

## Sital Prasad vs The State on 25 July, 1952

**Equivalent citations: AIR1953ALL101, AIR 1953 ALLAHABAD 101**

ORDER

Beg, J.

1. The petitioner Sital Prasad was prosecuted under Section 7, Essential Supplies (Temporary Powers) Act, 1940, read with Section 3, U. P. Food Grains Control Order of 1949. He was convicted by the trial Court and sentenced to three months' rigorous imprisonment and a fine of Rs. 500, or in default to undergo two months further rigorous imprisonment. He filed an appeal against his conviction before the learned Sessions Judge of Rae Bareilly who upheld the order of conviction but reduced the sentence by quashing the sentence of imprisonment maintaining only the sentence of fine of Rs. 500 or in default two months' rigorous imprisonment; the trial Court had also passed an order that the food grains seized should be forfeited and its price credited to the Government. This order of forfeiture was also maintained by the learned appellate Court.

2. The case of the prosecution against the petitioner as disclosed by the first information report as well as by the evidence produced in the case would appear to be that the petitioner, is a dealer in food grains in the town of Jais, which is declared to be a purchasing centre under the U. P. Food Grains Control Order, 1949. On 8th November 1950, at about 11. A. m. Sri Saxena, D. R. F. C. (Deputy Regional Food Controller), Sri Chandrapal Singh, Sub-Inspector of Rae Bareilly and Sri Sheo Shanker Singh Deputy R. M. O., Lucknow, inspected the godown of the applicant in Jais and recovered 32 mds. 30 srs. 4 chhtks. of wheat, 29 mds. 39 srs. 8 chhtks. of paddy, 6 mds. 39 srs. of rice and 3 mds. 35 srs. of barley from it. As the petitioner was not found in possession of any licence authorising him to store goods for sale, he was prosecuted for the contravention of Section 3, Sub-clause (1), U. P. Food Grains Control Order, 1949, and convicted as mentioned above.

3. The defence of the applicant was that he was not a dealer in foodgrains at all and the prosecution case that he was a dealer in food grains was false. He, however, clearly admitted the recovery of food grains from his godown and alleged that as a godown-keeper he merely kept the food grains for safe custody on a charge of 1 anna per bag for the use of his godown. These bags used to be left at his godown by business people and he had nothing whatsoever to do with the sale of the commodity contained in them. In fact, he had no power to sell them.

4. The learned trial Court appears to have accepted the prosecution case that the accused was a grain dealer and convicted him. In appeal the learned Sessions Judge after a minute and thorough examination of the prosecution as well as the defence evidence came to the conclusion that the

prosecution case that the petitioner was a grain dealer was not true. On the other hand he accepted the defence case that he was not a grain dealer to be correct. The finding arrived at by him is in these words :

"So the contention of the accused that he is not a grain dealer has not been disproved by the prosecution and I take it to be a fact that the appellant is not a grain dealer at all in the town of Jais."

He, however, maintained the conviction of the accused as he was of opinion that mere storage of the foodgrain irrespective of the fact whether the godown keeper had power to sell or not would be an offence if the intention of the persons who had deposited them there was to sell the same. The learned counsel for the applicant has urged two arguments in support of the petition in this Court. Firstly he has argued that the interpretation placed on Section 3 (1), U. P. Food Grains Control Order by the lower appellate Court was not correct. Secondly, he has argued that, in any case, the prosecution case as set out in evidence having been disbelieved, the accused could not be convicted on a new case which he was not called upon to meet. The procedure adopted has materially prejudiced the accused and should result in the reversal of the order of conviction of the petitioner.

5. So far as the first point is concerned, lengthy and detailed arguments have been advanced before me by the learned counsel for the petitioner as well as on behalf of the State. Section 3, Sub-clause (1), U. P. Food Grains Control Order, runs as follows :

"With effect from the date on which this Order comes into force, no person shall sell or store for sale controlled foodgrains except in the Recognised Market, a Purchasing Centre, or a Regulated Town."

According to the contention of the learned counsel for the petitioner the words "store for sale" in the above provision imply that the person contravening the aforesaid provision shall have the power to sell the stored commodity. In this particular case his position was merely that of a bailee. The foodgrains were left at his godown "not for sale" but for safe custody. It would be different if he was a commission agent for sale or was authorised by the owner of the goods to sell the articles in question. These bags were merely deposited at his shop and he was to return them on payment of the hire money. The hire money only represented a kind of fee-rent charged by him for the use of space in his godown. He can no more be convicted for stocking these articles in the room of his godown than the owner of the land in the open bazar can be convicted for allowing the prohibited foodgrains to be kept on his land by the seller for the purpose of sale. The word "for" means "with the object of." In this connection, my attention has also been drawn to condition 3 of Form B of the Licence which is as follows :

"The licensee shall sell to the controller, at a price which may be or has been fixed by the United Provinces Government and published in the official Gazette, such controlled foodgrains stored by him as may be ordered by the Controller."

