

State Vs Sheo Prasad Jaiswal

Court: Allahabad High Court

Date of Decision: May 22, 1956

Acts Referred: Essential Supplies (Temporary Powers) Act, 1946 " Section 7

Citation: AIR 1956 All 615 : (1956) CriLJ 1161

Hon'ble Judges: Roy, J; Mehrotra, J

Bench: Division Bench

Advocate: M.H. Faruqui and Government Advocate, for the Appellant; C.S. Saran, for the Respondent

Final Decision: Dismissed

Judgement

Mehrotra, J.

These six appeals have been filed on behalf of the State Government against the opposite-party sheo Prasad Jaiswal against

his acquittal by the Sessions Judge of Banaras "for an offence punishable u/s 7, Essential Supplies (Temporary Powers) Act.

2. Sheo Prasad Jaiswal is the sole proprietor of the Hindustan Oil Mills situate at Vidyapith Road Banaras. Two other persons were tried along

with him, namely, Gaya Prasad and Lok Nath. They were alleged to be manager and the munim Respectively working in the said mill. Gaya

Prasad died during the trial before the Magistrate. The trial first commenced in the court of Sri A.N. Shukla, Special Magistrate First Class.

The trial was held summarily but Mr. Shukla kept verbatim record of the evidence. The Magistrate convicted the opposite-party u/s 7, Essential

Supplies (Temporary Powers) Act for breach of condition 1 of the licence granted to the Hindustan oil mills under the U P. Oilseeds and Oilseeds

Products Control Order, 1945 and sentenced him to a fine of Rs. 5,000/-; in default of payment of fine to undergo rigorous imprisonment for three

months in each of these cases. Lok Nath was also convicted for abetment of the same u/s 8 of the Act and was sentenced to a fine of Rs. 250/-. In

these appeals, we are, however, not concerned with the accused Lok Nath.

3. The prosecution case is that the firm Hindustan Oil Mills was granted a B class licence under the U.P. Oilseeds and Oilseeds Products Control

Order, 1945. According to the conditions of the licence, the firm was required to maintain a register in English, Hindi and Urdu showing separately

the transactions in each kind of Oilseeds or their products in which it dealt specifying correctly the opening balance on each day, the quantities

received by him during each day, the quantities sold by him locally each day and the quantities consigned by him each day to places outside the

controlled oilseeds and oil markets with the name and address of the consignee in each case.

The firm, according to the prosecution, did not maintain correct account of the consignments received by it on different dates, nor it maintained a

correct account of the quantities sold by it locally each day or consigned by it locally to places outside and thus contravened the conditions of the

licence. The opposite-party denied that he was the sole proprietor of the firm. His case was that he was a sleeping partner of 12 annas share and

Gaya Prasad was the working partner of the remaining four annas share. He mostly lived at Calcutta as his father had become old and he was the

only son and had to look after other business.

Lok Nath admitted that the consignments received by the firm on different dates were not entered in the register on the dates they were received.

In four cases, the case of the prosecution was that four consignments received on certain dates had not been entered in the stock register and in

two of the cases, the allegation of the prosecution was that the two consignments alleged to have been despatched by the firm were not recorded

in the stock register.

According to Lok Nath, the consignments were not recorded on the dates on which they were received because they were first taken to the house

of Gaya Prasad where they were cleaned and reweighed and it was only after they were cleaned and reweighed that they were entered in the

stock register. As regards the consignments which were despatched, it was alleged by him that they were entered in the stock register on the actual

dates on which they left the firm.

It was no doubt accepted by the opposite-party that the consignments were not actually entered on the dates on which they were received but an

explanation was given by Lok Nath as to why entries of the consignments were made on subsequent dates. The Magistrate, on the finding that

Sheo Prasad Jaiswal was the sole proprietor of the firm and not merely a partner and that he used to look after the business of the Hindustan Oil

Mills and consequently the contravention of the condition was within his knowledge, rejected the explanation offered by Lok Nath for making

entries on later dates of the consignments received.

