a) of Sub-section (2) of Section 3 and it would, therefore, be the later part of Clause (a) of Section 7(1) which would apply. The two applicants were prosecuted under this provision read with Rule 125 of the Defence of India Rules, The Magistrate, who tried the two applicants, treated the report submitted by the police as a police report within the meaning of Clause (a) of Section 251-A of the Cr. P. C. and tried the two applicants under the aforesaid provision and convicted them u/s 7 of the Essential Commodities Act and sentenced each one of them to a fine of Rs. 2,000. The applicants went up in appeal. While their conviction was upheld the fine was reduced by the Sessions Judge, Sri J. P. Chaturvedi, to Rs. 1,000 for no other reason than this that the ends of justice would be met if the fine was reduced to Rs. 1,000. The applicants have now come up in revision against the aforesaid orders.

5. On facts the contention of both the applicants was that the quantity of wheat which was recovered from their possession did not wholly belong to them. Panna Lal''s contention was that seven bags out of the fifteen bags found in his possession belonged to one Mujai, and Prabhu''s contention was that fifteen bags out of the thirty seven bags found with him belonged to one Lala and twelve to one Ram Charan. It has been admitted by the witnesses who have been examined in the case that the bags were placed inside the premises of the two applicants in different lots. Panna Lal examined Mujai and he deposed that seven bags belonged to him. His statement was disbelieved by the trial court and all the fifteen bags were found to belong to Panna Lal. Prabhu Nath, the applicant in revision No. 608 of 1966, did not produce any evidence and the finding of fact even in his case is that all the bags belonged to him. Whether or not the applicants were in possession of the entire quantity of wheat which was found in their possession is a pure question of fact. The findings recorded by the Magistrate on this point have been confirmed by the Sessions Judge and there is no justification for interfering with the same in revision. The findings are based on evidence and there has been no mis-appreciation of the evidence either by the Magistrate or the Sessions Judge.

6. The next contention of the applicants was that they are not dealers and not doing the business of selling or purchasing or storing foodgrains and, therefore, Clause 3 of the U. P. Foodgrains Dealers Licencing Order, 1964, would not apply to them. The expression "dealer" is defined in Sub-clause (a) of Clause 2 of the aforesaid order. A dealer under this clause means "a person engaged in the business of purchase, sale or storage for sale of any one of the foodgrains in quantity of ten quintals or more at any one time or in quantity of twenty-five quintals or more of all foodgrains taken together," but does not include certain persons referred to the later part of the definition of the expression "dealer". What was contended on behalf of the applicants, therefore, was that they are not "engaged in the business of purchase, sale or storage for sale" of the wheat which was found in their possession.

Reliance for the purpose was placed upon two decisions of this Court reported in Haji Nasir v. State 1967 All Cri 142 and Mannoo Lal v. State 1967 All LJ 877, one decision of the Supreme Court reported in Manipur Administration Vs. M. Nila Chandra Singh, nd another of the Orissa High Court in M. Subba Rao Vs. State of Orissa, It is not, however, necessary to refer to these decisions in detail as the principle laid down in each of them is obvious. No person is liable to be convicted for infringement of Clause 3 of the U. P. Foodgrains Dealers Licensing Order, 1964, unless it is proved that he was engaged in the business of purchase, sale or storage for sale. The question, therefore, is one of fact whether in these two particular cases this fact has been established. If it is, then the applicants were rightly prosecuted u/s 7 of the Essential Commodities Act, 1955. If they are not, then their conviction and sentence will have to be set aside.

7. Under Sub-clause (2) of Clause 3 of| the Foodgrains Dealers Licensing Order, 1964, there will be a presumption, rebut-table of course, that the foodgrains which are found to be in excess of ten quintals in quantity were stored for purposes of sale. The only question that remains to be seen is whether the two applicants were engaged in the business of purchase, sale or storage. This requirement of the law is fully satisfied by the evidence on the record. In Panna Lal''s case Mahabir Prasad (P. W. 1) clearly deposed that Panna Lal was doing "dukandari ka kam."

