Century Spinning And Manufacturing Co. ... vs State Of Maharashtra on 13 October, 1971

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Bench: I.D. Dua, J.M. Shelat, S.C. Roy

JUDGMENT

I.D. Dua, J.

1. These two appeals by special leave are directed against the order of a learned single Judge of the Bombay High Court dated February 26, 1970 setting aside the order of discharge dated April 29, 1969 made by the Chief Presidency Magistrate. Bombay in case No. 121/P of 1969 under Section 120B. I.P.C. read with Section 7. Essential Commodities Act and Section 7 of the said Act against the appellants. In the trial court there were four accused, (accused No. 1 being Messrs. Century Spinning and Manufacturing Co., Ltd., Bombay, running textile mills manufacturing cotton textiles, and the other three being respectively, the President of the Executive Committee of the Mills who is in over-all charge of production, the Vice-President (Works) controlling the production of cloth manufactured by the mills and authorised to sign statutory returns required to be submitted by the mills to the Textile Commissioner and other authorities, and the Resident (Executive) of the two companies (M/s. Udyog Services Ltd., and M/s. Shree Services & Trading Co) which were working as a liaison agency between the textile mills, the first accused, and the Textile Commissioner at the material time, i.e. , between October 20, 1964 and June 20, 1965. Of these two appeals one has been presented by the Century Spinning & Manufacturing Co., Ltd., and the other by the remaining three accused persons. The Company runs textile mills and as in the correspondence with the Textile Commissioner it is generally described as the Mills, we will hereafter call the appellant No. 1 as the Mill.

2. The material facts necessary for our purpose lie in a narrow compass. In the opinion of the Chief Presidency Magistrate they were mostly a matter of common ground between the parties. In this Court, however, certain differences did appear between the rival versions given at the bar, but being on minor points they do not affect the broad material features of the case. The relevant facts necessary for understanding the real controversy may briefly be stated:

3. The mill manufactures, inter alia, dhotis of a brand known as Parana Sukh and it is admittedly governed by the provisions of the Essential Commodities Act, 1955 (hereafter called the Act). Cotton

and woollen textiles are included within the definition of 'Essential Commodities' as contained in Section 2 of the Act. Section 3(1) empowers the Central Government, if it is of opinion that it is necessary or expedient so to do, for maintaining or increasing the supplies of any essential commodity available at fair prices, to provide by order for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section 2(a) of Section 3 authorises the Central Government by an order made under Sub-section (1), to regulate the production or manufacture of any essential commodity.

4. In 1946, the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946) was enacted to provide for the continuance, during a limited period, of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities. Under Section 3 of this Act the Central Government, so far as it considered necessary or expedient for maintaining or increasing the supplies in any essential commodity or for securing their equitable distribution and availability at fair prices, was empowered by order to provide for regulating or prohibiting the production, supply or distribution thereof and trade and commerce therein. The Central Government under this section, made an Order called the Cotton Textile (Control) Order 1948 which it is not disputed, has been continued in force under the subsequent statutory enactment replacing the said Act. The last statutory enactment continuing that Order is the Essential Commodities Act. Clause 20 of the Order empowers the Textile Commissioner from time to time to issue directions in writing to any manufacturer or class of manufacturers generally inter alia regarding class or specifications of cloth or yarn which they are to produce and such manufacturers are enjoined to comply with such directions. Clause 22 of that Order empowers the Textile Commissioner to specify the maximum prices or the principles on which maximum prices are to be determined and the markings to be made by the manufacturer of specified class of cloth or yarn. In exercise of the powers conferred upon the Textile Commissioner by the said Order, by a Notification No. S.C. 3656 dated October 13, 1964, he specified the principles upon which the maximum ex-factory as well as retail prices inter alia of dhotis were to be calculated. The term dhoti was defined as meaning any type of bleached cloth, whether mercerised or not, of plain weave which complied with certain specifications mentioned therein one of which was that it must have a with ranging between 71 cm. and 137 cm. By another notification No. S.O. 3657 of the same date, in exercise of powers conferred upon him by Clause 20 of the said Order, the Textile Commissioner laid down that no producer should produce, inter alia, any dhoti or saree which did not conform to the specification laid down in Schedule 11-A annexed thereto and item 94 in that schedule provided that in the production of dhotis of superfine variety (with which the court is concerned in the present case) the yarn used in the warp was to be of 100 counts in the weft of 120 counts and reeds and picks to be 88 and 80 respectively. By a third Notification No. S.O. 36658 also of the same date in exercise of powers conferred upon him by Clause (22) of the said Order, the Textile Commissioner directed that each piece of cloth the ex-factory price in respect of which had been specified must be stamped in a particular manner, containing, inter alia, the words 'controlled cloth' in red colour. These notifications, it is not disputed, though dated October 13, 1964 were to take effect from October 20, 1964. Within a few days after the date of these three notifications it was realised by the office of the Textile Commissioner that they would work hardship in respect of yarn which was already on beams in the various mills manufacturing dhotis, sarees and long cloth. The Textile Commissioner, therefore, by his circular letter dated October 30, 1964 granted temporary relaxation from the notifications Nos.

