

---

**(1968) 09 GUJ CK 0002**  
**In the Gujarat High Court**

Jeshingbhai Nathabhai and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

---

**Date of Decision :** 02-09-1968

**Acts Referred:**

Essential Commodities Act, 1955 — Section 7

**Citation :** (1970) CriLJ 100 : (1970) 11 GLR 47

**Hon'ble Judges :** V.R. Shah, J

**Bench :** Single Bench

---

**Judgement**

V.R. Shah, J.—Criminal Appeal No. 516 of 1968 is brought by the two appellants who were original accused Nos. 1 and 2 respectively in the trial Court in Criminal Case No. 2095 of 1967. The material facts out of which this appeal arises may be shortly stated.

2. On 19th September 1967 at about 4 A.M. complainant Rhematkhan, who is a Head Constable attached to the Monogram Chowkey was on patrol duty along with three constables including one Somabhai. When they came to a place near crossroads adjacent to Amritlal Estate, they found one truck bearing G T D 2811 coming from O. K. Karkhana side. The truck was detained and on enquiry it was found that the truck was driven by accused No. 2. accused No. 1 was found sitting by the side of the driver. We are not concerned with accused Nos. 4 and 5 who have been acquitted. There were 60 bags of paddy weighing more than 4200 killograms. As neither accused No. 1 nor accused No. 2 had any pass or permit to bring the paddy bags within the limits of the city of Ahmedabad, the police seized that truck and the paddy bags therein and thereafter a case was filed against the two appellants for having contravened the provisions of Rule 4 of the Gujarat Rice (Export Control) and Paddy (Movement Control) Order, 1966 (hereinafter referred to as "the Order"), as amended by the Notification No. GTH.121(A)/ ECA-1146-9742-B dated October 13, 1986. The contravention of that Rule 4 in the above Order is made punishable u/s 7 of the Essential Commodities Act, 1955 (herinafter referred to as "the Act"), which provides not

only for punishment of imprisonment and fine to the offender, but also for the penalty of the confiscation of the material in respect of which the offence is committed and of the receptacles or the conveyance in which the said material is carried. The appellant No. 1 admitted that he was in the truck, but his case was that he wanted to go to Kapadvanj and as this truck was going to Lambha he was permitted by the owner of the said truck to sit in the said truck. Appellant No. 2 stated that he was driving the truck on hire at the instance of Dasrathbhai and that he had committed no offence.

3. The learned trial Magistrate convicted each of the two appellants for the contravention of Rule 4 of the Order and he sentenced appellant No. 1 to six months' rigorous imprisonment and to pay a fine of Rs. 1,000/-, in default to suffer one month's rigorous imprisonment. He also sentenced appellant No. 2 to two months' rigorous imprisonment and to pay a fine of Rs. 500/- in default one month's rigorous imprisonment. He also ordered confiscation of the paddy as well as the truck in which the paddy was being carried. The original accused Nos. 1 and 2 have filed Criminal Appeal No. 516 of 1968 against the order of their conviction, and sentence; while Criminal Appeal No. 581 of 1968 is filed by original accused No. 5 and one minor Satishbhai Jivabhai who claim to be the manager and owner respectively of the said truck, and their appeal is directed against the order of confiscation of the vehicle to the Government.

4. The admitted facts are that this truck containing bags of paddy was proceeding from the village Kuha, a place in Ahmedabad District, to Lambha, a place also in the said District. There is also no dispute that the truck was detained at the crossroads near Amritlal Estate. This Amritlal Estate and the Crossroads where the vehicle was detained are, as stated by the prosecution witnesses, within the city limits of Ahmedabad. There is no dispute on this point also. There was admittedly no pass or permit either with accused No. 1 or accused No. 2 to transport these bags of paddy to a place in Ahmedabad. The only question that arises for decision in this appeal is whether on these facts the appellants can be said to have contravened the provisions of Rule 4 of the Order. Rule 4, as amended subsequently, in so far as material for the purpose of this appeal, reads as follows:

No person shall move, or attempt to move, or abet the movement of paddy from one place in the Ahmedabad District excluding Ahmedabad City to any place in the Ahmedabad City, whether by road, rail, water or air, except under and in accordance with a permit issued by the State Government or by the Director of civil Supplies, Gujarat State or by the Director of Food, Gujarat State or by any officer authorised by the State Government, in this behalf.

Rule 4 thereafter proceeds to mention certain provisos, but I am not concerned with any of these provisos in this appeal. The charge mentions that the bags of paddy were "trans-ported" from village Kuha to Ahmedabad City. The evidence of the complainant as well as witness Somabhai makes it quite clear that the truck was in actual motion when it was stopped by the complainant Rhematkhan at the

crossroads near Amritlal Estate. The evidence of Somabhai makes it also dear that the truck was bound for Lambha. There is no other evidence on the record contrary to the facts stated by the witnesses as aforesaid. The evidence, therefore, makes it crystal clear that the truck was transporting paddy bags from Kuha to Lambha and while doing so, the truck was actually moving through a portion of the city of Ahmedabad when it was stopped by the complainant near the crossroads at Amritlal Estate.