4. The facts alleged by the prosecution in the case which has given rise to the Appeal No. 405 are that the firm received consignments of linseed of

270 maunds each on 17th May, 1946, 24th May, 1946 and 27th May, 1943 but they were not entered in the stock register. Lok Nath admitted

the receipt of these consignments. His explanation was that the consignment of 270 maunds received on the 17th May, 1946 was entered along

with another consignment of 270 maunds received on the 9th May, 1946 and that both the consignments were entered together on the 26th of

May, 1946 as 533 maunds. As regards the consignments received on the 24th of May, 1946 and 27th of May, 1946, the explanation was that

they were entered on the 27th June, 1946 as 645 maunds 20 seers including the weight of Jhari (105 maunds 27 seers).

5. The facts of the case which gave rise to Appeal No. 403 of 1952 were, according to the prosecution, that 200 maunds of mustard oil on the

30th, November, 1945, 26 maunds 10 seers of mustard oil on the 19th January, 1946 were sold but none of these consignments were entered in

the stock register of the firm.

Lok Nath admitted the sale of these consignments but his explanation was that the first consignment of 200 maundy was shown on the 1st of

December, 1945 along with 118 maunds 32 1/2- seers, the total quantity being 318 maunds 32 1/2 seers. He further stated that on the 1st

December, 1945, a railway receipt for 729 tins, total weight being 341 . maunds 30 seers, for despatch to Noakhali was drawn up. As regards the

second item of 26 maunds 10 seers, it was suggested that it consisted of sixty tins. They were sold and delivered on the 18th January, 1946 and

shown in the stock register on the 18th January, 1946.

6. In Appeal No. 407 of 1952, the facts were that the firm sold three consignments of 100 maunds of mustard oil, 70 maunds of mustard oil and

25 maunds of linseed oil on 25th January, 1946, 1st March, 1946 and 16th March, 1946 respectively and none of these items were entered in the

stock register. With regard to the consignment of 100 mds. of mustard oil sold on 25-1-46 Loknath contended that it was not entered in the stock

register because the goods were taken along with certain other goods to the railway station for despatch to Noakhali but it could not be booked;

so on 26-1-46 it was brought back to the mill, vide transit form No, 5162/2676 of 26-1-46.

Loknath further said that the item of 70 maunds of mustard oil was actually sold on the 28th February, 1946, but it was taken away by the

purchaser on the 1st March, 1946 and it was entered in the stock register on the 28th February, 1946 along with a retail sale of 17 1/2 seers. As

regards the item of 25 maunds of linseed oil, it was alleged by him that it was entered on the 20th March, 1946 along with other sales which took

place on that date, the total weight was shown as 75 maunds on the 20th March, 1946 and this was because the Holi holidays had intervened from

17th March 1946 to 19th March 1946.

7. The facts of the case which gave rise to Appeal No. 408 of 1952, as alleged by the prosecution, are that the consignments of linseed of 523

maunds 10 seers, 268 maunds 18 seers and 294 maunds 30 seers received on the 17th March, 1946, 21st March, 1946 and 22nd April, 1946

respectively were not entered in the stock register. Loknath admitted receipt of these consignments on the above dates. His explanation was that

the consignments of 523 maunds 10 seers and 268 maunds and 18 seers were entered together on the 4th April, 1946 as 772 maunds 36 seers 8

chhataks.

As regards the consignment of 294 maunds 30 seers, received on the 22nd April, 1940, his explanation was that it was entered as 293 maunds

3 $\frac{1}{2}$ seers on the 26th April, 1948. He stated that the goods on arrival were kept in a godown outside the mill premises where they were cleaned

and weighed and they were noted in the stock register after the completion of that process.

