

## Inder Chand vs State on 23 July, 1953

**Equivalent citations: AIR1954ALL55, AIR 1954 ALLAHABAD 55**

ORDER

Randhir Singh, J.

1. This is a reference by the Sessions Judge of Lucknow recommending that the conviction of Index Chand under Section 7, Essential Supplies Act for infringement of Clause 25 and 26, U. P. Foodgrains Rationing Order, 1949. and the sentence of fine of Rs. 75/- be set aside.
2. It appears that Inder Chand was the Manager of Consumers Co-operative Society shop in Mansoornagar. This Co-operative society held a licence as an authorized retail dealer and used to sell rations to card holders. On 4-12-1951, an Inspector of the Rationing Department inspected the shop and found certain irregularities. He found that rations had been given to some persons and not entered on the cards and also that certain rations entered on the cards were not given to the card holders. He also found that the accounts had not been kept correctly. Inder Chand and Lalta Prasad. were prosecuted for breach of certain provision of the U. P. Foodgrains Rationing Order, 1949, under Ss. 7 and 8 Essential Supplies (Temporary Powers) Act.
3. The defence of the accused was that he was not present in Lucknow on 4-12-1951, and as such had no knowledge of what was done by Ram Sarup who was in charge of the shop at Mansoornagar. Lalta Prasad pleaded ignorance of the affairs, as he was only a weigh-man at the shop.
4. The learned Magistrate came to the conclusion that Inder Chand being the Manager of the Consumers Co-operative Society shop could not be absolved of his liability for any acts of commission or omission and as he did not exercise due diligence to prevent the contravention of. the provisions of the order, he was liable for punishment in view of the provisions of Section 9, Essential Supplies Act. Lalta Prasad was acquitted by the Magistrate. Inder Chand then went in revision to the Sessions Judge. It was contended before him that the U. P. Foodgrains Order, 1949, had been withdrawn by the time when the case came up for hearing before the Magistrate and as such any conviction for a breach of this Order on that date was incompetent and invalid. The Sessions Judge agreed with this contention and has made the reference which is before me.
5. The learned counsel for Inder Chand, who has appeared in support of the reference made by the Sessions Judge has cited two rulings in support of the view taken by the Sessions Judge, vide -- 'Crown v. Haveli, AIR 1949 Lah 191 (FB) (A) and -- 'Emperor v. Bans Gopal', AIR 1933 All 669 (FB) (B). In both these cases the temporary Act or Ordinance under which the accused were convicted had ceased to be operative, as they had neither lapsed or were withdrawn before the date when the conviction was made. It was held in these two cases that Section 6, General Clauses Act is not attracted if a temporary Act or Ordinance lapses and no provision is made in the subsequent

legislation, if any, for the repeal of the earlier Acts or for the continuance of the liabilities incurred under the previous Act or Ordinance. None of these case's is, however, applicable, to the facts of the present case.

6. In the present case Inder Chand has been convicted under Section 7 read with S. 8, Essential Supplies (Temporary Powers) Act, which is still in force. An order known as the U. P. Foodgrains Rationing Order, 1949, was passed by the State Government which prescribed certain rules to be observed by authorized retail dealers. A breach of the provisions of this Order was punishable under the Essential Supplies (Temporary Powers) Act. It is not disputed that the offence for which the applicant Inder Chand was tried had been committed when this Order was in force. It is also not in dispute that the Act under which the applicant Inder Chand has been convicted is still in force. The effect of the withdrawal of the U. P. Foodgrains Rationing Order is that the rules made for the maintenance of accounts or for certain other matters now ceased to be operative and a breach of these rules, after the Order had been withdrawn, would cease to be an offence. Any breach already committed would not be affected by a withdrawal of this Order. The Order was in force on the date when the offence was committed in this case and the Act under which he was convicted is still in force.

6a. The rulings cited by the learned counsel for the applicant have, therefore, no application to the present case. In the reported cases the accused were convicted for offences created by the temporary Act or Ordinance and if they ceased to be operative on the date when the conviction was made, the conviction could not be upheld as there was no provision of law under which they could be convicted. The view taken by the Sessions Judge, therefore, that the withdrawal of the U. P. Foodgrains Rationing Order, 1949 would have the effect of wiping out the criminal liability already incurred by the applicant does not appear to be correct.

7. The reference was made by the Sessions Judge on the point of law referred to above, but the learned counsel for the applicant has tried to support the reference on other grounds also.

8. It has been argued on behalf of the applicant Inder Chand that he, although a Manager of the Consumers Co-operative Society shop, was not in fact looking after the affairs of the shop at Mansooranagar, which was being run by Ram Sarup a clerk, and that Inder Chand only visited the shop occasionally and inspected the accounts. He was not in Lucknow on 4-12-1951, and as such had no knowledge of what happened on the shop on the 4th December. The learned Magistrate has come to the conclusion that Inder Chand did not exercise due diligence in keeping himself in touch with the work of Ram Sarup and left the entire business of the shop to Ram Sarup. Section 9, Essential Supplies (Temporary Powers) Act provides as follows :

"If the person contravening an order made under Section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention."

It would, therefore, appear that the persons. mentioned in Section 9 will be held liable for contravention of an order made under Section 3, unless they establish that the contravention took place without their knowledge or that the contravention could not be prevented in spite of an exercise of due diligence on their part-No doubt it is difficult for a person who has to look after more shops than one to have active knowledge about the affairs of each such shops and reliance has to be placed on other persons, who were in charge of the shops. It was, however, the duty of Inder Chand to have exercised due diligence to prevent such contraventions as were alleged in the present case. He should have examined the accounts every day to satisfy himself that the accounts were kept properly and the stock was in accordance with the books. On his own showing he inspected the shop only occasionally and was concerned only with the receipt of cash. This could not be said to be an exercise of due diligence to prevent a contravention of the U. P. Foodgrains Rationing Order, 1949. It is difficult, therefore, to come to a conclusion different from the one arrived at by the learned Magistrate on this point.

9. No other point has been pressed in arguments on behalf of the applicant.

10. The applicant has been sentenced to a fine of Rs. 75/-. In view of the fact that he was managing more than one shop and had placed reliance on one Ram Sarup who Was the clerk in charge of the Mansoornagar shop, the fine imposed on Inder Chand, who is technically guilty of the offence, appears to me to be excessive. Under the circumstances I think it fit to reduce the fine to a sum of Rs. 5/-.

11. As a result, the reference made by the Sessions Judge is rejected, but the order passed by the Magistrate is modified to this extent that the sentence of fine imposed upon the applicant Inder Chand is reduced to Rs.

5/-. If the fine has been paid in full, the rest of the fine shall be refunded to the applicant.