(1951) 02 BOM CK 0018

Bombay High Court (Nagpur Bench)

Case No: None

State Govt. Madhya Pradesh	APPELLANT
Vs	
Seth Parasmal	RESPONDENT

Date of Decision: Feb. 22, 1951

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 342
- Essential Supplies (Temporary Powers) Act, 1946 - Section 7

Citation: (1952) CriLJ 118

Hon'ble Judges: R. Kaushalendra Rao, J; Hemeon, J

Bench: Division Bench

Judgement

1. This is an appeal by the State Govt. u/s 467, Criminal P.C.

2. The respondent Seth Parasmal son of Motilal was charged with the contravention of Clause 2 of the Provincial Govt.''s Order regulating export of ghee No. 4860-VII-F dated 18.5.1943, punishable u/s 7, Essential Supplies (Temporary Powers) Act, for exporting 23 tins of ghee to Sambalpur.

3. The respondent was convicted by the trial Court & sentenced to pay a fine of Rs. 100. The conviction was set aside by the Additional Ses. J. Balaghat, on two grounds. The learned Additional Ses. J. held that prosecution failed to prove that any mode of publication of the Order was prescribed as required by Section 119 of the Defence of India Rules, or that the Order was published in : that manner. The learned Judge placed reliance on two decisions of the Court reporter in Shakoor v. Emperor I.L.R (1944) Nag. 150 and Babulal Rajjulal v. Emperor I.L.R (1915) Nag. 762. The first decision was concerned with an order passed by a District Magistrate u/s 81 of the Defence of India Rules. The second case was concerned with the Govt. of India''s Foodgrains Control Order, 1942, read with an order of the Provincial Govt. published in the local gazette. The order of the Provincial Govt. was held to be valid because the Order of the Central Govt. provided that the Provincial Govt. may from time to

time by notification in the official gazette declare a commodity specified in the first schedule of the foodgrains Control Order of the Govt. of India to be a foodgrain within the meaning of the Order. The notification in the local gazette of masoor as a foodgrain was held to be a sufficient compliance with the mode of publication prescribed by the Control Govt. There are, how ever, observations in that decision to the effect that because an order is published in a Govt. gazette, it cannot be presumed that the authority in question thought that that was the host mode of publication. It was, further, observed that the Crown must prove that the authority making the order not only prescribed a particular mode of publication but that the publication was strictly in accord with what was prescribed.

4. In the instant case we are concerned with an order of the Provincial Govt. published in the Provincial Gazette. There is an unreported decision of the Division Beach consisting of Pollock & Puranik JJ. according to which where an order''s published in the gazette, it may be presumed that the publication of the order by the Govt. is sufficient publication & that it may be further pi turned that publication was made in the gazette in compliance with all the provisions of Rule 119 including the provision as to the determination of the moat suitable form of publication. See Provincial Government v. Namdeo cri. Appeal No. 7 of 1946. The Division Bench expressed agreement with the decision of the Full Bench of the Patna High Court in Mahadeo Prasad v. Emperor ILR (1945) Pat 781. The decision of the Division Bench as well as that of the Patna High Court was concerned with an order of the Govt of India published in the Gazette of India. The principle is applicable also to an order of the Provincial Govt. published in the Provincial Gazette is dear from the decision in Province of Bihar v. Bhim Bera ILR (1946) pat. 539. Since the decision in Provincial Government v. Namdeo cri. Appeal No. 7 of 1946 (supra), the trend of authorities in other Courts is also in the same direction: sae Debi Prasad v. Emperor AIR 1947 ALL. 191 & Public Prosecutor v. Badulla Sahib AIR 1948 Mad. 262. According to the decision of their Lordships of the Privy Council in Srinivas Mall v. Emperor AIR 1947 P.C.135:
once the making of as order has been proved, there may well be a presumption that it has been duly promulgated.

The acquittal cannot then be supported on the ground of defective publication of the order.

5. The learned Additional Ses. J, also held that the order in question was not kept alive by the Essential Supplies (Temporary Powers) Act, 1946. According to the learned Additional Sea. J., "ghee" is not included within the expression "foodstuffs" in Section 2(a). The Additional Ses J sought to reinforce his conclusion by reference to Clause (c) which includes "edible oilseeds & oils".

6. As all oils & oilseeds are not edible, it was necessary to specify that edible oilseeds & oils are included in foodstuffs. From that it does not follow that ghee which is so

much consumed in this country along with meals is not included within the definition of foodstuffs. The finding of the learned Judge on this point cannot be supported.

7. But we are of the view that the acquittal cannot be reversed because of a fundamental de-feet in the case of the prosecution. The case against the respondent being that he exported 23 tins of ghee it was incumbent upon the prosecution to establish the act implicating the respondent in the offences of exporting contrary to the order of the Provincial Govt. (After discussion of evidence the judgment proceeds). There is not even a scintilla of evidence to connote the accused Parasmal with P. Suganchand mentioned as the sender of the ghea tins in E.P. 3. Yet the learned trial Magistrate asked the accused while under examination u/s 342, Criminal P.C.

Q : Did you book on 1.12.1948, 23 tins of ghee from Balaghat to sambalpur by rail?

The accused gave the answer:

Yes Sir.

The object of Section 342, Criminal P.C. is to enable the accused to explain any circumstances appearing against him & not to enable the Court to fill up the gap in the evidence of the prosecution. The learned trial Magistrate used this admission in proof of the case of the prosecution that the respondent had exported 23 tins of ghee. This was most improper. In the absence of any circumstance appearing against the respondent in the evidence adduced by the prosecution, the question put by the learned trial Magistrate was not warranted. The admission made by the accused could not therefore be taken into consideration. It would be unfair to the accused to receive in evidence an answer so irregularly elicited. The authorities leave no room for any doubt on the point.

8. In Mohideen Abdul Kadir v. Emperor 27 Mad. 238 where the accused were charged with defamation by making & publishing a certain petition regarding the conduct of the complainant, as answer given by the accused admitting publication of the alleged libel was excluded on the ground that there was no evidence of making A publishing the alleged statements by the accused. To the same effect is the decision of the Lahore High Court in Devi Dayal v. Emperor 4 Lah. 55.

9. Reference may also be made to the decision in In re Sarabhayya AIR 1943 Mad. 408. There three accused were charged for an offence punishable u/s 467, Penal Code. When accused were asked what they had to say about the case, accused 2 & 3 stated that the karar had been written by accused 3 but it was done under the instructions of P.W. 1 jointly with accused Section There was no evidence that accused 3 had forged the document or had anything to do with the forgery. The only circumstance appearing against him was that his name appeared in the document. Nobody was asked whether the signature or the body of the document

was in the hand of accused 9. There being no evidence that the document was written by accused 3 or signed by him as a writer, it was hold that the Sea. J. should not have put him any question at all. Consequently, the statement, made by the accused person as a result of questions improperly put to him was not taken into account against him.

10. Excluding thon the admission of the respondent it must be held that the prosecution failed to establish the essential fact for the success of their ease that it was the respondent who bad booked the tins of ghee to Sambalpur from Balaghat. Consequently the acquittal must stand.

11. The amoral is accordingly dismissed.