

(1961) 01 KAR CK 0006
In the Karnataka High Court

Baburao Balwant Kurubet

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 25-01-1961

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1962) CriLJ 830

Hon'ble Judges : H. Hombe Gowda, J

Bench : Single Bench

Judgement

H. Hombe Gowda, J.—This Criminal Revision Petition is directed against the judgment of the Sessions Judge, Belgaum in Criminal Appeal No. 94 of 11959 confirming the conviction and sentence passed against the petitioner for an offence u/s 7 of the Essential Commodities Act, by the Judicial Magistrate First Class, Hukeri in Criminal Case No. 543 of 1958. The learned Sessions Judge also confirmed the order passed by the learned Magistrate confiscating to the State the amount realised by the sale of the rice bags seized from the truck belonging to the petitioner.

2. The petitioner was found transporting 64 bags of rice in his truck on 23rd of April 1958 when the same was stopped by the Head Constable near the tollnaka of Sankeshwar. The Head Constable had information to the effect that the petitioner was transporting rice to the State of Bombay. It is on that information he was lying in wait for the petitioner near the tollnaka and immediately the truck came near the tollnaka he stopped the vehicle and found "64 bags of rice in it. After necessary formalities the bags of rice were seized and. a charge-sheet for an offence punishable u/s 7 of the Essential Commodities Act, 1955 was placed against the petitioner in the court of the Judicial Magistrate First Class, Hukeri.

The defence of the petitioner was that he was transporting these 64 bags of rice to Nipani and that those bags belonged to D.Ws. 1 and 2 examined by him. The learned Magistrate did not accent the defence of the petitioner. He held that the

version given by the petitioner that he was proceeding to Nipani and intended to unload the bags of rice at Nipani was false. The learned Magistrate held further that the indications were that the petitioner was transporting 04 bags of rice to the State of Bombay without a licence and had thereby infringed Section 7 of the Essential Commodities Act, 1955. The learned Magistrate convicted the petitioner and sentenced him to pay a fine of Rs. 600/- and in default of the payment of fine to suffer simple imprisonment for one month.

The learned Magistrate further directed that the amount realised by the sale of 64 bags of rice seized by the police should be confiscated to the Government. The petitioner preferred an appeal against his conviction and the order of confiscation to the Sessions Judge, Belgaum in Criminal Appeal No. 94 of 1959. The learned Sessions Judge dismissed the appeal. It is against this judgment confirming the conviction and sentence passed against the petitioner and also against the order directing the confiscation of the amount realised by the sale of 64 bags of rice that the present revision petition has been filed by the petitioner.

3. It is contended by Mr. Krishnaswami Rao, the learned Counsel for the petitioner that the courts below were entirely wrong in assuming without any basis that the truck in which the bags of rice were being carried was proceeding, to the State of Bombay. He urged that the Courts below were entirely wrong in rejecting the unimpeachable evidence adduced by the petitioner to establish that he was taking the bags of rice to Nipani and that they belonged to D.Ws. 1 and 2 examined by him.

(After dealing with evidence His Lordship held). The courts below have rejected the contention of the petitioner that the bags of rice in question belonged to D.Ws. 1 and 2 and that the petitioner was only a carrier for hire and that he was actually carrying the bags of rice to Nipani, This is a finding of fact. Whatever be the force in the contention of Mr. Krishna Swamy Rao, I am afraid sitting on the revision side I cannot interfere with this finding of fact. Therefore, we must proceed on the basis that 64 bags of rice belonged to the petitioner; that he had loaded them into his truck and was proceeding in the road that leads to the State of Bombay; that the vehicle was stopped near Sankeshwar toll naka by the Head Constable who was on duty near the place and that the defence of the petitioner that he was taking these bags of rice to Nipani has not been established.

4. The question for consideration is, whether on the facts proved in the case, the petitioner can be found guilty of the offence punishable u/s 7 of the Essential Commodities Act. It is urged by Mr. Krishnaswami Rao the learned Counsel for the petitioner that even assuming for the sake of arguments the petitioner was actually transporting these bags of rice in contravention of Section 7 of the Essential Commodities Act, the act of the petitioner cannot amount to an offence inasmuch as he has not actually transported the bags of rice out of Mysore State. In other words his contention that it is quite possible for the Petitioner to have changed his mind and as a good citizen brought back the bags of rice to the State of Mysore. It is admitted that the border of the State of Bombay is about a

mile away from the tollnaka at Sankeswar. It is therefore, urged by Mr. Krishnaswamy Rao that because the vehicle was proceeding in the direction of the State of Bombay and was stopped at the tollnaka at Sankeswar it cannot be presumed that the petitioner would have proceeded towards Gadhinglaj side and entered the State of Bombay and that until and unless it is established that the petitioner had in contravention of the provisions of Section 7 of the Essential Commodities Act, in fact transported them out of the state, he cannot be held liable u/s 7 of the Essential Commodities Act.