It is argued that the above condition indicates that the licensee contemplated by the licence is a person who should have power to sell to enable him to comply with condition 3 of Form B of the licence. It has to be conceded that the godown keeper had no power to sell, hence it is argued that he is not a person contemplated by Section 3 (1), U. P. Food Grains Control Order, 1949. In support of this contention, it is also urged that in the case of a godown-keeper the necessary ingredient of mens rea is lacking. Mens rea is ordinarily the basis of all criminal offences unless its application is specifically excluded by the words of the Statute. Reliance in this connection is placed on a ruling of their Lordships of the Privy Council reported in *Srinivas Mall v. Emperor*, A. I. R. 1947 p. c. 135. The said case related to an offence under Rule 81 (2), Defence of India Rules. In that connection their Lordships of the Privy Council laid down that it is of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules not (out ?) mens rea as a constituent part of a crime, an accused should not be found guilty of an offence against the criminal law unless he has got a guilty mind. Offences against Rule 81 (2), Defence of India Rules, are not within the limited and exceptional class of offences which can be held to be committed without a guilty mind. Offences which are within that class are usually of a comparatively minor character and a person who was morally innocent of blame cannot be held vicariously liable for a servant's crime involving contravention of penal provisions. Learned counsel for the applicant also invited my attention to cases reported in *Mahadeo Sheolal v. Emperor*, A. I. r. 1949 Nag. 401 and *Raghubar Lal v. Emperor*, A. I. R. 1944 Pat. 308. In the Patna case, the relevant clause alleged to have been contravened ran as follows :

"No person shall engage in any undertaking which involves the purchase, sale or storage for sale in wholesale quantities of any foodgrain except under and in accordance with a licence issued in that behalf by the Provincial Government."

The wording of this clause is obviously wider than the wording of Section 3 (1), U. P. Food Grains Control Order. In spite of it, it was held in that case that mere possession not for purposes of sale would not be touched by the said provision of law and possession without licence in such a case would not be an offence.

On the other hand it is urged on behalf of the State that the words "for sale" do not necessarily indicate the object in the mind of the person with whom the goods were stored. It is quite enough if the object of the person who deposited the goods was to sell the commodity stored, and the godown keeper would in such a case be vicariously liable for storing such goods even though he himself had no intention or even power to sell. This is one of those exceptional cases where mens rea has been ruled out by the statutes.

6. Having considered the arguments on either side I am of opinion that much can be said on both aspects of the case. This particular provision of law is ambiguously worded, and in view of the patent ambiguity in this provision of law, this ambiguity must be resolved in favour of the accused. This interpretation would be in consonance with the well-known canon of construction that in order to make a person liable for punishment under a penal statute such a statute must be clear, explicit and unambiguous. If it admits of more than one interpretation, the interpretation beneficial to the accused should be preferred and the benefit of doubt must go to the accused. The rule in question

has been expounded in Crawford's Statutory Construction (1940 Edn.), Section 240 thus :

"Criminal and penal statutes must be strictly construed; that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offences and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favour of the person accused of violating the statute ; that is, all questions in doubt will be resolved in favour of those from whom the penalty is sought."

The danger of non-observance of this rule is that it might lead to the creation of offences by interpretation which may operate to entrap the unwary and the ignorant and threaten the rights of the people generally. It has grown out of tenderness of the law for the rights of the individual. Conclusions hostile to the accused should not, therefore, be drawn from merely ambiguous phraseology of penal enactments couched in dark and cloudy words. As observed by Maxwell at page 269 of the well-known book on Interpretation of Statutes (9th Edition) :

"Where an enactment may entail penal consequences, no violence must be done to its language to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language."

Under the circumstances I have no hesitation in accepting the interpretation placed on this provision of law by the learned counsel for the petitioner.

7. The case can also be decided in favour of the petitioner on the alternative argument advanced by his learned counsel. It would appear that the entire case of the prosecution was that the petitioner himself was a dealer in foodgrains and that he had stored them as a grain dealer with the intention of selling the prohibited commodity. Therefore, according to the prosecution case, the intention and the power to sell was to be inferred from the fact that he was a grain dealer and owned the commodity to be sold. The accused categorically denied this case. As observed above the lower Court definitely rejected the prosecution case and accepted the defence case that the accused was not a dealer in grains. The lower Court, however, convicted him on his own admission. The entire evidence of the prosecution having broken down the accused cannot be convicted on his own admission unless the ingredients of offence are clearly and explicitly admitted by him in his own statement. Having gone through the statement of the accused I find that there is no such clear or explicit admission either of the guilt or of the ingredients of the offence. He has merely made a general statement that he used to keep the bags of foodgrains left with him by business men. He has strenuously contended that he is not guilty and he has nowhere stated that these particular bags were kept "for sale." Thus with the rejection of the prosecution case that the petitioner was a grain dealer the foundation of the prosecution case seems to disappear and there is no evidence left to prove that the bags were stored there "for sale."

8. Moreover in this particular case it would appear that the conviction of the accused on the new case would materially prejudice him in his defence. If the petitioner had been faced with this case, he might have taken other defences to shield himself. He might have tried to prove that the various individuals who left the goods with him did not intend to sell it at all or that they had actually it or even if they intended to sell it they possessed a licence and the amount stored by them with him did not exceed the target limit or that the bags in question were stored by growers of grains who were exempted persons. We are not concerned with the merits of those defences. They might be good, bad or indifferent but they were open to him and could have been taken by him. I am clear in my mind that the shifting of ground by the prosecution at the stage of appeal was neither proper nor justified. As mentioned by me above, the statement of the accused by itself is not sufficient in this case to make out all the necessary ingredients of offence. I am, therefore, of opinion that the revision must succeed on the alternative contention advanced by the learned counsel as well.

9. For the reasons given above I allow this revision, set aside the conviction of the petitioner and order that the fine, if paid by him shall be refunded. The order of forfeiture is also quashed.