

## Raghubar Dayal vs State on 4 February, 1953

**Equivalent citations: AIR1953ALL691, AIR 1953 ALLAHABAD 691**

ORDER

Mukerji, J.

1. This application in revision came before me on 22-12-1952 when it was argued by Mr. Chaturvedi on behalf of the applicant at some length. The case was adjourned to this date at the request of Mr. Chaturvedi, because during the course of argument it appeared that it was necessary to consider certain provisions of the Essential Supplies Act and a particular control order and some provisions of the Sale of Goods Act a little more carefully.

2. The facts, which have given rise to this revision, lie within a very narrow compass and are admitted on both sides. On 28-4-1951, the applicant purchased 19 maunds and 30 seers of gram from one Mr. L. P. Garg, a Magistrate of the first class, for a sum of Rs. 308/6/- the gram having been purchased at the rate of Rs. 16/3/6 per maund. The controlled rate at which gram could have been sold in April 1951 in that area was Rs. 12/- per maund. Therefore, the purchase, which had been made by the applicant, was at a much higher price than the controlled price for the commodity purchased. It appears that the Dist. Magistrate of Jhansi wanted to trap certain purchasers of Jhansi who were making purchases of gram at rates higher than controlled rates in order to stop prices soaring higher than was contemplated by the authorities who were anxious to control and stabilise prices in that area. The District Magistrate consequently ordered his subordinate Magistrate, Mr. Garg, to offer Government gram for sale at higher prices than the controlled rate for the commodity. The applicant coming to know that gram was available from Mr. Garg -- who, to the applicant, did not appear as a Magistrate but merely as a seller -- offered to purchase some gram at Rs. 16/3/6 per maund. As I have stated earlier, the applicant purchased 19 maunds and 30 seers of gram from Mr. Garg and paid him the price which amounted to Rs. 308/6/-. Immediately after the sale had been completed, that is, the goods had been taken possession of and the price paid, there appeared on the scene a police officer who apprehended the applicant on the allegation that he had committed an offence under Clause 3, U. P. Rabi Food-grains Price Control Order, 1950.

3. The applicant was prosecuted under Section 7, Essential Supplies (Temporary Powers) Act, 1946, and he was convicted under that section for a breach of Rule 3 of the Rabi Foodgrains Price Control Order. The applicant was awarded a sentence of one year's simple imprisonment and a fine of Rs. 500/-, in default of which he was ordered further simple imprisonment for a period of six months. The appeal made by the applicant was dismissed by the learned Sessions Judge of Jhansi, except in so far that the learned Judge thought it fit to reduce the sentence of imprisonment to the sentence of fine only and he has, therefore, come up in revision to this Court.

4. On behalf of the applicant two questions of law were argued by Mr. Chaturvedi first, that the applicant could not be, convicted under Clause 3 of the Rabi Foodgrains Price Control Order, 1950, because of the provisions of Clause 5. Clause 3 of the Control Order is in these words :

"No person shall sell or offer for sale and no person shall purchase or offer to purchase any 'rabi' foodgrain specified in Sch. I at a price in excess of the maximum price".

Clause 5 is in these words :

"Nothing in this Order shall apply to the 'sale' of foodgrains by the State Government, a Controller or a District Magistrate."

Clause 3 takes into account the two parties to a sale and it makes it an offence for either of those two parties who are necessary to complete a sale to enter into a transaction of sale at a price which is higher than the maximum price fixed under the provisions of the Order. Therefore, a person, who purchases at a higher price is equally guilty with the person who sells a commodity at a higher price than the maximum price fixed. Clause 5, on the other hand, does not concern itself with the two parts which go to make up a sale, viz. that part which consists of the offer of sale and is the act of the seller and that part which consists of the purchase and is the act of the purchaser, but takes the transaction as a whole and, therefore, in my judgment embraces the two transactions which I have mentioned above that go to make a sale. The position, to my mind, therefore, is that any person, who purchases any foodgrains which is sold by either the State Government, a Controller and a District Magistrate, is outside the scope of the mischief of Clause 3 inasmuch as Clause 5 makes the entire Order inapplicable to sales made by the three authorities named in that clause. The sale in this particular case was admittedly by and on behalf of the District Magistrate. Mr. Sri Ram, appearing on behalf of the State, conceded, for he had to, on the facts found by the Courts below, that the sale was by the District Magistrate and the sale was of foodgrains belonging to the State Government. It was, therefore, contended by the learned counsel for the applicant that the sale in this case was covered by the provisions of Clause 5 and therefore, the purchase made by the applicant could not be penalised under Clause 3, for Clause 3 must be deemed to be non-existent when a sale is made by authorities mentioned in Clause 5. Mr. Sri Ram, appearing on behalf of the State, contended that the sale referred to in Clause 5 must be held to relate to a 'bona fide' sale and not to a 'bogus' sale as was made in this particular case. I have been unable to see the distinction which was attempted to be drawn between the sale in question and the other sale that the District Magistrate was authorised to make under Clause 5. Sale has been defined in the Sale of Goods Act, According to this definition an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property or the goods is to be transferred. On the facts of this particular case all the requisite conditions for a valid sale were complied with. Therefore, I do not see how the transaction in question could not be termed a sale or how the transaction in question could be qualified by adjectives like 'bogus'. If the sale made by the District Magistrate was not a sale, there was no purchase by the applicant and, in my judgment, there would then be no offence committed under Clause 3, but when faced with this situation Mr. Sri Ram shifted his position and said that it was a sale for the purposes of making it an offence but it was not a sale