In cross-examination he further stated that two or four persons were present at the shop at the time of wheat was seized. Harish Chandra (P. W. 2) has stated in his cross-examination that ''beo-paris'' arrive at the shop for selling and purchasing the goods, and then he adds that if somebody''s goods are not sold, they are even stocked. The evidence is thus quite sufficient to call for a finding that the applicant Panna Lal is a dealer who is engaged in the business of selling or purchasing goods. If he is engaged in the business of selling and purchasing goods and if the wheat which was found in his possession is to be presumed under Sub-clause (2) of Clause 3 of the Food-grains Control Order to be for purposes of sale, the conclusion is irresistible that Panna Lal is engaged in the business of selling or purchasing foodgrains.

8. In the case of Prabhu Nath, Mahabir Prasad (P. W. 1) deposed in examination-in-chief that the business of purchase and sale is transacted by Prabhu Nath at the shop. Harish Chandra (P. W. 2) also deposed in examination-in-chief that Prabhu Nath was doing business of purchase and sale. My remarks in respect of Panna Lal will apply mutatis mutantis to the case of Prabhu Nath also and he would on the basis of the same reasoning be deemed to be a dealer engaged in the business of purchase or sale of foodgrains.

9. Another question which was raised on behalf of Prabhu Nath was that it was not he but his father who was the owner of the shop, and, therefore, he could not be prosecuted for the recovery of these thirty-seven quintals of foodgrains. Mahabir Prasad (P. W. 1) has stated in the cross-examination, that Prabhu Nath''s father Narain Prasad was the owner of the shop but earlier in the cross-examination he has clearly stated that the business was transacted at the shop by Prabhu Nath. Harish Chandra (P. W. 2) has stated in cross-examination that though the shop belongs to Prabhu Dass'' father, Narain Das, Narain Das works at another shop and Prabhu Dass works at this shop. Then he states that Prabhu Nath works at this shop for a pretty long time. For the purpose of this shop, therefore, Prabhu Nath will be deemed to be a dealer and the stock of wheat will be deemed to have been recovered from his possession and from that point of view, therefore, there can be no question of interfering with their conviction.

10. It was then urged that, in any case, the trials are vitiated by wrong procedure being followed by the Magistrate. According to the applicants their trials should have been u/s 251-A (252?) and not u/s 252 (251-A?) of the Code of Criminal

Procedure and it was urged that if there has been a trial under a wrong provision, the case of the applicants has been considerably prejudiced '' inasmuch as they were deprived of their right for second cross-examination which would have been available to them u/s 252 and that, therefore, the conviction of the applicants is liable to be quashed. Reliance was placed for the purpose of Pulukuri Kottaya v. Emperor AIR 1947 PC 67. Their Lordships of the Privy Council have observed in this case that if a trial is conducted in a manner different from that prescribed by the Code, the trial is bad and no question of curing an irregularity arises.

In two Madhya Pradesh cases, Sardar Khan Multan Khan Vs. State, and State of Madhya Pradesh Vs. Baital Nahar Singh, a similar case was held to be triable u/s 252 and not u/s 251-A of the Code of Criminal Procedure and it was consequently held that the trial was vitiated and conviction liable to be set aside on that ground. There is, therefore, no doubt that if the applicants were liable to be tried u/s 252 of the Code of Criminal Procedure their trial u/s 251-A would be illegal and their conviction consequently liable to be set aside on that account. The question, however, remains whether they should have been tried u/s 252 or Section 251-A as the Magistrate actually did.

11. In case against the applicants started on the basis of a police report against the two applicants under Rule 125 of the Defence of India Rules and Section 7 read with Section 3 of the Essential Supplies Act, 1955, the applicants were actually convicted only u/s 7 of the Essential Supplies Act and their prosecution under Rule 125 of the Defence of India Rules may, therefore, be ignored. u/s 7 aforesaid the applicants were liable to be punished with imprisonment for a term which can extend upto three years and it was not disputed that the offence with which the applicants were charged was a non-cognizable offence.

12. The Investigating Officer submitted a report against the applicants and this was treated by the Magistrate to be "a police report" and he, therefore, proceeded against the applicants u/s 251-A. The main question to be considered, therefore, is whether the report which was submitted by the Investigating Officer in a non-cognizable case which he could not investigate without being properly authorised by the Magistrate could be treated as "a police report" or if the case was to be treated "instituted otherwise than on a police report" within the meaning of Section 252 of the Code.