8. The facts which gave rise to Appeal No. 409 of 1952 as alleged by the prosecution, are that the firm received 322 maunds of mustard seed on

the 27th March, 1946, 129 maunds 8 seers of mustard seed on the 27th July, 1946, and 270 maunds of linseed on the 9th May, 1946 from the

Banaras Cantonment Railway godown. Loknath acquitted the receipt of these consignments on the dates mentioned above and he also admitted

that the arrival of these consignments was not entered in the stock register on those dates.

As regards 322 maunds of mustard seed received on the 27th March 1946 his explanation was that it was received by the mill on the said date but

it could not be entered in the stock register as it was taken to another godown for purposes of being cleaned and reweighed. It was entered in the

stock register on the 29th of March, 1946 along with another consignment of 21st March, 1946 and the total weight of these two consignments

was entered as 583 maunds 32 seers.

As regards 129 maunds 8 seers of mustard seed, his explanation was that it was not entered because this stuff was not according to sample. As

regards 270 maunds of linseed received on the 8th May, 1946, the explanation was that it was entered in the stock register on the 26th of May,

1946 along with another quantity of 270 maunds of linseed which was received on the 17th May, 1946. The total quantity of both these

consignments was entered in the register as 533 maunds.

9. The facts giving rise to Appeal No. 410 of 1902, as alleged by the prosecution, are that the firm received 270 maunds of linseed on the 17th

August, 1943, 544 maunds of mustard seed on the 16th March, 1946 and 272 maunds of mustard seed on the 21st March, 1946 from Banaras

Cantonment; Loknath admitted the receipt of these consignments on the above dates. He, however, explained that 270 maunds of linseed received

on the 17th August, 1946 could not be entered in the stock register because it was not according to sample and there was a dispute about it.

The Mill licence was suspended on the 28th September, 1946 and from 31st March, 1947, oil and oilseeds were decontrolled and, therefore, no

entry was made about them in the stock register. As regards the item of 544 maunds of mustard seed, the explanation was that it was taken to

another godown of the mill where it was cleaned and reweighed and then it was entered in the stock register in two instalments of 263 maunds 7

seers on the 3rd April, 1946 and 256 maunds 21 seers on the 4th April, 1946. As regards the third item of 272 maunds received on 21st March,

1946, the explanation was that it was entered in the stock register on the 29th March, 1946 along with another quantity of 325 maunds, the total

quantity being 583 maunds 32 seers.

10. Some of the points", raised by the parties in these appeals are common to those which were raised in the appeals in which we have already

given our judgment. The contention of the prosecution was that under the provisions of the Oilseeds and Oilseeds "Products" Control order, the

liability of the master was absolute and even though the opposite-party has no knowledge of the fact that the stock was not properly kept, he could

be held guilty u/s 7, Essential Supplies (Temporary Powers) Act.

It was also urged by the prosecution that from the materials on the record it was sufficiently established that the opposite-party was managing the

affairs of the mills. He was the sole proprietor and consequently he had knowledge of the breach of the conditions of the licence. It was then

contended by the prosecution that it having been admitted in a number of these cases that certain consignments, which were received on. particular

dates, had not been mentioned in the stock register, it must be presumed that the stock, position was not correctly shown by the opposite- party

and the explanation offered by the munim for having made those entries on subsequent dates cannot be accepted.

The Magistrate held, after consideration of the evidence that from the evidence on the record it was established that the respondent took active

part in the affairs of the Hindustan Oil Mills as its sole proprietor in day-to-day running of the mill. He further held that the explanation offered by

the munim for making the entries of the consignments received, on later dates could not be accepted. It was also found by the Magistrate that the

bahikhatas (account books) and cash books for the years 1946-47 were not before the court. They must be deemed to be in the custody of the

accused and the Investigating Officer was never given those account books by the opposite-party and a presumption therefore, could be raised

against the accused that if they had been produced, the entries could have gone against the opposite-party.