In support of this contention Mr. Krishnaswamy Rao relied upon the decisions of the several High Courts. In *The State v. Narain Singh* AIR 195S MB 216 a Division Bench of the Madhya Bharat High Court dealing with a case somewhat similar to the one before me observed as follows:

From the evidence of the prosecution witnesses themselves, it is clear that the cart in which the respondents were carrying wheat and jawar was stopped by the authorities; at a place in the Madhya Bharat itself and that this place "which was at a distance of about two furlongs from the border of the Central Provinces was also on the way to Kamodia Basoda a village situated in the Madhya Bharat itself. It is clear from this evidence that the accused had not exported the foodgrain to Central Provinces. It cannot be held from this evidence that the accused were attempting to export without a permit, the wheat and Jawar which was in their cart.

It was strenuously contended by Mr. Krishnaswami Rao that the facts in the instant case are similar to the facts established in the case that was before their Lordships of the Madhya Bharat High Court and that the tests applied by their Lordships in that case should be applied in this case and it should be held that the prosecution had failed to establish that the petitioner was exporting the bags of rice to the State of Bombay. The next decision on which reliance was placed is one reported in *Narayanaswami Pillai Vs. Emperor*, wherein Walsh J, dealing with a case in which a person was found carrying opium in contravention of the provisions of the Dangerous Drugs Act, held that the question whether there was attempt to commit a crime or whether there was only "preparation" for its committal is a question of fact which¹ must be decided on the facts of each case.

In the course of his judgment the learned Judge made the following pertinent observations:

In the present case I think there is no doubt that there was nothing more than a preparation.... One important consideration in such case, is whether there was a locus penitentiae. How far this can be stretched in favour of the accused is seen from *Queen Empress v. Ramakka* ILR 8 Mad 5 where a woman ran to a well evidently with the intention of committing suicide and was stopped and it was held that this was not an attempt to commit suicide. In the matter of *R. MacCrea* ILR 15 All 173 seems to be a case which has gone far in the other direction; but even there it is stated at p. 180:

Again the attempt once begun and a Criminal act done in pursuance of it towards the commission of the act attempted, does not cease to be a criminal attempt in my opinion, because the person committing the offence does or may repent before the attempt is completed.

It is on the basis that in that case there was-likelihood of the petitioner changing his mind and was not transporting the opium His Lordship allowed the revision petition and acquitted him. Govinda Menon J. (as he then was) In Re: Bavaji alias Abdul Muhammad, dealing with a case tailing u/s 7(i) of the Essential Supplies (Temporary Powers) Act observed as follows:

In order to constitute an attempt to commit an offence there must first of all be an intention to commit the crime, a commencement of the commission and an act done towards the commission. Neither the mere forming of the intention to commit the crime nor the mere preparation for an offence is punishable. The dividing-lines between a mere preparation and an attempt to commit a crime may be rather thin in some cases and the question whether there has been an attempt or only a preparation to commit it is to be decided on the facts of each particular case. One important consideration in such case is whether there was a *locus penitentiae*.

In arriving at this conclusion His Lordship relied upon the observations referred to above in *Narayanaswami Pillai Vs. Emperor*, . In the case before His Lordship, as in this case it was proved, by the prosecution that four carts carrying paddy were found near a river flowing between the Tanjore and the Trichinopoly Districts and at a distance of six furlong, from the Bank and near a place used as a cart track to proceed to Trichinopoly Dt. It is on the basis that he was transporting paddy to Trichinopoly Dt. the prosecution placed a charge-sheet against the petitioner in that case and he was convicted by the Additional First Class Magistrate, Kumbakonam. The conviction and sentence passed against the petitioner were concerned in appeal by the Sessions Judge, West; Tanjore. Govinda Menon J. allowed the petition holding that it is quite possible that the four carts were intended to go to Kumbakonam to deliver the paddy as suggested by the accused.

Mr. Shankar Chetty the learned Additional Assistant Advocate-General appearing for the State has not been able to cite any decision before me which has taken a contrary view. I am impressed with the reasons adopted by His Lordship in the Madras case. I am of the opinion that the prosecution had failed to establish that the petitioner was attempting to transport these 64 bags of rice from out of this State into the State of Bombay. The conviction of the petitioner cannot be supported and is liable to be set aside.

5. In the result, therefore, for the reasons stated above this Criminal Revision Petition is allowed. The conviction and sentence passed against the petitioner are set aside. The order of confiscation passed also is set aside and the money realised by the, sale of these bags of rice is ?ordered to be paid to the petitioner.

The fine amount, if paid shall be refunded to the petitioner.