

State of U.P. Vs Mohan Lal and Another

Court: Allahabad High Court

Date of Decision: Feb. 2, 1982

Acts Referred: Defence of India Rules, 1962 " Rule 114
Essential Commodities Act, 1955 " Section 3, 7

Citation: (1983) 7 ACR 373

Hon'ble Judges: N.N. Sharma, J

Bench: Single Bench

Advocate: K.N. Dwivedi, for the Appellant; Kundan Singh and N.S. Chowdhary, for the Respondent

Final Decision: Dismissed

Judgement

N.N. Sharma, J.

This appeal has been filed by State of U.P. against the order dated 3-8-1977 by Sri Ram Kishore, learned IV Additional

Munsif Magistrate, Etah in case No. 383 of 1977 by which both the Respondents were acquitted of the offence u/s 3/7 of Essential Commodities

Act read with Rule 114 of Defence of India Rules.

2. Prosecution story briefly stated is that Mohan Lal, son of Mewa Ram, resident of village Kuramai, Police Station Kasganj, district Etah was a

quota holder of Sugar on 23-8-75. His duty was to distribute the quota on ration cards to local consumers. It is alleged that in contravention of the

rules, he sold four bags of sugar to Roop Chand, Respondent No. 2, resident of Etah in black market. Mohan Lal approached informant Geetam

(P WI) who was watching his maize crop to carry the sugar bags on hire on his cart from the village upto Kasganj at about 8/9 A.M. The informant

agreed. Sugar was loaded in his cart in presence of Raj Pal Singh (PW 2), Turdi Lal (PW 3) and Shyam Lal. Informant informed about this shady

deal to his co-villagers; who surrounded that cart; Roop Chand took to his heels; informant carried sugar to police station Kasganj where he

submitted written report Ext. Ka-1, scribed by Tursi Ram on 23-8-1975 at 0.10 P.M., distance of police station from the scene of occurrence

was five miles. On the basis of this report First Information Report Ext. Ka-5 was drawn at police station by Head Constable Sobran Singh, who

also seized sugar vide memo Ext. Ka-2 and registered a case in General Diary vide Ext. Ka-6. Writing of Sobran Singh was proved by

investigator Sri Ram (PW 5) who was acquainted with the same and took up investigation forthwith. Roop Chand was arrested on 31-8-75 at

4.45 P.M. by Investigator near statue of Mahatma Gandhi in Kasganj and brought under pardah to police station vide G.D. entry Ext. Ka-4. He

was sent to Etah Jail on 1-9-75; he was put up for identification by Sri Preetam Singh, SDM on 1-10-75 after taking necessary precautions. Ten

similar under trials were mixed in the parade of Roop Chand who was correctly identified by witness Rajpal Singh and Tursi who did not commit

any mistake vide memo Ext. Ka-2. On completion of investigation charge sheet Ext. Ka-7 was submitted against the Respondents.

3. Both the Respondents denied aforesaid allegations in their statements and alleged their implication to ill-will.

4. In support of their case, prosecution examined five witnesses. In defence, Respondents examined Hari Shanker (PW I) who testified that he

knew Roop Chand for about 10 years prior to his deposition. Roop Chand was a general merchant at Railway Road, Kasganj and never dealt in

sugar etc.

5. Learned trial Magistrate disbelieved prosecution story and acquitted Respondent.

6. I have heard Sri K.N. Dwivedi for State and Sri Kundan Singh and Sri N.S. Chowdhury for Respondents.

7. On behalf of State it was argued that mere fact that Investigator in the charge sheet could not specify the rule which had been contravened, was

not sufficient for acquittal of the Respondents. There was sufficient evidence of identification of Roop Chand which should have weighed with

learned trial Magistrate; under such circumstances acquittal was not sustainable.

8. I do not subscribe to this contention for the following reasons:

First Information Report is the (sic) of the case initiated on police report. This First Information Report was lodged by Geetam Singh informant

(PW 1). A careful perusal of the aforesaid testimony shall go to disclose that Geetam is an unmitigated liar. Even in his examination-in-chief he

prevaricated and stated that written report was dictated by Sub-Inspector and scribed by Head Constable. He again alleged that he simply thumb-

marked the report without knowing as to what he was about. When confronted with the affidavit filed by him earlier, repudiating prosecution story

he alleged that thumb impression was procured from him under influence of Mohan Lal, Respondent.

9. As regards identification testimony, he stated that he faltered in test identification parade on account of various slips pasted on the faces of the

suspects and under-trial. Learned trial Magistrate rightly pointed out that Geetam Singh had utmost opportunity of having seen Roop Chand while

sitting in his cart and transacting with him and yet he could not pick up Roop Chand. Under such circumstances, testimony of Raj Pal Singh (PW

2) and Tursi about identification does not hold water. So, identification, evidence, as adduced by prosecution against Roop Chand was rightly

discarded by learned trial Magistrate who had an occasion to observe demeanour of witness.

10. Raj Pal Singh (PW-2) claimed to have learnt about this transaction from Geetam. In his examination-in-chief he alleged that he learnt about

purchase of sugar by Ram Lal and not Roop Chand. Learned Advocate for State pointed out that it could be a clerical error. In his cross-

examination he stated that he was not present at the time of the shady deal. Roop Chand did not run away in their presence; when he was

interrogated by investigator, he did not give any description of Roop Chand. He did not see sugar bags being loaded from store of Mohan Lal. He

also denied the suggestion of his enmity with Mohan Lal in connection with a theft case.

11. Tursi (PW-3) who was scribe of report Ext. Ka-1, was also disbelieved by learned trial Magistrate on the ground of ill-will with Mohan Lal.

Obviously, appreciation of evidence by trial Magistrate who had occasion to observe demeanour of witnesses is weighty. I do not find that learned

trial Magistrate has taken perverse view in the matter. Unless evidence could have been cogent against Respondents, conviction in a criminal case

is not sustainable, for prosecution was bound to prove their case to the hilt by unimpeachable evidence.

12. It is further significant to note that learned trial Magistrate rightly pointed out that there is no evidence of any action taken by authorities against

Mohan Lal for the aforesaid transaction, his stock register was not checked nor there is evidence to show that these four bags were actually

removed from his godown. Had it been a fact, licence of Mohan Lal could have been suspended. There is no direct evidence, oral or documentary

to prove the aforesaid transaction. For the aforesaid reasons. I find that acquittal recorded by the learned trial Magistrate is not open to challenge.

13. In the result, appeal fails and is dismissed. Impugned order is affirmed.