In the absence of any such account books showing that the stocks which were entered on subsequent dates related to these consignments, the

explanation of the accused could not be accepted. The Sessions Judge held on appeal that the failure to keep proper stock register was an offence

u/s 10, Essential Supplies (Temporary Powers) Act and having regard to the nature or the language of Section 10, knowledge on the part of the

respondent was necessary before he could be convicted.

Apart from that, he held that the element of mens re a was a necessary ingredient for an offence for breach of the conditions of the licence. He also

held on facts of the case that the opposite-party had no knowledge of the fact that the stock renter was not correctly kept. He also held that Shoo

Prasad Jaiswal due to the old age of his father, was living mostly at Calcutta and had no knowledge of the affairs of the mills at Banaras.

The prosecution in this case also relied upon the Bank account ""to show that the opposite-party used sometimes to operate upon the Bank account

of the mills and account had been opened in his name. Reliance has been placed on the statements of Bishwanath Frasad and Sarju Prasad. We

have already dealt with that point in our judgment in the connected appeals and in our opinion the finding of the Sessions Judge was right that the

prosecution failed to prove by satisfactory evidence that; the opposite-party had knowledge that the entries in the stock register were false and in

the absence of such proof, his conviction could not be maintained.

It is an admitted fact in those cases that what was the actual position of the stock on the dates when the consignments are alleged to have been

received in the godown of the mill has not been proved by any direct evidence. Nobody actually weighed the stock on those dates who could have

said by personal knowledge that the actual stock was so much in the mill.

Because the correct stock shown in the stock register did not tally with the actual stock. The prosecution, however, has relied upon the admission

of the munim Lok Nath, that the consignments which were received on the alleged dates were not actually shown in the stock register of the mill on

those dates. In some cases the explanation is that they were entered subsequently. In other cases the explanation is that they could not be entered

as the articles were not according to contract and there was dispute with regard to those consignments.

The magistrate was of the opinion that it was for the defence to establish by the production of account books that two or more consignments were

entered together and this not having been done, the possibility of goods having been received from other sources could not be excluded.

We do not see that this is a correct approach in such cases.

The charge against the opposite-party is that he failed to comply with condition 1 of the licence under which he was required to keep a proper

stock register giving the opening balance on each day, the quantities received by him during each day, the quantities sold by him locally each day

and the quantities consigned by him each day to places outside the controlled oilseeds and oil markets with the name and address of the consignee

in each case.

There may be a legitimate controversy with regard to the actual meaning of the words "the quantities received by him during each day" and the

defence may consider that "the quantities received by him during each day" necessarily mean the quantities which have been actually brought into

the godown of the mill, while the prosecution may think that as soon as a consignment is received at the station, the goods come within the custody

of the consignee and as such they must be considered as quantities received on that date and the failure to enter them in the stock register amounts

to breach of the condition of the licence even though these very stocks may have been entered subsequently.

In the case of *The Seksaria Cotton Mills Ltd. Vs. The State of Bombay*, it was observed that-

In a penal statute it is the duty of the Courts to interpret words of ambiguous meaning in a broad and liberal sense so that they will not become

traps for honest, unlearned (in the law) and unwary men. If there is honest and substantial compliance with an array of puzzling directions, that

should be enough even if on same hypercritical view of the law other ingenious meanings can be devised.

In that case the appellants had been convicted under Sections 7 and 9, Essential Supplies Act. The first appellant was a registered joint stock

company, the Seksaria Mills Ltd. It was fined Rs. 10,000/- on each of the two counts. The second appellant was the Director of the mills. He was

sentenced to two months rigorous imprisonment and a fine of Rs. 2,00,000/- on each count. In appeal the sentence of imprisonment was set aside

and the fine reduced to Rs. 10,000/- on each count.

The third appellant was the General Manager of the mills and he was sentenced to a fine of Rs. 2,000/- on each count. It was upheld in appeal.

The fourth appellant was the Sales Manager of the mills. He was sentenced to four months rigorous imprisonment and a fine of Rs. 1,00,000/- on

each count. In appeal the sentence of imprisonment was upheld but the fine was reduced to Rs. 10,000/- on each count.

