

Indar Chand Vs Emperor

Court: Calcutta High Court

Date of Decision: March 24, 1915

Citation: 33 Ind. Cas. 289

Hon'ble Judges: Woodroffe, J; Greaves, J; Beachcroft, J

Bench: Full Bench

Judgement

1. This matter has been referred to me on a difference of opinion between Mr. Justice Beachcroft and Mr. Justice Greaves.

2. The accused was charged with three offences. He was acquitted on the second charge by the Magistrate and the Government appeal against

that acquittal was withdrawn. Both the learned Judges convicted the accused under the third charge. Therefore, the only matter before me for

decision is that on which the learned Judges differed, namely, the first charge, Mr. Justice Greaves being of opinion that the accused should be

acquitted and Mr. Justice Beachcroft expressing the opinion that he was guilty of the offence, and if not, of abetment of it though not charged

therewith. He would, therefore, have fined the accused Rs. 1,000 on this charge in addition to the fine which both the learned Judges have agreed

should be imposed in respect of the third charge.

3. It is not necessary for me to recapitulate the facts, which are set out in the judgments which are before me. The questions are, firstly, as to the

meaning of the word "trading" in the first charge, and nextly, whether, if there was a trading here in respect of one case of mica shipped by Sections

Nore," it can be said that, at the date of the operation of the Ordinance, that is, the 14th October 1914, the goods were destined for an enemy

country.

4. For the prosecution it is contended that the acts of the accused in directing the Bank to make over the goods to Messrs. Baker and Startin of

London the direction to the latter to take up the goods, the direction to the latter to send the goods to Checcacci, an Italian agent at Genoa on his

application, and lastly his direction to the latter to deliver the goods to Rheinische Co. and receive payment constitute trading. Now, it seems to me

clear that, as the Ordinance was not retrospective, the only acts at which I can look, for the purpose of establishing the offence with which the

accused has been charged, are such as took place after it was enacted, namely, the directions to Checcacci to hand over the case of mica to the

German firm. The other facts are only relevant as establishing the circumstances under which it is alleged that it became possible to do the last-

mentioned act, unless they also amount to ratification of acts done and directions given prior to the date of the publication of the Ordinance.

5. I may here mention that the prosecution does not rely on the letter of the 5th November 1914 as it was never sent, being intercepted by the

censor.

6. Now, does the act to which I have referred, assuming for the sake of argument that there is a ratification of instructions given to Messrs. Baker

and Startin, amount to "trading"? For the defence it is contended that this term involves an actual handling with the goods and not mere directions

such as we have before us, which were in fact not carried out. For the prosecution it is contended that the word "trading" includes all forms of

commercial intercourse. Both the learned Judges appear to have rejected the contention on this point which was put forward on behalf of the

accused. It is not necessary, however, to go further into this part of the case, for, even assuming in favour of the prosecution that the acts charged

amounted to "trading" within the meaning of the Ordinance, I agree with Mr. Justice Greaves that, whether there was a trading or not (which it is

unnecessary to decide), the goods were not, on or after the 14th October 1914, the date of the Ordinance, destined for an enemy country. Now,

what is the meaning of the word "destined"? For the defence it is contended that if we look at the words "or coming from" in the Proclamation,

destined" must mean going to, that is, on the way to an enemy country. The goods were then, it is said, in London and remained there from before

the date of the operation of the Ordinance and were, it is contended, incapable of being sent to an enemy country as export of mica from England

had been forbidden except to Belgium, France, Russia, Spain and Portugal (see page 407 of the Manual of Emergency Legislation). I do not

assent to all the terms of the argument by which the accused's contention is sought to be supported. But I come to the conclusion on the whole that

the contention itself should be given effect to.

7. I agree with Mr. Monnier, who appears on behalf of the prosecution, that we must not confuse legal destination with actual destination. It is true

that after the Proclamation the exportation of mica was prohibited at law. But it is possible, of course, that it might in fact be exported in

disobedience of that law. Next, the export of mica was not altogether forbidden, it was allowable to some countries from which the goods

exported might possibly have found their way to enemy destination. Next, I am disposed to accept his argument that the word "destined," when

used in connection with the word "trading," is not limited to the sense which the defence asked me to accept, but is equivalent to the term intended

for." But assuming this point in favour of the prosecution, can it be then said that the goods had an enemy destination at any time after the

proclamation of the Ordinance on the 14th October 1914. The case of mica was shipped before the war. It had then undoubtedly an enemy

destination. But on its arrival at London war had then broken out and the goods were landed there Messrs. Baker and Startin of London under

instructions of the accused took up and paid for the goods. If this was a real purchase by them and not a mere accommodation, there is no case

for the prosecution. For in that event the goods were not in existence, so far as any disposition of them by the accused was concerned, after the

date upon which Messrs. Baker and Startin took over the goods from the Bank and paid for them. But I will again assume for the sake of

argument in favour of the prosecution that Messrs. Baker and Startin did not purchase outright for themselves, but merely took over the goods on

behalf of the accused and held them for him subject to his further directions. If so, when was it that the enemy destination, which had been

intercepted by the landing of the goods and the taking over of them by Messrs. Baker and Startin, again arose? As regards any acts which are said

to re-establish the enemy destination by the accused, I can, as I have already said, only look to what was done by him subsequent to the date of

the Ordinance of the 14th October. Then, are the two letters of the 15th and 22nd October in which the accused directed his Italian agent to

deliver the case against payment to the German Company sufficient to give the goods an enemy destination? The point is one which is not

altogether free from doubt. But on the whole I am of opinion that the question should be answered in the negative; and in any case, if the point is a

doubtful one, the accused is entitled to the benefit of it. For we must note that at the time when these two letters were written, the accused was

unaware of what had happened to the goods at home, namely, that Messrs. Baker and Startin had refused to export the goods and in fact the

goods were never exported. They had refused to export the goods, because, as they stated, such exportation was forbidden by the Ordinance.

The directions given by the accused in ignorance of this fact could in any event only take effect on the arrival at London of the letters in which they

were Contained; and even upon such arrival they had no operation for the reasons stated and the goods, therefore, never in fact acquired an

enemy destination.

8. I may point out in this connection that the letter of the 15th October was sent only one day after the Ordinance, which may, therefore, very well

not have come to the notice of the accused. The Ordinance itself was not translated into the vernacular until the 22nd of December, after the date

of the second letter of the 22nd of October. Nothing, moreover, has been shipped by him after the date of the Ordinance.

9. Then it is sought to establish that, if that be the case, there has been an abetment of supplying or of trading by the accused, which is prohibited

by the Ordinance. I am not prepared to hold as a universal rule that in no case can there be a conviction for abetment where the charge was only

for the principal offence. In the present case the accused was not originally charged with abetment. There is also the question, which has been

raised by Mr. Ghose on behalf of the accused, as to whether there can be in fact an abetment of an offence under the Ordinance where in fact no

offence has been committed, in other words, whether the principle enacted by the Penal Code is applicable to an offence punishable under the

Ordinance. In any case it is in the discretion of the Court whether it should allow fresh charges being tried in appeal. Mr. Justice Greaves

expressed the opinion that this was not a case in which this should be done. I agree with him in holding that, assuming that the Court has jurisdiction

to entertain this new charge in appeal, this is not, under the circumstances, a case in which I should do so.

10. I, therefore, agree with him that this first charge has not been established and I acquit the accused of it. As a result the accused is acquitted of

the first two charges and convicted of the third charge, for which he has been fined Rs. 1,000.

11. The accused is entitled to get back the briefs made over for the use of the Court and books of account and other papers which have been

taken by the prosecution and which are now held by them.