13. Reliance was placed by the learned counsel for the applicants on two Madhya Pradesh decisions to which, reference has already been made earlier, namely, State of Madhya Pradesh Vs. Baital Nahar Singh, and Sardar Khan Multan Khan Vs. State, The 1966 Madhya Pradesh case merely follows the decision in 1963 Madhya Pradesh and it is that decision which may be looked into, Madhya Pradesh High Court in this decision followed an earlier decision of the Calcutta High Court report in Premchand Khetry Vs. The State, and also referred to another decision of the Madras High Court in re In Re: Pavadai Goundan, . The reasoning of the Calcutta High Court in

Premchand Khetry Vs. The State, , was that prior to the amendment in 1923 by Amendment Act 18 of 1923 cognizance could be taken by a Magistrate under Clause (b) of Sub-section (1) of Section 190 only on the basis of a police report which meant a report submitted u/s 173 of the Code and that whenever a report made by a police officer was other than a report submitted u/s 173(1) of the Code it was merely by way of an information received by the Magistrate from any person other than a police officer under Clause (c) of Sub-section (1) of Section 190. In the same decision even Clause (a) of the same Sub-section was also referred to which clause provides that cognizance may be taken by a Magistrate upon receiving a complaint of facts which constituted an offence.

14. It is not necessary to examine the Madhya Pradesh decisions in detail as it was conceded by the learned counsel for the applicants that these decisions have been overruled by the Madhya Pradesh High Court itself in Ashiq Miyan and Others Vs. The State of M.P., . This decision of the Madhya Pradesh High Court is based on two decisions of the Supreme Court, one of which is reported in Pravin Chandra Mody Vs. State of Andhra Pradesh, and the other Amal Shah v. State of Madhya Pradesh (Criminal Appeal No. 201 of 1963, D/- 11-12-1964 (SC) but not reported hitherto). This decision was not available during the hearing of the appeal even in the file of blue prints of the Supreme Court judgments.

15. The Calcutta decision was, however, examined by their Lordships of the Supreme Court in Pravin Chandra Mody Vs. State of Andhra Pradesh, where a similar argument was raised before their Lordships. In that case the report which was submitted by the Investigating Officer was in respect of two offences, one of which was cognizable and the other non-cognizable. In respect of that part of the case it has been pointed out by their Lordships that when a police officer is investigating a cognizable case, he can also investigate a non-cognizable case which is based on the same facts. But the facts in this case are different and we are not concerned with this part of the observations of their Lordships so far as these two revisions are concerned. What is directly relevant however, is that part of judgment in which their Lordships dealt with the question whether the report submitted by the police officer is "a police report" or a document other than a police report.

Their Lordships have discussed as to whether a report submitted by a police officer in a non-cognizable case is to be treated as other than "a police report", which, it was urged before their Lordships, meant nothing else but a document which has come to be called or termed a "charge sheet" and in that case cognizance on the basis thereof could be taken by a Magistrate only under Clauses (a) and (c) of Sub-section (1) of Section 190 of the Code of Criminal Procedure, or if it was in any case "a police report" on which cognizance could be taken under Clause (b) of Sub-section (1) of Section 190 and proceedings on the basis thereof could be u/s 251-A of the Criminal Procedure Code. Their Lordships have pointed out that a report submitted by a police officer cannot be a complaint so that it could not be

covered by Clause (a) and it is not an information received from any person other than a police officer and could not, therefore, be governed by Clause (c) and must, therefore, be governed only by Clause (b) of subsection (1) of Section 190. Their Lordships referred to the argument advanced before them on page 1186 of the report where they mention:

"Contention of the appellant is that by the words ''police report'' in Section 251-A of the Code of Criminal Procedure, is meant the report mentioned in Section 173 which the police officer makes to a Magistrate in respect of offences investigated by him under Chapter XIV." Their Lordships then referred to the provisions of Section 190 and after discussing the provisions of Sections 251-A and 252 arrived at their conclusion in the beginning of the next paragraph where they observed:

"In our judgment the meaning which is sought to be given to a ''police report'' is not correct."

It is thus in simple words clear indication that the contention which was put forward before their Lordships that the word "police report" used in Section 251-A could mean only that document which is called a "charge sheet" was wrong; and if this contention was wrong, it is obvious that the expression "police report" would include even those reports which are submitted by the police otherwise than under Chapter XIV. Their Lordships further discussed this question in paragraph 4 and pointed out that there are three clauses of Section 190 (1) of the Code of Criminal Procedure which provide for initiation of a Criminal Proceeding before a Magistrate:

(a) Upon receiving a complaint of facts which constituted such an offence;

(b) Upon a report in writing of such facts made by any police officer; and

(c) Upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such an offence has been committed.

