

## **Shiam Manohar And Ors. vs The State on 1 August, 1952**

**Equivalent citations: AIR1953ALL443, AIR 1953 ALLAHABAD 443**

**Author: V. Bhargava**

**Bench: V. Bhargava**

ORDER

V. Bhargava, J.

1. This revision has been filed by four persons, viz., Shyam. Manohar, Ram Piaro, Ganga Prasad and Ram Kishore, who have been convicted for an offence punishable under Section 7, Essential Supplies (Temporary Powers) Act, 1946, read with Clause (V) of Section 3, U. P. Foodgrains (Movement) Control Order, 1949. Shyam Manohar and Ram Piaro have been sentenced to pay a fine of Rs. 500/- or, in default, to undergo rigorous imprisonment for three months each. Ram Kishore and Ganga Prasad have been sentenced to pay a fine of Rs. 250/- each, or, in Default to undergo six weeks' rigorous imprisonment each. The offence is alleged to have been committed in October 1949.

2. The main point, that has been taken by the learned counsel for the applicants in this revision, is that the trial Court wrongly took cognisance of this case as there was no report in writing by a public officer giving facts constituting the offence as required by Section 11, Essential Supplies (Temporary Powers) Act. It appears that the case was first investigated, by a Sub-Inspector of Police who submitted a charge-sheet through the Prosecuting Inspector of Police. The Prosecuting Inspector on the same charge-sheet, recorded a report addressed to the Magistrate and made the documents, viz.. the First Information Report which had been lodged at the Police Station and the report of recovery of certain foodgrains from the motor truck belonging to or driven by the applicant of the report. Learned counsel has contended that the report of the investigation officer in charge-sheet does not give facts constituting the offences and this is correct. That charge-sheet merely served the purpose of the report of the investigating officer under Section 173, Criminal P. C. There is no requirement that the report under Section 11, Essential Supplies (Temporary Powers) Act, 1946, must be identical with the report of the investigating officer under Section 173, Criminal P. C. nor is it anywhere laid down that the two reports must necessarily be by the same officer. In order to see whether Section 11, Essential Supplies (Temporary Powers) Act has been complied with or not, therefore, the report of the Prosecuting Inspector of Police can be taken into consideration. This report has to be read as a whole with the two documents which form part of this report. The report mentions that the First Information Report & the recovery report were being attached with it. All the three documents read together clearly give all the facts constituting the offence. It is clearly mentioned that wheat and rice were being transported on a motor truck and that, at the time when the motor truck was caught, it was coming out of the abadi of village Purwa and going towards Maurawan. It was also mentioned

therein that the destination of the grain was Lucknow. These facts clearly make out that there was contravention of the orders made under Section 3, Essential Supplies (Temporary Powers) Act, 1946, relating to foodgrains.

3. Learned counsel has further based his arguments on the fact that the report by the Prosecuting Inspector mentioned that the facts given by him constituted contravention, of Clause (v) of Section 3, U. P. Foodgrains (Movement) Control Order, 1949. The lower Court in convicting the applicants also applied the same clause. Section 11, Essential Supplies (Temporary Powers) Act, 1946, does not, however, require that the report must correctly mention the particular clause of the order which has been contravened. All that is required by that Section is that the facts constituting an offence should be clearly brought out. In this case, even the provision of law, under which the punishment was to be given, was correctly mentioned being Section 7, Essential Supplies (Temporary Powers) Act, 1946. There can be no doubt at all that the facts, which were given in the report and which were found to be established in the trial, clearly made out that there was contravention of the orders in Clauses (iv) or (v) and (ix) of Section 3, U. P. Foodgrains (Movement) Control Order, 1949. Since the facts were correctly mentioned and the charge framed by the Magistrate also correctly enumerated them, there has been no error which can vitiate the trial. In the report as well as in the charge framed by the Magistrate, the provision of law, under which the punishment was awarded has also been correctly mentioned as Section 7, Essential Supplies (Temporary Powers) Act, 1946, The mere error in mentioning in the report as well as in the charge framed by the Magistrate the particular clause of the U. P. Foodgrains (Movement) Control Order, 1940 which had been contravened cannot, therefore, vitiate the trial or the conviction. Consequently this argument also has no force and there is no reason for interference on this ground.

4. Learned counsel relied on various decided cases in which it has been held that provisions of law like those in Section 11, Essential Supplies (Temporary Powers) Act, 1946, must be strictly construed. So far as this case is concerned, even the strictest construction of Section 11, Essential Supplies (Temporary Powers) Act would show that that provision of law has been complied with. The strictest construction can only lead to the requirement that all the facts constituting the offence must be mentioned in the report and as I have said before, the report read with the documents which formed part of it does mention all these facts on the basis of which the applicants have now been convicted. Learned Counsel also referred to a decision of a learned Single Judge of this Court in -- 'Dr. N. C. Chatterji v. Emperor', AIR 1946 All 416 (A) where it was held that incorrect mention of the particular order which had been contravened vitiated a conviction under the Defence of India Rules and that this incorrect mention was not merely an irregularity but an illegality. That case is however of no assistance in the present case because, in that case, what was required under the Defence of India Rules had to be taken into account was the requirement of Section 11, Essential Supplies Act. Under the Defence of India Rules the facts constituting the contravention of the order has to be given whereas under Section 11, Essential Supplies Act, what has to be given are facts constituting the offence" and not the facts constituting the "contravention". It was because the word "contravention" was used there that the learned Judge was of the view that the particular order contravened had to be correctly mentioned.

In this case, since all that was needed was to give facts constituting the "offence", the acts which resulted in the contravention of the order, need only be mentioned and there was no essential requirement of correctly mentioning the particular clause of the order contravened. Learned Counsel also cited before me two decisions of the Madras and the Bombay High Courts but it appears that neither of them is applicable to the present case and I do not therefore consider it necessary to discuss them. On this ground, the revision has no force.

5. The second point that has been taken by the learned counsel for the applicants is that the applicants in this case were not properly questioned under Section 342, Criminal P. C. and, therefore, their conviction is vitiated. This is a case where all the four applicants pleaded guilty. This plea of guilty was certainly not to be treated as a plea relating to law but as a plea relating to facts. The plea is final and binding and there can now be no question of their being prejudiced after they have already pleaded guilty.

6. The third point that the learned counsel raised was that the order of forfeiture in so far as it related to rice was, at least liable to be set aside because the conviction recorded by the lower Courts was for an offence punishable under Section 7, Essential Supplies (Temporary Powers) Act read with Clause (v) of Section 3, U. P. Foodgrains (Movement) Control Order, 1949, and not read with Clause (ix) of Section 3 of that Order. It is again to be noticed that when the Magistrate framed the charge against the applicants he clearly mentioned that rice had also been transported and that this transport of rice was an offence punishable under Section 7, Essential Supplies Act. The mere failure to mention Clause (ix) of Section 3, U. P. Foodgrains (Movement) Control Order, 1949 was not material and the conviction in respect of the transport of rice by the motor truck was also, therefore, correct. This being so, the order of forfeiture was valid.

7. The revision has no force and it is dismissed. The fines shall now be paid within one month during which period the stay order will continue to operate. If the fines are not paid within this period, steps will be taken for realisation of fines and enforcement of the order of imprisonment in default.