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(1949) 06 AHC CK 0003

In the Allahabad High Court

Case No : Criminal Revision No''s. 1047 to 1049 and 1078 to 1080 of 1947

Binod Behari Lal and Another — APPELLANT

Vs

Rex — RESPONDENT

Date of Decision : 08-06-1949

Acts Referred:

Citation : AIR 1950 All 145

Hon'ble Judges : Malik, C.J

Bench : Single Bench

Advocate : Gopal Behari and P.C. Chaturvedi, for the Appellant; K.L. Misra, Deputy Government Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

Malik, C.J.—These connected revisions have been filed by Benod Behari Lal and Amrit Lal Saraiya. Amrit Lal Saraiya was the Chief Goods Clerk at Agra Port Railway Station, B. B. & C. I., and Binod Bahari Lal was the loading clerk at the same station. The applicants have been convicted under the Government of India Sugar and Sugar Products Control Order, 1943, Clause 8, for having accepted for despatch sugar from the United Provinces to Indore without the necessary permit.

2. The Government of India Sugar and Sugar Products Control Order, 1943, Clause 2 (f) defines sugar as meaning, (i) any form of sugar containing more than 90 per cent. of sucrose; (ii) any sugar of crystalline structure. If, therefore, sugar has sucrose contents exceeding 90 per cent. or is of crystalline structure, it comes under this Order. Clause 8 of the Order provides that :

"No sugar shall, after such date as the Controller may notify in this behalf, be offered for transport by railway, or in any manner whatsoever by land or water by a consignor or accepted by a railway servant or by any person whatsoever for transport except under a permit issued by the Controller in such form and subject to such conditions and in respect of such areas as he may from time to time prescribe," Learned counsel for the applicants has urged that there was no notification issued by the controller as required by this clause and the previous notification dated 10th October 1942, issued in pursuance of Clause 5, Sugar Control Order, 1942, must be deemed to have lapsed after the Sugar Control Order, 1942, was superseded. It is not necessary for me in these cases to go into that question because the prosecution must fail on another ground.

3. Certain bags containing what was described as shakkar were booked from Agra Fort Station to Indore under permits from the Deputy Regional Food Controller, Meerut. The goods were tendered by one Parbhu Dayal, who was the servant of a firm Babulal Chhoteylal at Indore. These permits were also for "shakkar". In the forwarding notes and the indents filled in by Parbhu Dayal the contents of the bags were described as shakkar. On receipt of these bags, the Chief Goods Clerk made out indents for wagons. These indents were D-11, P-A and P-B. In all these it was entered that the wagons were required for despatch of ''sugar''. It appears that the railway have two rates. Rupee 1-1-5 per maund is charged as freight for transport of "sugar" from Agra Fort Station to Indore, while Re. 1 is charged as freight for "jaggery powder". Freight was charged at the rate of Re. 1-1-5. From the fact that Amrit Lal had indented wagons to transport sugar and had charged freight at Re. 1-1-5 the learned Sessions Judge came to the conclusion that he must have known that the goods that were being transported were sugar of the quality mentioned in the Control Order. Learned counsel states that the attention of the learned Sessions Judge was drawn to the B. B. and C. I. Tariff Manual, Part I, which sets out the rates at which various goods are classified for despatch, and "sugar" in this Tariff Manual is said, to include shakkar, but not ground sugar or powdered jaggery. According to the Tariff, therefore, Amrit Lal was entitled to treat as sugar the goods that were described as shakkar. The conduct of Amrit Lal, therefore, cannot amount to an admission that the sugar or shakkar contained sucrose more than 90 per cent. or crystalline.

4. In the complaint the goods were described by the prosecution as khandsari sugar and that term has been adhered to throughout as describing the goods that were being sent. The learned Sessions Judge has said that there was overwhelming evidence that the commodity received at the station was khandsari sugar. The learned Deputy Government Advocate is unable to point to any such evidence. The only witness who said that the sugar was khandsari sugar was Parbhu Dayal, who may be treated as an accomplice and was, at one time, under arrest by the police but was not prosecuted. He was the person who had booked the goods as agent.

5. In the Government of India Sugar and Sugar Products Control Order, 1943, there is Clause 4 (1) which is as follows :

"If the Controller has reason to believe that the production of special type of sugar or sugar products is likely to affect adversely the production of adequate quantities of ordinary sugar, he may, by general or special order, prohibit, or limit

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to such quantities as may be specified in the Order, the manufacture by any producer or by producers generally of such types or grades of sugar or sugar product as the Order may specify, and no producer to whom such order applies shall manufacture any sugar or sugar products in contravention thereof." Sub-clause (2) of Clause 4 is to the effect:

"For the purposes of Sub-clause (1), producer includes at person carrying on the business of manufacturing any form of sugar containing more than 90 per cent. sucrose including khandsari sugar, desi sugar and bura."