S.O. 3656 and 3657 permitting all mills holding stocks of yarn on beams to manufacture dhotis out of such beams against their control obligations even though the varieties so manufactured did not conform to the notified specification, provided that no production of the varieties not specified in the said notifications (Nos. S.O. 3656 and 3657) should take place on or after November 10, 1964 without the specific permission of the Textile Commissioner. A few days later the office of the Textile Commissioner seems to have realised another hardship occasioned to the textile mills as a result of the three notifications. The Textile Commissioner, thereupon, by a circular letter dated November 2, 1964 directed as per paragraph 17(i) that where a mill had been manufacturing any dhoti of constructional particulars not falling strictly within the specifications prescribed in the control order, the Textile Commissioner would permit the mill on application, to continue to manufacture such varieties provided that the mill had been traditionally manufacturing the same for a period of not less than three years continuously, prior to October 1964. It was added in that letter that the mills could apply to the Textile Commissioner with full details for approval and issue of Deviation Orders.

5. The appellant mill, in reply to a letter dated December 3, 1964 written by the office of the Textile Commissioner seeking information on some points regarding certain sorts or varieties of textile product stated on December 7, 1964 that the variety of their Param Sukh dhoti was under production at that time but the same would stop as soon as the stock of existing beams was exhausted. It was added in that letter that the mill had already started manufacturing dhotis of constructional particulars in conformity with those provided by the Textile Commissioner which would replace the said Param Sukh dhoti. According to the High Court, it is common ground that the mill went on" manufacturing Param Sukh dhotis which did not comply with the specifications notified by the Textile Commissioner even after the stock of beams had been exhausted.

6. On February 11, 1965 the mill by writing signed by the second accused applied to the Textile Commissioner for the necessary Deviation Order pursuant to the circular letter of November 2, 1964. On 7/11th March, 1965 the office of the Textile Commissioner asked the appellant mill for information regarding the production figures of dhotis for the preceding three years for examining its claim. On March 13, 1965 the necessary production figures for 1962, 1963 and 1964 were furnished and a request was made for early grant of the necessary Deviation Order. On April 12, 1965 the mill sent to the office of the Textile Commissioner a statement showing month-wise production of Param Sukh dhotis during the preceding three years ending with December, 1964. On May 28, 1965 the fourth accused wrote to the Textile Commissioner that from personal discussion between the representative of the mill and the officers of the Textile Commissioners Office there appeared to be some misunderstanding that Param Sukh dhotis were being manufactured by the mill during the preceding eight months. It was stated that as a matter of fact the mill has manufactured those Param Sukh dhotis up to December, 1964 and in the first quarter of 1965, they had started the manufacture of a new quality known as Sukh Data. It was further added that the mill had started production of the old specification dhotis for which a request had been made to the Textile Commissioner's Office for the grant of Deviation Order.