A government notification was issued on the 2nd February, 1946 which required every manufacturer to submit "true and accurate information

relating to his undertakings" to the Textile Commissioner C.S.T. Section at Bombay. In compliance with that order, the first appellant submitted a

return, signed by the third appellant on the 10th March, 1947 which showed that 13 bales of cloth were delivered to Messrs. Dwarkadas Khetan

and Co., of Bombay during the month of February, 1947 on behalf of the quota-holder Sri Kishan and Co.

Another return of the same date also relating to the month of February, 1947 showed that six bales were delivered to the same Dwarkadas Khetan

and Co., on behalf of another quota-holder Behari Lal Bairatht. A note on the back of each printed form stated:

By "delivered" or "delivery" is meant physical delivery of cloth in bales or in pieces but not cloth which though paid for is still in the physical possession of the seller".

According to the prosecution, the offence charged was that that information was not true and accurate. According to them, the bales remained in

the physical possession of the first appellant at all material times and were not physically delivered to Messrs. Dwarkadas Khetan and Co. It was

also contended in that case that even though there may have been physical delivery to Messrs. Dwarkadas Khetan and Co., but as he was not an

agent of the mill, there was no compliance with the note on the back of each form and the statement was inaccurate.

On these facts the appellants and the mills were prosecuted. The facts were that on a particular date Shree Kishan and Co., were the quota-

holders in respect of the first 13 bales. This was an up-country firm and it had a local agent in Bombay for making payments and receiving delivery.

The firm had appointed one Dharsi Moolji as its agent in Bombay and Dharsi Moolji wrote to the mills on the 20th February, 1947 that he had

been authorised on behalf of Shree Kishan and Co., to take delivery of the January quota and he on the, 21st February, 1947, paid Dwarkadas

Khetan and Co., a sum of Rs. 14,000/- for this quota.

The Rams day Dwarkadas Khetan wrote to the appellant No. 1 in that case telling it that his firm had received payment in advance from Sri Kishan

and Co., and that the 13 bales should be sent to their godown. On receipt of this advice, the mills prepared a ready sale note on the same

authorising the purchaser to take delivery within a week, Dharsi Moolji was named as the Commission Agent. In pursuance of all this, the mill

despatched the 13 bales on the 23th February, 1947 and sent them to Dharsi Moolji.

But in the meanwhile other events had taken place. One P.C. Vora wrote to the mills on the 17th February, 1947 that he had been authorised to

take possession of those 13 bales. When the goods reached Dharsi Moolji, he refused to take delivery. The selling agent Dwarkados thereupon

telephoned the appellant No. 1 the Seksaria Cotton Mills Ltd., and said that he had actually received the money for the bales from Dharsi Moolji

and had not received anything from P.C. Vora and so he could not deliver the goods to the latter and also could not accept money from P.C. Vora

unless the matter had been settled. Thereupon the mill told Dwarkadas to keep the goods in the godowns.

On the same day the mill credited Dwarkadas Khetan with the money he had received from Dharsi Moolji on account of 13 bales. In these

circumstances the mill in the accounts showed these bales to have been delivered to Dwarkadas Khetan. The contention of the prosecution in that

case was that as the goods had been physically delivered to Dwarkadas Khetan, the mill had committed a breach of the conditions and in that

connection an observation was made by the Supreme Court which we have already referred to.

The Supreme Court allowed the appeal and set aside the conviction of the mill. In applying the same principle to the present case, it cannot be

said that the words of the condition are not capable of being interpreted as meaning the quantities actually received in the godown of the mill and

not, referring to the consignments which may have been received at the station. In any case, when a reasonable and substantial explanation was

offered, it cannot be said that the opposite-party committed any breach of the conditions of the licence.

11. In the result, therefore, we see no force in these appeals and they are dismissed.