5. I will first deal with the charge actually made against the appellants. The charge is that the appellants were transporting paddy from Kuha to Ahmedabad city. So, the first question is whether, in view of the facts established in this case, it can be said that the appellants transported paddy from Kuha to Ahmedabad city. This point is concluded by a decision of the Bombay High Court in the case of Emperor Vs. Dagadu Shetiba, . The Bombay High Court was then considering the provisions relating to the transportation of liquor under the Bombay Abkari Act (Bom V of 1878). The case dealt with the alleged transport of a certain quantity of liquor from Jogeshwari to poona and in doing so the accused travelled by rail and the railway passed through a portion of Bomby City and the accused had to change trains at Dadar in Bombay. The accused was, therefore, Charged for having transported liquor from Jogeahwari to Bombay and thus he committed an offence of importing liquor from a lower to a higher still-head duty area. The question that arose for consideration of the Court in that case was whether it can be said that the accused in those circumstances committed an act of "transporting" liquor from Jogeshwari to Bombay. Dealing with this question, the learned Chief Justice, speaking for the Division bench, observed as follows:

When the Bombay Abkari Act, 1878 speaks of transport from one place to another it means transport from the starting point to the ultimate destination. It is a question of fact for the court to determine what the destination may be. If a man comes to a place and stays there for an appreciable time--and what amounts to an appreciable time--would have to be considered in relation to the purposes of the act the Court might hold that that place was the destination although it appeared that the journey was to be resumed subsequently. But merely passing through a place in the course of a journey does not amount to transporting to that place.

6. In so far, therefore as the charge speaks of transporting the bags of paddy from Kuha to Ahmedabad city, the charge obviously fails, as the prosecution evidence itself shows that the transport was from Kuha to Lambha and that the truck was merely passing through the Ahmedabad City on its way to Lambha.

7. Mr. Thakar, however, painted out that Rule 4 of the order does not speak of "trans. port" and emphasised that the words used in Rule 4 refer to "moving" paddy from one place to another; and he says that whenever there is a movement of paddy from a place outside Ahmedabad city to a place inside Ahmedabad city, the contravention of Rule 4 is committed, if there is no pass or permit. Mr. Thakar stated that the ultimate destination of that movement may be

a place outside Ahmedabad city, but that would not make any difference to the interpretation of the words used in B. 4. No authority was shown to me in support of this argument by Mr. Thakar. It is no doubt true that the words used in the Bombay Abkari act and the words used in B. 4 of the Order are not same. The word "transport" is used in the Bombay Abkari Act, while the word "move" is used in B. 4 of the Order. In the Bombay Abkari act the word "transport" is defined as meaning "to move from one place to another place." The word ""move" is not defined in the order; but Rule 4 refers to moving paddy from a place outside Ahmedabad city to a place within it. Rule 4, therefore, does not refer to "movement" simpliciter; it refers to that kind of movement which originates at a particular place and ends at another place. What is to be looked at is (i) movement from a place and (ii) movement to a place. The words used in Rule 4 therefore, deal only with "transport" and nothing else. There cannot be a transport of goods unless the goods are moved from one place to another; and if goods are moved from one place to another, then there is certainly a transport of the goods. Even if the paddy bags were to be moved from one place to another there will necessarily be included therein movement of the paddy not only from the place of origin but also movement of it through every intervening place until it reaches the final place of destination where the movement comes to an end. Rule 4 takes notice of only the initial movement from a place and the final movement to a place; and it does not deal with the movement through intervening places. In my opinion, therefore, on the facts which are not disputed and which are established by the prosecution evidence itself, there was no movement of paddy from Kuha to a place in Ahmedabad City. The movement which is restricted by Rule 4 of the Order is that movement which commences at a particular point outside Ahmedabad City and which comes to an end at some place in Ahmedabad City. In other words, if the final destination of the goods which are moved is in Ahmedabad City, then there is a movement to a place in the Ahmedabad City. If the final destination of the goods which are in movement through Ahmedatad City is not a place within Ahmedabad city, then there is no movement to any place in Ahmedabad city, even if the goods were for the time being moving over a place in Ahmedabad city. In my opinion, therefore, on the facts found in this case, no offence of contravening E. 4 is committed. It is not, therefore, necessary to go into the other questions raised on behalf of appellant No. 1, namely, that he was merely travelling in that truck with the permission of the owner of that truck, or that he was not the owner of the goods.

8. Since no offence is proved to have been committed by any of the appellants it follows that no order of forfeiture of the vehicle or the bags of paddy can be passed u/s 7 of the Act.

9. In the result, therefore, both the appeals are allowed. The order of conviction and sentence passed against the appellants Nos. 1 and 2 in Criminal Appeal No. 516 of 1968 is set aside and they are acquitted of the offence with which they are charged. Fine, if paid, should be refunded to them. Both the appellants are on bail. Their bail bonds are cancelled. The order of confiscation of the paddy

bags and the truck is also set aside. The bags of paddy which are with the Government should be returned to the witness Nandkumar Chandulal Shah of Naroda to whom they belong. The truck has been already restored to the appellants in Appeal No. 581 of 1988. A bond has been taken in respect of that truck. That bond stands cancelled.