7. As per letter despatched on May 31, 1965 the mill was called upon to intimate the office of the Tex? tile Commissioner the quantity of Param Sukh dhotis of the constructional Pattern (100 warp,

120 waft, 88 (sic) and 84 picks) produced monthwise and packed after October 20, 1964 The mill. it appears, had a personal discussion through accused No. 4 and pursuant thereto has already furnished the necessary information on April 12, 1965. Thereafter on June 25, 1965 the Textile Commissioner issued the Deviation Order for which prayer had been made on February 11, 1965 permitting the manufacture of Param Sukh dhotis of the aforesaid constructional particulars A warning letter of the same date was however also sent to the mill along with the Deviation Order. As the Deviation Order dated 25-6 did not mention that the mill was permitted to manufacture Param Sukh dhotis of the aforementioned constructional particulars with a width of 140 cms. the mill on June HO. 1965 asked for this variation in the Deviation Order and the Textile Commissioner issued supplementary Deviation Order dated 23/26 July, 1965 permitting the mill to manufacture Param Sukh dhotis of the aforesaid constructional particulars having a width of 140 cms. In view of these two Deviation Orders the prohibition, on the production of Param Sukh dhotis appears to have stood removed with respect to the aforementioned constructional particulars and also with respect to the width of 140 cms. According to the prosecution this prohibition could only be held to have been removed with effect from June 25, 1965 when the first Deviation Order was issued, and the mill had contravened notification No. S.O. 3657 between October 20, 1964 when the statutory control was imposed and June 25, 1965 by manufacturing Param Sukh dhotis with the aforementioned constructional particulars which did not conform to Schedule II-A to the said notification and also by stamping them as controlled cloth. It is further the prosecution case that the mill had contravened notification No. S.O. 3658 read with notification No. S.O. 3656 between the aforesaid dates by manufacturing Param Sukh dhotis with the width of 140 cms. and by stamping them as controlled cloth. All the four accused persons were, therefore, charged with criminal conspiracy under Section 120B Indian Penal Code read with Section 7 of the Act and also for the substantive offence under Section 7.

8. There is no dispute that the mill did not stop the manufacture of Param Sukh dhotis of the aforesaid constructional particulars with a width of 140 cms. between October 20, 1964 and June 25, 1965. It was, however, contended on behalf of the appellants that the exemption granted to the mill by the Deviation Order was retrospective in nature and related back to the date of imposition of statutory control and, therefore, no offence was committed by them.

9. The other pleas taken by the accused and canvassed at the bar of this Court were - (i) that the Textile Commissioner had condoned the offence, if any committed, as per Deviation Order dated June 25, 1965 in which only a warning was given to the mills,' and (ii) that there was no mens rea on the part of the accused. We are not referring to the points raised in the Courts below and not pressed before us.

10. The trial Magistrate took the view that the Deviation Orders is sued in favour of the mill clearly stated that it was exempted from compliance with the directions contained in Para 8-A read with Schedule II-A of the notification dated September 22, 1949 with the result that it must be held that as far as the mill is concerned those directions had not at all been issued with respect to Param Sukh dhotis of 140 cms, and having constructional particulars in question were concerned. On this view the mill could not be said to have contravened the three notifications imposing the statutory control, by manufacturing the disputed varieties of Param Sukh dhotis from October 20, 1964 to June 25,

1965. Therefore, none of the accused persons could be held to have committed the offence complained of.

11. The Court did not consider it necessary to deal with the other contentions raised by the parties. But as those points had been argued, the Court deemed it proper to record its findings thereon. The contention that the defaults committed by the mill were condoned by the warning issued with the first Deviation Order dated June 25, 1965 was accepted by the trial Court which, after a brief discussion, came to the conclusion that the Textile Commissioner's office was never misled on any point and had dropped the matter after giving a warning about future defaults. This condonation in the view of the Court rendered the prosecution unsustainable, even if the Deviation Orders could not be taken to have permitted the continuous production from the date of the imposition of the statutory control. The contention of the prosecution that the Textile Commissioner's Office was incompetent to condone the default was not accepted. The argument on behalf of the accused that the mill had made no profit by the commission of the alleged offence and that there was, therefore, no mens rea was next considered by the Court. The contention of the prosecution that profit motive is irrelevant for considering the contravention of the control orders appeared prima facie attractive but in view of the decisions of this Court in Nathulal v. State of M. P. and in the case of Deokaran Das v. State of Bihar Criminal Appeal No. 38 of 1968, D/-26-11-1968 (SC) (unreported) the trial Court held, to quote its own words; "the mill must be deemed not to have committed any offence for any part of the relevant period, if the operation of the Deviation Orders is taken to relate back to the date of imposition of the statutory control, while it should be taken to have committed no offence from the date of his application, if the Deviation Orders are not deemed to be retrospective in their operation." if the accused had a bona fide belief that they were entitled to the Deviation Order and, therefore entitled to manufacture the dhotis then there being no guilty mind or intention to contravene the provisions of the control order they could not be held liable. The last point on the question whether the three notifications were laid before both the Houses of Parliament does not concern us now, because at the bar this point was not pressed on behalf of the appellant. The trial Court discharged all the accused on the aforesaid conclusions. The trial Court, it may incidentally be mentioned, was also impressed by the contention on behalf of the accused Nos. 3 and 4 that the contravention, if any, was committed by the mill and not by them, there being no material that these two accused persons were also controlling the production of textiles along with the accused No. 2 or were otherwise responsible for the manufacture of the traditional variety of Param Sukh dhotis. As far as accused No. 4 is concerned the trial Court observed that there was no evidence to show that Messrs Shri Services and Trading Co., were in any way concerned with the production of cloth in the mill or had any hand in controlling its manufacture. In the absence of such evidence accused No. 4 as resident executive of the liaison agency could not be taken to have any connection with the production or the manufacture of the dhotis in question. The argument that accused No. 4 had some personal discussions with the officers in the Textile Commissioner's Office did not induce the Court to hold that he had any connection with the manufacture or production of the dhotis in question.

