Adamji Umar Dalal Vs The State of Bombay

None

Court: Bombay High Court

Date of Decision: Nov. 26, 1951

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 114

Citation: (1952) 54 BOMLR 400

Hon'ble Judges: Mahajan, J; Fazl Ali, J; Bose, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Mahajan, J.
These two appeals by special leave are limited to the question of sentence only. In case No. 1783/P of 1950, which has given

rise to Criminal Appeal No. 54 of 1951, the appellant Adamji Umar Dalai was tried along with five other persons on the following charges :

Firstly, that you at Bombay on or about the 29th day of December 1949 in contravention of Government Notification No. 342/IV B, dated 27-1-

46 issued under the Essential Supplies (Temporary Powers) Act, 1946, attempted to export by rail out of the State of Bombay to Jalna, a place

beyond the limits of Bombay State, 50 barrels of kerosene oil, without having any permit in that behalf, by misdescribing or causing the

misdescription of the said barrels of oil as high speed diesel oil, and thereby committed an offence punishable under Sections 7 and 8 of the

Essential Supplies (Temporary Powers) Act.

Secondly, that you at Bombay, on or about the 29th day of December 1949 attempted to export by rail 50 barrels of kerosene oil by

misdescribing or causing the misdescription of the same as high speed diesel oil, and abetted each other in the commission of the said offence and

thereby committed an offence punishable under Sections 106 and 107 of the Indian Railways Act, read with Section 114 of the Indian Penal

Code.

2. In cases Nos. 1784/P and 1785/P of 1950 the appellant was tried along with the same persons on similar charges in respect of two other lots of

50 and 15 barrels of kerosene oil respectively. These two cases have given rise to Appeal No. 55 of 1951.

3. The circumstances under which these three cases arose are these. On December 29, 1949, three consignments of 50, 50 and 15 barrels had

been booked from Wadi Bunder under the description of high speed diesel oil when in fact they contained kerosene oil and were to be despatched

to Jalna. The police on getting information of this fact opened the railway wagons and took charge of the barrels kept in them. Accused Nos. 2, 3

and 4 are members of a firm of commission agents. They had purchased the barrels of oil from Sunbeam Oil Company on behalf of three different

principals. The first accused is a representative of one of these firms. Accused Nos. 5 and 6 are the godown keeper and the assistant godown

keeper of the supplier company. All the barrels seized bore the mark ""Prakash Traders-High Speed Diesel Oil, U.S.A."" The third accused

engaged two lorries to remove 100 barrels and they were loaded in the lorries and delivered to Sattar Latiff, witness, who was the forwarding and

carting agent at Wadi Bunder. He was instructed by accused No. 3 for the booking of these barrels for Jalna in Hyderabad State, along with the

third lot of 15 barrels. In the consignment note which concerned the 50 barrels purchased on behalf of accused No, 1 his firm was shown as the

consignor and the consignee was self. The consignment note was signed by Sattar Latiff. In these documents the goods were described as high

speed diesel oil. Similar consignment notes and risk notes were prepared in respect of the other two consignments. There was a ban on the export

of kerosene oil to any place outside the State of Bombay. All the barrels had a white paint on them. It appeared to be new and below the paint on

the barrels the words ""kerosene oil"" were visible. On these facts the prosecution started three separate cases in respect of the three consignments

of 50, 50 and 15 barrels respectively on the charges set out above against all the six accused persons. All of them pleaded not guilty.

4. The fifth accused stated that accused Nos. 2 and 8 brought to him a delivery order asking him to deliver high speed diesel oil but that he

delivered to them kerosene oil at their request. The first accused admitted that he on behalf of his firm placed an order for 65 barrels of high speed

diesel oil through accused No. 2, but denied all knowledge about the alleged delivery of kerosene oil. The second accused said that he placed an

order for diesel oil with Sunbeam Oil Company for 65 barrels and obtained a delivery order from the company and gave it to accused No. 3 and

sent him to take delivery of the barrels from the godown of the company. He denied having told accused No. 5 to deliver kerosene oil instead of

diesel oil. The third accused admitted having taken delivery of the barrels on the instructions of accused No. 2 and having sent them to Wadi

Bunder in two lorries. He was surprised to learn that the barrels contained1 kerosene oil. He denied that he ever asked the company to deliver

kerosene oil for diesel oil. The fourth accused said that he personally took no part in the transaction and had committed no offence. The sixth

accused stated that he had delivered the barrels as ordered by accused No. 5 and had committed no offence. The learned Presidency Magistrate

convicted accused Nos. 2, 3 and 5 on the charges levelled against them and acquitted accused Nos. 1, 4 and 6 as he felt some doubt in regard to

them.

