
(1969) 01 CAL CK 0001

Calcutta High Court

Case No: Criminal Revision No. 999 of 1966

Atul Chandra Pal and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Jan. 14, 1969

Acts Referred:

- Essential Commodities Act, 1955 - Section 2, 4, 7, 7(1)(a)(ii)

Citation: 73 CWN 651

Hon'ble Judges: K.K. Mitra, J; A.K. Das, J

Bench: Division Bench

Advocate: S.S. Mukherjee and K.K. Mukherjee, for the Appellant; F.M. Sanyal for State, for the Respondent

Final Decision: Allowed

Judgement

A.K. Das, J.

This is a revisional application against an order of conviction u/s 7 (1) (a) (ii) of Act X of 1955. The petitioners were sentenced to R. I. for three months each and the rice seized was confiscated. There was an appeal against the order but the learned Sessions Judge dismissed the appeal. The facts leading to the prosecution are as follows :

On April 5, 1964 the petitioners were detected moving with six cartloads of rice in a field in mouza Laka within the five mile border area between West Bengal and Bihar. The Cordoning Officer intercepted the carts which were being driven by petitioners 2-5, who told that the rice belonged to petitioner No. 1, who was also moving with the carts. The carts with the men were taken to the Police Station where a written complaint was filed by the Inspector. Investigation started and charge sheet was submitted against parties.

2. Defence was a plea of innocence and the petitioners contended that rice was being taken Burdwan (Banduang?) in West Bengal and not to Bihar.

3. The learned Magistrate held on the evidence that rice was being smuggled to Bihar at that unearthly hour along routes seldom used by the villagers. The learned Sessions Judge held that "it is an offence if any person transports rice to any place within the area of five miles of Bihar border. The evidence is that the accused persons were found carrying rice within 2 1/4 miles of the border area "without permit". He therefore dismissed the appeal.

4. Admittedly, the parties had no license or permit for movement of paddy or rice. Section 4 of the Rice (Eastern Zone) Movement Control Order, 1959, reads as follows:

No person shall transport, attempt to transport or abet the transport of rice-

(a) to any place in the border area from any place in the Eastern Zone outside that area; or

(b) from any place in the border area to any other place in that area; except under and in accordance with a permit issued by the State Government or any officer authorised by that Government in this behalf.

5. This provision speaks of restrictions on transport of rice to or within the border area. Border area means the area falling within a five mile belt all along the border of the Eastern Zone which means the territory comprising the States of Orissa and West Bengal. Section 4 prohibits transport of rice.

(I) to any place within the border area from any place in the Eastern Zone outside that area, or

(II) from any place in the border area to any other place in that area, without license or permit.

6. The prohibition, therefore, does not relate transport from any place in the border area to any area in the Eastern Zone outside the border area. The defence version is that they were transporting the rice to Banduang which is within the Eastern Zone but outside the border area. Mr. Palit at one stage argued that Banduang is within the border area but there is no evidence to that effect. Transportation to Banduang from any place in the border area is not prohibited and therefore no offence was committed.

7. Mr. Palit next argued that the rice in carts were intercepted at village Laka within border area and it was being brought from village Sindri within the same area. The movement was therefore from one place in the border area to another place in the same area where it was intercepted. Section 4, however, speaks of transporting from any place in the border area to any other place in that area and this involves the question of destination. According to defence, it was being transported to Banduang and even prosecution witnesses conceded that it was the normal route to Banduang. The use of the word transport in our view connotes movement from one

place to another and the mere fact that the normal route is along the border area does not either indicate that it was transported to another place in the same area, while the known destination is elsewhere. To hold otherwise is to hold that goods on transit are transported to every point between the starting point and its destination.

8. Mr. Palit drew our attention to definition of the word "transport" in clause (f) of section 2 but it speaks of mode of transport merely, obviously to include manual movement by individuals.

9. Prosecution failed to show by evidence that the parties either transported or attempted or abetted the transport to any other place in the border area and therefore the conviction cannot be justified. The idea is to prevent smuggling outside the Eastern Zone and not against transport to other parts of the Eastern Zone outside the border area and the manner in which the carts were intercepted did not satisfy the requirements for a successful prosecution.

10. Mr. Mukherjee, learned Advocate for the petitioner also challenged the learned Judge's finding re : mens rea. The learned Judge held on the authenticity of a decision of this court reported in (1) [Madan Lal Arora Vs. The State](#), that mens rea is not necessary for a conviction u/s 7 of the Essential Commodities Act. This question was considered by the Supreme Court in a decision reported in (2) [Nathulal Vs. State of Madhya Pradesh](#), where it was held that the mere fact that the object of the statute is to promote social welfare activity or to eradicate a grave social evil is not by itself decisive to exclude mens rea. Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may, by necessary implication, be excluded from a statute. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof. The well-established rule is that unless a statute clearly or by necessary implication rules out mens rea as a constituent part of crime, the defendant could not be held guilty of an offence under a criminal law unless he has guilty mind. The cart-men, petitioners 2-6 are hired labourers and had not necessarily a guilty knowledge as transporting with licence or permit is permissible.

11. We have, however, already seen that the prosecution has failed to prove that the rice was being transported from a place in the border area to another place within such area and no offence was therefore committed. The petition, therefore, allowed and the Rule is made absolute. The conviction and the sentence passed against petitioners are set aside and they are acquitted. They are discharged from bail bond.

K.K. Mitra, J.

I agree.