12. On revision by the State of Maharashtra against the order of discharge, the High Court set aside that order and directed the Magistrate to frame charges against the accused under Section 120B, Indian Penal Code as well as under Section 7 of the Act.

At the outset, the High Court expressed its clear view that the Textile Commissioner's Office was not desirous of pursuing the matter of the alleged irregularities of the appellant in continuing to manufacture Param Sukh dhotis which did not comply with the notified specifications even after October 20, 1964. That office was, according to the High Court, satisfied with the warning it had issued on June 25, 1965 and this matter was raked up almost two years later when the Police filed the charge-sheet dated June 30, 1965. But the charge-sheet having been filed and criminal proceedings initiated, in the view of the High Court the law had to take its course.

13. The High Court then considered the scope and effect of Section 251-A, Criminal P.C. After adverting to some reported cases and comparing that section with Sections 207-A and 209, Criminal P.C. it took the view that under Section 251-A(2) the accused could only be discharged if, to quote its own words "no reasonable persons could come to the conclusion that there was any ground whatsoever to sustain the charge against the accused" The High Court concluded that the charge against the accused in this case could not be said to be groundless if it took the counsel five days to convince the trial Magistrate that it was so, and it took two and a half days for the counsel to attempt to convince the High Court that the charge was groundless. That Court, however, did not base its decision on this ground alone. In its opinion all the documents referred to in Section 207-A, Criminal P.C. were before the Magistrate who had, after a detailed scrutiny, written a lengthy judgment, but without discussing the statements of witnesses recorded by the Police under Section 161, Criminal P.C. This was considered to be one infirmity which exposed the order of discharge to attack on revision. In the High Court the counsel for the accused did not submit, that the Deviation Order was retrospective in the sense that it condoned the offence: that order was contended to be retrospective because the mill was told that exemption would be granted if certain conditions were satisfied and there was, therefore, no offence committed. Though the High Court did not consider this submission to be frivolous or liable to be lightly brushed aside, that Court was equally unable to hold that no reasonable person could possibly take a contrary view. This was one of the grounds on which the High Court did not agree with the order of discharge. The High Court further observed that the trial Court was not called upon at this initial stage of the proceeding to decide finally whether on a true construction of the notification, the circular letter and the correspondence, there would, on certain conditions being satisfied, be an exemption from the operation of the control order and there would therefore, be no offence at all. This question, according to the High Court, required a full argument at the hearing of the case, after the framing of the charge. In expressing a final opinion at that stage the Magistrate had in the view of the High Court, exceeded his jurisdiction under Section 251-A(2). Similarly, on the question of mens rea also a contrary view was considered by the High Court to be not only possible but highly probable and for this reason it did not agree with the learned Magistrate's conclusion that the charge was groundless. That Court finally observed that having regard to the documents refer-red to in Section 173, Criminal P.C. there appeared a certain consistency of conduct or even collaboration amongst the accused persons so far as the alleged contravention of the control order is concerned and under the circumstances it could not be said that the charge of conspiracy was groundless. It was on this reasoning that the order of discharge was set aside and the case remanded to the Court of the Chief Presidency Magistrate. These appeals have been presented under Article 136.