5. The appellant (accused No. 3) in these two appeals was awarded the following sentences :

1. In case No. 1783-P of 1950 he was sentenced to six months'' rigorous imprisonment and a fine of Rs. 15,000 under Sections 7 and 8 of the

Essential Supplies (Temporary Powers) Act. For default in the payment of fine he was to undergo six months'' rigorous imprisonment. A fine of Rs.

1,000 was awarded to him u/s 106 of the Indian Railways Act and in default he was to undergo one month''s imprisonment.

2. In case No. 1784-P of 1950, under Sections 7 and 8 of the Essential Supplies (Temporary Powers) Act he was awarded rigorous

imprisonment for six months and a fine of Rs. 15,000 and in default six months'' rigorous imprisonment. Under the Railways Act he was fined in the

sum of Rs. 1,000 and in default he was ordered to undergo one month''s imprisonment.

3. In case No. 1785-P of 1950, under Sections 7 and 8 of the Essential Supplies (Temporary Powers) Act he was awarded a sentence of one

day''s imprisonment and a fine of Rs. 10,000 and in default rigorous imprisonment for six months. Under the Railways Act he was fined in the sum

of Rs. 300 and in default he was ordered to undergo one month''s imprisonment. In the result in respect of these 115 barrels of oil a cumulative fine

of Rs. 42,300 was imposed on the appellant besides the sentences of imprisonment. The learned Presidency Magistrate while imposing the

sentence observed as follows :

Such black market transaction when detected must be crushed, else the common man has no escape from the plague.

6. On appeal the convictions and sentences were maintained except that the fine imposed on accused No. 5 was remitted. The High Court held

that having regard to the manner in which the offence was committed and the purpose for which kerosene was attempted to be sent outside the

State of Bombay which obviously was to sell it in the black market the sentences passed could not be regarded as excessive.

7. The determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a

matter of discretion which is to be guided by a variety of considerations, but the Court has always to bear in mind the necessity of proportion

between an offence and the penalty. In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused

persons as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not

accompany it except in exceptional cases. It seems to us that due regard has not been paid to these considerations in these cases and the zeal to

crush the evil of black marketing and free the common man from this plague has perturbed the judicial mind in the determination of the measure of

punishment.

8. The appellant was acting in these transactions on behalf of accused No. 1 and other principals in the capacity of a member of a commission

agency firm. It was asserted before us that its commission in this deal was half a per cent, on the sale price. There is no evidence on the record

about the accused''s pecuniary condition. His learned Counsel emphatically asserted at the bar that it was impossible for him to pay even a fraction

of this heavy fine. The profit made on the sale of oil in the black market would in the ordinary course of business dealings go to the principals but its

extent is not known nor found on the record. The first accused who was to profit by getting kerosene oil by this device has been acquitted and is

not before us. The other persons on whose behalf the oil was purchased were not brought to trial. In these circumstances there is no material on

the record justifying the imposition of such heavy fines on the appellant and these seem to us to be quite disproportionate to the offences.

9. It is no doubt true that the offence of black marketing is very generally prevalent in this country at the present moment, and when it is brought

home against a person, no leniency in the matter of sentence should be shown and a certain amount of severity may be very appropriate and even

called for. In our opinion, however, when quite a substantial sentence of imprisonment was awarded to the appellant, a person belonging to the

commission agency class, imposition of unduly heavy fines which may have been justified to some extent in the case of the principals, was not

called for in his case. It is not the practice of this Court to interfere by special leave in the matter of punishment imposed for crimes committed,

except in exceptional cases where the sentences are unduly harsh and do not really advance the ends of justice.

10. For the reasons given above we think that it would meet the ends of justice if the fines imposed on the appellant by the Magistrate and upheld

by the High Court are reduced in all cases as below :

11. In case No. 1783-P of 1950, the sentence of fine is reduced to Us. 1,000 from Rs. 15 000 and in default he will undergo imprisonment for a

period of one month. In case No. 1784-P of 1950 also the fine is reduced to Rs. 1,000 from Rs. 15,600 and in default he will undergo

imprisonment for one month.

12. Similarly, in case No. 1785-P of 1950 the sentence of fine is reduced to Rs. 1,000 and in default he will undergo imprisonment for a month.

13. The fines in all the cases under the Indian Railways Act are reduced to one cumulative fine of Rs. 1,000, instead of a fine of Rs. 2,300 and in

default he will undergo imprisonment for a month. In all other respects the appeals fail and are dismissed.