6. This does not, to my mind, affect the definition of ''sugar'' in Clause 2 (f) or the meaning of the word ''sugar'' in Clause 8, and before a man can be prosecuted for contravention of the Sugar Control Order, it must be proved by the prosecution that the sugar contained more than 90 per cent, of sucrose or was of crystalline structure.

7. The prosecution remained content in this case by describing the sugar as khandsari sugar and made no attempt to prove either the sucrose contents of it or the nature of its structure.

8. In holding that the sugar was khandsari sugar the learned Sessions Judge has relied on certain pieces of evidence which appear to me to be wholly inconclusive. He has relied on the fact that freight was charged at Rs. 1-1-5. I have already said that that was because the B. B. & C. I. Tariff provided that shakkar was to be treated as ''sugar.'' He has relied on the customs charged at the barrier at Indore. Duty is charged at Indore on sugar at Rs. 3-2-0 per maund while the duty on gur is only As. 0-12-0 per maund. Nobody has said that gur was sent, and even if the consignment was of shakkar the duty might be charged on it at the higher rate. The-learned Sessions Judge has relied on the so-called admissions made by Amrit Lal in indenting wagons for sugar. I have already said that unless the sucrose contents or the nature of the structure is proved the applicants cannot be convicted.

9. The learned Deputy Government Advocate-has said that it must be presumed that all sugar contains more than 90 per cent. of sucrose. I do not know whether that is so or not, but from the definition of the word ''sugar'' in the Government of India Sugar and Sugar Products Control Order, 1943, which I have quoted, and the definition of the word ''gur'' in the U. P. Gur Control Order, 1945, this contention does not seem to have any force. Gur is defined in the U. P. Gur Control Order of 1945, Clause (2) (b) as "including shakkar, rab, mijadansa, and any form of sugar containing less than 80 per cent. of sucrose, and also convertible molasses, that is, khandsari molasses which are the residual products of open-pan sugar factory."

Reading these two definitions it would be clear that sugar may have more or less than 90 per cent. of sucrose, and if it has more than 90 per cent. of sucrose, it comes under the definition of ''suga'' in the Government of India Sugar and Sugar Products Control Order, 1943, and if it has less than 90 per cent. of

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sucrose, it comes under the definition of gur in the U. P. Gur Control Order, 1945. According to the learned Sessions Judge, the terms khand and shakkar are clearly understood in the United Provinces and shakkar is powdered jaggery, while khand is sugar manufactured in a certain way. I do not know how far the learned Sessions Judge is correct as in certain parts of the United Provinces ''sugar'' is not known as khand. Shakkar means at Allahabad, at any rate, brownish sugar and does not necessarily mean powdered jaggery. We cannot go by the popular meaning of these terms which vary from place to place in the Province. It is best to go by the definition contained in the Control Orders. It was for the prosecution to prove that these bags contained sugar, the sucrose contents of which were more than 90 per cent. or that it was crystalline sugar. No attempt was made to prove this, and it was assumed that simply because some of the prosecution witnesses described the contents of the bags as khandsari sugar the Courts should assume that the goods satisfied the definition given in the Government of India Sugar and Sugar Products Control Order. In a criminal trial the prosecution must prove that the accused is guilty and in the absence of any evidence that the bags contained goods, the export of which was prohibited under the Sugar Control Order, I fail to see how the applicants can be convicted.

10. Though the applicants were not charged with conspiracy, the learned Sessions Judge has assumed that there must have been a conspiracy as the applicants come from the place in Gujrat as the merchants and are Gujrat is. If Amrit Lal was in the conspiracy it is unlikely that be would have despatched the goods as sugar and charged the higher rate. The learned Sessions Judge has remarked that if he had used the word shakkar and not sugar, the railway authorities would not have given him a whole wagon. In two of the cases whole wagons were not required; it is only in the third case that a whole wagon was needed. The learned Deputy Government Advocate has not been able to explain why it was necessary to describe the commodity as ''sugar'' to get a whole wagon and neither counsel was able to point out on what this conclusion of the learned Sessions Judge was based.

11. The learned Deputy Government Advocate admits that there is no evidence to prove that the sugar contained more than 90 per cent. of sucrose or that it was of crystalline structure. The prosecution must, therefore, fail.

12. The revisions filed by Amrit Lal and Binod Behari Lal are allowed and their convictions and sentences are set aside. The applicants need not surrender to their bail bonds which are hereby cancelled. The fines, if realised, must be refunded to them.

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