14. In this Court we have been taken through the relevant material on the record and it is strongly contended on behalf of the appellants that the High Court has taken an erroneous view of law and has also exceeded its power under revisional jurisdiction and that the judgment under appeal has resulted in failure of justice.

15. We may first dispose of the argument on the meaning and scope of Section 251-A, Criminal P.C. This section reads:

> (1) When, in any case instituted on a Police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in Section 173 have been furnished to the accused, and if be finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.
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> (2) If, upon consideration of all the documents referred to in Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.
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> (3) If, upon such documents being considered: such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.
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> (4) The charge shall then be read and explained to the accused and lie shall be asked whether he is guilty or claims to be tried.
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> (5) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.
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> (6) If the accused refuses to plead, or does not plead, or claims to be tried, the magistrate shall fix a date for the examination of witnesses.
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> (7) On the date so fixed the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:
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> Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination.
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> (8) The accused shall then be called upon to enter upon' his defence and produce his evidence: and if the accused puts in any written statement, the Magistrate shall file it

with the record.

(9) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination or the production of any documents or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purpose of justice.

(10) The Magistrate may, before summoning any witness on such application under Sub-section (9), require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in Court.

(11) If in any case under this section in which a charge has been framed, the Magistrate finds the accused not guilty he shall record an order of acquittal.

(12) Where in any case under this section, the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall, if he finds the accused guilty, pass sentence upon (him) according to law.

(13) In a case where a previous conviction is charged under the provisions of Section 221, Sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under Sub-section (5) or Sub-section (12), take evidence in respect of the alleged previous conviction, and shall record a finding thereon.

Though at the bar of this Court as also in the High Court considerable arguments and discussion centered round this point, in our opinion, the construction and meaning of this section so far as relevant for our purpose does not present any difficulty. Under Sub-section (2), if upon consideration of all the documents referred to in Section 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with Sub-section (3), according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code with in the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two sub-sections together it clearly means that if there is no ground for presuming that (he accused has committed an oftence, the charges must be considered to be groundless, which is

the same thing as saying that there is no ground for framing the charges. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in Sub-section (2). On the view that we have taken, we do not consider it necessary to refer to the various decided cases cited at the bar of this Court or discussed in the judgment of the High Court.

16. Coming now to the facts of this case, in our view, the question principally depends on the scope and effect of the notification dated September 22, 1949, the circular dated November 2, 1964 and the Deviation Order dated June 25, 1965. If, on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it, has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution.

17. Having cleared the ground about the legal position under Section 251-A. Criminal P.C. we now proceed to consider the effect of the relevant notifications and other orders emanating from the office of the Textile Commissioner. The notification dated November 2, 1964, so far as relevant for our purpose, reads as under:

> 17. Constructional particulars of dhotis and sarees.
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> (i) Some mills have represented that they have been manufacturing certain types of dhoties and sarees which do not fall strictly within the constructional particulars prescribed in the Control Order. Where a mill has been manufacturing any dhoti or saree of constructional particulars not falling within the specifications given in the Control Orders, the Textile Commissioner will permit the mill on application to continue to manufacture such varieties provided the mill has been traditionally manufacturing the same varieties of dhoties and/or sarees for a period not less than three years continuously prior to October, 1964. Mills may apply to the Textile Commissioner with full details for approval and issue of deviation orders.

This order clearly permits the mill in question to continue to manufacture Param Sukh variety of dhotis if it had been traditionally manufacturing the same for a period of not; less than three years continuously prior to October, 1964. The mill was, however, required to apply to the Textile Commissioner with full details for approval and issue of Deviation Orders. The right to continue to manufacture, in our opinion, was expressly conferred by this order and the application with details for approval and issue of Deviation Orders was merely a procedure prescribed for the convenience of

the authorities to check up that the right thus conferred was being correctly exercised by the mill concerned. The Textile Commissioner was not vested with any choice or discretion to refuse permission if the condition was satisfied.

