

(1960) 07 CAL CK 0031

Calcutta High Court

Case No: Criminal Revision Case No. 938 of 1959

Nanak Raj Pandit

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 28, 1960

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 173
- Defence of India Rules, 1962 - Rule 130(1), 81(4)
- Essential Commodities Act, 1955 - Section 11, 7(1)
- Penal Code, 1860 (IPC) - Section 21

Citation: (1961) 2 ILR (Cal) 346

Hon'ble Judges: Sen, J

Bench: Single Bench

Advocate: Radhakanta Bhattacharjee and Biswanath Banerjee, for the Appellant; Anil Kumar Sen, for the Respondent

Judgement

Sen, J.

The Petitioner Nanak. Raj Pandit has been convicted u/s 7(1) of the. Essential Commodities Act, 1955, for contravention of the provisions of para. 4 of the West Bengal Cotton Cloth and Yam Control Order, 1948, which is. deemed to be an order issued, under the corresponding provisions of the Essential Commodities Act. Paragraph 4 of the Order provides that no person shall engage in. any undertaking which involves the, manufacture, purchase, sale or storage for sale of cloth or yarn or both unless he holds a license in this behalf under this order and except in accordance with the conditions specified in such license.

The prosecution case is that on certain information the house off the Petitioner Nanak Raj Pandit was searched on April 21, 1958, at about 12-30 p.m. and in course of the search 144 reels oft thread, some ready-made clothes (60 pieces) and some then or rolls of new cloth were found. The Petitioner failed to show any license

under the West Bengal Cotton Cloth and Yarn Control Order for storage for sale or sale of cotton cloth and yarn. Accordingly, both he and his wife were prosecuted u/s 7(1) of the Essential Commodities Act. The wife was, however, acquitted. As regards the Petitioner, the learned Magistrate held that there was sufficient evidence against him and that he must have kept these reels of thread and clothes for the purpose of sale either in India or in Pakistan. Accordingly, the Petitioner was convicted u/s 7(1) of the Essential Commodities Act and sentenced to pay; a fine of Rs. 200 in default to suffer rigorous imprisonment for two months.

2. Mr. Eadhakanta Bhattaeharjee appearing for the Petitioner-has urged that no proper cognizance of the offence was taken and, therefore, the conviction must be held to be bad. Section 11 of the Essential Commodities Act provides that no Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code. In the present case, the Sub-Inspector, District Enforcement Branch, conducted the search and detected the offending articles. First he submitted a report to the officer-in-charge of Bongaon police-station and he himself carried on the investigation and submitted a charge-sheet on which cognizance was taken by the learned Magistrate. The question, therefore, is whether a charge-sheet submitted by a Police Officer can be considered a report of the facts constituting the offence made by a public servant.

3. A Police Officer is certainly a public servant as defined in Section 21 of the Indian Penal Code, and, a charge-sheet is a report in writing of the facts constituting the offence u/s 173 of the Code of Criminal Procedure. In this particular case, the charge-sheet contained a full report of the facts constituting the offence. Prima facie, therefore, the learned Magistrate in taking cognizance on the charge-sheet took cognizance on a report in writing of the facts constituting the offence made by a public servant and, therefore, there was no contravention of Section 11 of the Essential Commodities Act. Mr. Bhattacharjee has, however, relied on a decision of this Court in [A.P. Misra Vs. The State](#). The head-note runs as follows: "The first information drawn up on a letter sent by a police Sub-Inspector is not a report in writing as required u/s 11 of the Essential Commodities Act. Cognizance taken by a Magistrate on such a charge-sheet is not a legal cognizance taken on a report in writing." The reference to the first information report in the head-note mentioned above is somewhat misleading, but on reading the judgment it is clear that N.K. Sen, J. who delivered the judgment, took the view that a charge-sheet submitted by the police was not a report in writing of the facts constituting the offence made by a public servant because if cognizance could be taken by a Magistrate on a charge-sheet, there was no necessity to specifically mention that the Court shall take cognizance only on a report in writing by a public servant of the facts constituting the offence.

4. I would hold, however, that Section 11 of the Essential Commodities Act was introduced to prevent harassment by private prosecution and it only excludes taking of cognizance on a complaint by a private person; but a charge-sheet submitted by a Police Officer, as already stated, is a report in writing of the facts constituting the offence by a public servant, and in my opinion, it is not excluded by the terms of Section 11 of the Essential Commodities Act. Mr. Bhattacharjee has suggested that if I should take a different view from N.K. Sen, J. the case should be referred to a Division Bench. There is, however, an earlier Division Bench decision which by implication decided the question. I refer to *Ganga Prosad Kanoo v. Emperor* (1945) Cri. L. J. 557 which was a decision by Derbyshire, C.J. and Lodge, J. In that case the police submitted a charge-sheet or a prosecution report for prosecution of the accused under Rule 81(4) of the Defence of India Rules read with Clause (4) of the Iron and Steel Control Order, 1941, for acquiring and possessing coils of black iron wire and galvanized iron wire without any license or permit as required by the Iron and Steel Control Order, 1941. The learned Magistrate having taken cognizance on the report did not, however, convict the accused for possessing the black iron wire and galvanized iron wire without a license, but convicted him instead for failing to submit a report of the stock of, iron and steel wire in his possession as required by another Order, namely, Iron and Steel (Demand for-Information) Order, 1942. Their Lordships held that since there was no report in writing of the facts constituting the contravention of which the accused has been found guilty, the learned Magistrate had no jurisdiction to take cognizance of the offence of which the Appellant was found guilty. It is clear that conviction was quashed in that case not because cognizance was taken on a police report for prosecution, but because the police report for prosecution did not contain any mention of the offence of which the accused had been actually found guilty. By implication, therefore, it was held that the police report u/s 173 of the Code of Criminal Procedure or the charge-sheet, as it is popularly called can be classed as a report of the facts constituting the offence made by a public servant and, therefore, cognizance could be taken thereon in view of Section 130(1) of the Defence of India Rules, the provisions of which were similar to the provisions of Section 11 of the Essential Commodities Act.

5. In view of the above decision I do not consider it necessary to refer this case to a Division Bench. I would hold that cognizance as taken by the learned Magistrate on the report of the Police Officer in writing was sufficient compliance with the provisions of Section 11 of the Essential Commodities Act.

6. The next contention of Mr. Bhattacharjee is that the accused Petitioner did not possess the goods for sale and that, therefore, he was not guilty of contravention of para. 4 of the West Bengal Cotton Cloth and Yarn Control Order. But in view of the large quantity of goods found in the possession of the accused Petitioner, namely, 144 reels of thread, 60 pieces of ready-made clothes and some than or rolls of silk and cloth, it is clear that the accused Petitioner must have possessed them for sale of the goods either in India or in Pakistan though, according to the evidence, it

would appear that ostensibly he was carrying on business in groceries. In this connection it is relevant to remember that according to the prosecution case, from his shop in Bongaon he was habitually smuggling goods into Pakistan. But this was not proved and neither was it necessary to prove this fact for the purpose of this case. It is, however, clear that the possession of such a large quantity of thread reels, ready-made clothes and rolls of cloth must have been for the purpose of sale either in India or in Pakistan. Therefore, since there was admittedly no license, there was contravention of para. 4 of Cotton Cloth and Tarn Control Order, and so the accused was guilty u/s 7(1) of the Essential Commodities Act. The sentence cannot be regarded as too severe.

7. This Rule is, therefore, discharged.