Then their Lordships pointed out:

"We are thus concerned to find out whether the report of the police officer in writing in this case can be described as a "complaint of facts" or as "information received from any person other than a police officer". That it cannot be the latter is obvious enough because the information is from a police officer. The term "complaint" in this connection has been defined by the Code of Criminal Procedure and it "means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer (see Section 4(1)(b))."

Then their Lordships further observed that Section 252 of the Code would apply only to those cases which are instituted otherwise than on a police report, that is to say, upon complaints which are not reports of a police officer or upon information

received from persons other than a police officer.

16. This case is, therefore, clear authority for the fact that the report of a police officer even though it may be in a non-cognizable case has to be treated as a police report within the meaning of Sections 251, 251-A and 252 and proceedings before a Magistrate on the basis thereof cannot but be u/s 251-A.

17. In Criminal Appeal No. 201 of 1963, D/- 11-12-1964 (SC) the judgment of which is not available, it appears that the Excise Officer, who submitted the report had the powers of a police officer under the law of the State in which the case had arisen. A portion of the judgment of their Lordships is cited in Ashiq Miyan and Others Vs. The State of M.P., where the Supreme Court is said to have observed;

"On the record as it stands, there is no justification for assuming that the report on which the Magistrate acted was sent to him by the Excise Officer; on the contrary the evidence shows that this report was made by a police officer and so Section 251-A in terms would apply."

Their Lordships thus treated the report submitted by the Excise Officer as a report submitted by a Police Officer and held that it would be the provisions of Section 251-A which would apply and not Section 252. This is all what can be said in respect of this decision.

18. Another point which was urged during the hearing of these revisions was that in any case the report which was submitted by the Investigating Officer in the non-cognizable case was an invalid report and the prosecution based thereon would itself be vitiated on that account. This contention need not detain us long. The proposition of law involved is covered by the decision of their Lordships of the Supreme Court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, . Their Lordships pointed out on page 203 of the report:

"A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190, Cr. P. C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190, Cr. P. C. is one out of group of sections under the heading "conditions requisite for initiation of proceedings." The language of this section is in marked contrast with that of the other sections of the group under the same heading i. e. Sections 193 and 195 to 199."

A little later their Lordships pointed out that --

"Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1) (whether it is the one or the other we need not pause to consider) and in any case the cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537, Cr. P. C. would apply."

It is thus clear that what their Lordships meant was not that the defect would be cured only if the report falls under either Clause (a) or Clause (b) of Section 190, Sub-section (1) of the Code of Criminal Procedure, but because the cognizance so taken is only in the nature of an error in a proceeding antecedent to the trial, the defect, if any, would be cured by Section 537 of the Code. In that view, therefore, there is no force in either of these two applications.

19. Before I conclude, however, I cannot help mentioning that the punishment which has been awarded to the applicants is extremely inadequate. Section 7 of the Essential Commodities Act, 1955, provides that in a case of this type the accused can be sentenced to imprisonment for a term which may extend to three years and shall also be liable to fine. There is a proviso to Section 7(1)(a) which provides that if a sentence of fine is only awarded the Magistrate has to record reasons for the same. The Magistrate in this case did give reasons by way of after-thought. He imposed a fine of Rs. 2,000/- on Panna Lal on account of his age and his being a first offender. He mentions that he had also taken into consideration the length of the trial and the loss sustained by the accused in the deposit of grains. The same reason is given by him in the case of Prabhu Dass.

The reasons given by the Magistrate are altogether unsatisfactory and did not justify the imposition of mere fine for such an offence to meet which special laws had to be adopted. The Sessions Judge reduced the fine to Rs. 1,000/- in each case. This again was an exercise of the discretion which was not based on any judicial reasoning. The Sessions Judge thought that a reduced fine of Rs. 1,000 would meet the ends of justice. That is an argument which can be advanced in support of any order which the Sessions Judge might think proper to pass. He might have reduced the fine to Re. 1/- and said that the ends of justice would be met by that technical amount of fine. The offences of this type deserve to be punished with what may even be termed deterrent punishment so that those who indulge in such activities may feel that it is not in their interest to go against the provisions of law.

20. In the result the applications are dismissed.