18. On October 30, 1964 the Textile Commissioner's Office has issued a circular addressed to all composite mills, in which, after making a reference to the notifications Nos. S.O. 3656 and 3657 of October 13, 1964, and to D.O. No. CER/1164 of the same date, it was stated that it had been brought to the notice of that office that some mills were having some stocks of yarn on ready beams which did not conform to the specifications laid down for dhotis, sarees and long cloth. In view of this situation the earlier orders were temporarily relaxed. The circular said, to quote its own words: "In temporary relaxation of the above order it has, therefore, been decided to permit all mills holding such stocks of yarn on beams, to manufacture Dhotis, Sarees and Long Cloth out of such beams and adjust the same against their control obligations, even though the varieties so manufactured are not conforming to the required specification; provided that no production of varieties not specified in the above notifications takes place on or after the 10th November, 1964 without specific permission of the undersigned. This circular concluded with the direction that the specifications and quantities of Dhotis, Sarees and Long Cloth so produced upto November 10, 1964, should be communicated to the Textile Commissioner's Office by 25th November, 1964. It is noteworthy that before the 10th November, the notification of 2nd November had permitted the mills traditionally manufacturing dhotis or sarees of different constructional particulars to do so provided the traditional manufacture could be traced back to a period of three years continuously prior to October, 1964.

19. The appellant mill claims to have been traditionally so manufacturing Param Sukh dhotis and, therefore, according to the submission urged on its behalf, the appellant mill was entitled to continue to manufacture Param Sukh dhotis. It may be recalled that on February 11, 1965 the appellant had actually applied to the Textile Commissioner for a Deviation Order which was issued on June 25, 1965. It is no doubt true that on the same day the office of the Textile Commissioner had also written to the mill that the manufacture of dhotis sort Param Sukh having the particulars viz: 100s-120s, 88-84 without obtaining the necessary Deviation Order was a violation of the Cotton Textile (Control) Order, 1948: but in the same communication it was added that since the said sort was a traditional one. being continuously under manufacture by the mill for three years prior to October 20, 1964 a D.O. was being separately issued. Though the mill was cautioned against repetition of such irregularity it nevertheless indicates that this irregularity was not considered sufficiently serious to call for prosecution. On this material we have no hesitation in holding that the Textile Commissioner had felt fully satisfied that there was no cogent ground for prosecuting the appellant for any alleged violation of the notifications issued on October 13, 1964.

20. It was contended before us on behalf of the respondent that the contravention of the notification being a cognizable offence, the fact that the Textile Commissioner did not consider it proper to prosecute the accused person was wholly irrelevant for considering the legality of the institution of criminal proceedings by the Police and that if there was actually an offence, then the Police was fully justified in instituting the present proceedings even though more than two years had elapsed since the violation of the notifications.

21. We agree that the Police authorities are not bound by the decision of the Textile Commissioner not to take steps to prosecute the appellant company and even after the expiry of more than two years the Police could technically initiate the present proceedings, there being no legal bar. We are, however, inclined to think that the Textile Commissioner having felt satisfied that the appellants' case fell within the notification of November 2, 1964 as is clear from the Deviation Order actually issued by this office, the appellant must be held not to have violated any provisions of the notification dated October 13, 1964 with any guilty mind assuming there was technical violation thereof. We are unable to hold that there was any mens rea on the part of the appellant mill with the result that the prosecution for the offence charged must be considered to be groundless. In other words, there was no ground for presuming the appellant company to be guilty of the criminal offence charged. The learned Chief Presidency Magistrate, in our opinion, rightly came to this conclusion on the material on the record and he did not exceed his jurisdiction in doing so. That, for an offence violating the Essential Commodities Act, mens rea is necessary, has been decided by this Court in Nathulal's case (supra) and no argument to the contrary was ad dressed at the bar. It may be borne in mind that in this case there is no question of any further evidence being led for bringing home the charge to the appellants If on the existing material there is no ground for presuming them to be guilty then there can hardly be any point in framing' charges and going through the formality of a trial and then acquitting (hem. Such a course would merely result in unnecessary harassment to the appellants without serving the cause of justice.

22. The order of discharge made by the Chief Presidency Magistrate did not suffer from any serious legal infirmity and it was eminently a just and fair order. The High Court was, therefore, clearly in error in reversing that order on revision and the reasons given by it in support thereof are unsustainable. The impugned judgment will cause grave injustice to the appellants.

23. The result, therefore, is that these appeals must succeed and allowing the same we set aside the order of the High Court and restore that of the learned Chief Presidency Magistrate discharging the appellants.