within the meaning of clause 5. I must say I cannot agree with this for the obvious reason that I find no justification for drawing a distinction between the scope of a sale under clause 3 and the scope of a sale under Clause 5.

5. It was next contended on behalf of the State by Mr. Sri Ram that the purchaser in this case, viz. the applicant, made the purchase according to his knowledge, not from a District Magistrate, but from a Seth, because he took Mr. Garg to be a Seth and further it was pointed out by Mr. Sri Ram that the applicant, when he made the purchase, did so with the guilty intention and the guilty knowledge that he was paying a higher price than he should have. It was, therefore, argued that the applicant could not get the protection which clause 5 offered to other purchasers at sales made by the State Government, a Controller or a District Magistrate. Mr. Sri Ram's argument was also to the effect that clause 5 only protects a seller if the seller happens to be the State Government, a controller or a District Magistrate, but it does not protect the purchaser. I am unable to agree with this contention because clause 5 does not in term give protection either to the seller or to the purchaser. The protection is given to the transaction of sale which must include both the seller as also the purchaser. I am! also unable to agree with the contention of learned counsel for the State, Mr. Sri Ram, that the applicant cannot escape liability because of his guilty intention in making the purchase. Clause 3 does not, in my judgment, take into account the intention of either the seller or the purchaser--the clause is confined to the actual acts of sale and purchase. Similarly, Clause 5 takes no account of the intention of the seller when making a sale.

6. By the control orders individual freedom of contracts is severely restricted. Further, these control orders make provision for punishing of breaches of these control orders. These are, therefore, in the nature of penal statutes and they have to be interpreted strictly. I have no doubt that the intention with which the sale was made by the District Magistrate in this particular case was to trap certain grain dealers, who were indulging in forbidden purchase but that did none the less make the sale of the gram in this particular case a sale by the District Magistrate to which the provisions of Clause 5 of the U. P. Rabi Foodgrains Price Control Order, 1950, applied.

7. Mr. Chaturvedi raised a second point, viz. that this Court having declared the provisions of Section 6 of the Essential Supplies (Temporary Powers) Act, 1946 'ultra vires' the U. P. Rabi Food-grains Price Control Order, 1950 also became 'ultra vires'. His argument was that since the provisions of clause 3 of this Order were inconsistent with the provisions of Section 9, Sale of Goods Act, the provisions of the Order could not survive because there was no Section 6 in the Essential Supplies (Temporary Powers) Act, any more to make its survival possible. I am unable to accept this contention of Mr. Chaturvedi for, in my judgment, clause 3 of the Rabi Foodgrains Price I Control Order is not inconsistent with Section 9, Sale of Goods Act. I do not consider it necessary to elaborate this point because, in my judgment, the revision must succeed on the first point raised by Mr. Chaturvedi.

8. In the result, I am of the opinion that the applicant could not be held guilty of a breach of Clause 3, Rabi Foodgrains Price Control Order, 1950 and that his conviction under Section 7, Essential Supplies (Temporary Powers) Act, 1946 was illegal. I accordingly set aside his conviction and sentence.

9. The trial Court made an order for forfeiting the sum of Rs. 308/6/-, which the applicant has paid as price for the gram which he had purchased, to the State. This order of forfeiture is also set aside. The sum of Rs. 308/6/- shall be refunded to the applicant. The realisation of the fine was stayed by an order of this Court, and I take it that the fine has not been realised. But in the event of the fine having been realised from the applicant, the same also be refunded.