
(1946) 10 AHC CK 0006
In the Allahabad High Court
Case No : Criminal Miscellaneous 680 of 1946

Nand Ram Agarwala

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 21-10-1946

Acts Referred:

Cotton Cloth and Yarn (Control) Order, 1943 — Clause 10
Criminal Procedure Code, 1898 (CrPC) — Section 561A

Citation : (1946) 10 AHC CK 0006

Hon'ble Judges : Malik, J

Bench : Single Bench

Advocate : P.L. Banerji and Mr. Ram, for the Appellant; Vishwa Mitra, Government Advocate for Crown, for the Respondent

Judgement

Malik, J.—This is an application on behalf of Nand Ram Agarwala who has been prosecuted u/s 81 (4) of the Defence of India Rules for having contravened certain provisions of the Central Cotton Cloth and Yarn (Control) Order, 1943. It is prayed that the two criminal cases that have been started against him should be quashed and he should be discharged, or in the alternative it is prayed that the cases be transferred to some competent Magistrate outside the district of Ghazipur.

2. The facts of this case, so far as they are not disputed, are as follows:

The Government of India was, from time to time, purchasing large quantities of yarn from the mills for the Government of China. The yarn was delivered to Pekin Syndicate Ltd., at Ghazipur for despatch. In the year 1944 a large amount of excess stock remained in the hands of the Syndicate which was sold with the approval of the Textile Commissioner, and thus 1305 bales were sold by auction on July 29, 1944. Out of these 1305 bales 409 bales were purchased by the accused Nand Ram Agarwala.

3. These bales were not tex-marked by the manufacturers, nor did they bear any

texmarks by the dealer who may be taken to have been the Pekin Syndicate Ltd., at the time when the bales were purchased by the accused. There were certain terms embodied in the conditions of sale, and I am informed by the learned Government Advocate that these terms were incorporated with the consent and approval of the Textile Commissioner.

4. The relevant clauses in the conditions of sale were:

3. Time of T. C. B. Marking allowed upto end of August, 1944.

4. After T. C. B. Marking period lapses, i.e., August 31, 1944 then 3 months free time for delivery will be given, thereafter storage will accrue at Re. 1 per bale per mensem.

5. All the yarn will lie at the risk and expense of the purchasers....

7. All the bales will be marked with the Ex-Mill Ceiling Price and the Ceiling retail prices as on date of auction.

5. Before I proceed further, I may mention that in a letter, Ex. 22, written by the Deputy Secretary to the Government to the District Magistrate of Ghazipur it was mentioned that directions had been issued to the District Magistrate of Ballia, Azamgarh and Benares to direct their Piece Goods Inspectors and the other local staff to stamp the cloth and yarn sold by auction from the godown of the Pekin Syndicate Ltd. and the Deputy Secretary mentioned that he hoped with the assistance of this staff the stamping of the cloth would be done within two weeks. It was thus contemplated that the marking would be completed and yarn so marked delivered to the purchaser in August, 1944. It was further mentioned that the purchasers should be told that before the yarn was put on sale at destination they must insert a slip in each bundle, failure to do which would lead to the confiscation of the yarn at the destination. These slips, I am told, had to be printed by the Supply Department and furnished to the accused for insertion in the bundles.

6. The Cotton Cloth and Yarn (Control) Order did not contemplate a case where the yarn would be acquired by the Government direct from the mills and it would not bear the tex-marks which were required under Clause 10 of the said Order. Clause 10 provides that

the Textile Commissioner may, by notification in the Gazette of India, specify

(c) The markings to be made by the manufacturers and dealers on any class or specification of cloth or yarn manufactured or sold by them and the time and manner of making those markings.

7. There are two notifications that were issued by the Textile Commissioner in accordance with the provisions of this clause. One concerns the dealers and the other the manufacturers of cotton cloth and yarn. We are not concerned in this case with the notification which referred to the manufacturers of cotton cloth and yarn. The relevant portion of the notification which referred to the dealers of yarn

was in these terms:

...cloth or yarn not disposed of within the period specified in Clauses 14 (1) (b) and 14 (8) (b) of the said Order may be kept and sold by a dealer, namely;

(1) Such cloth or yarn as aforesaid shall not be kept or sold unless it bears the special marking stamped or impressed upon it by the Provincial Government which has seized it or to which it has been surrendered for the purpose of such marking.

8. The rest of the notification provided for the manner of marking to which I will come later in the judgment. The proviso to Clause 15A of the notification then provided that

no such cloth or yarn shall be kept undisposed of by any dealer, or by any person holding on behalf of a dealer, for more than 6 months after the date of such marking.

9. Under the terms of the sale which I have already quoted the marking was to be done within August 31, 1944. This marking consisted of putting the tex-mark, which, in this case, had to be a map of India with letters T. C. B. on the bales along with the month and year marking and certain printed slips had to be attached to the bundles inside the bales-I am informed that there are usually 40 bundles in each bale. The slips and tex-mark also contained the ex-mill ceiling price and the ceiling retail price. The idea behind these markings and these printed slips, which were to be attached, evidently, was to prevent black marketing and hoarding so that the manufacturers and the dealers may be obliged to sell the goods within the period provided and may not be able to keep them back in the hope that they would get better prices later and the price had to be marked on the bale and included in the bundle so that the purchaser may know what was the control ex-mill and retail price of the goods.

10. It is now admitted that the officers of the Government did not know these prices, that is, the ex-mill ceiling price and the ceiling retail price, which was prevailing on the date of the auction, till September 23, 1944, and it was after they came to know of these prices that the order was placed for printing of the slips. I was informed by Mr. Banerji, learned Counsel for the accused, that the slips were received in the Supply Department on October 2, 1944. The learned Government Advocate objects that there is nothing on the record to show when the slips were received. We can, however, take it that the slips were received by the Supply Department within a few days of the date of the order, that is, sometime after September 24. It is the case on behalf of the accused that the tex-marks were not put on the bales till November 23, 1944. It was admitted by a witness for the prosecution- and it was also conceded by the special counsel engaged by the prosecution-that the printing of the slips commenced on September 24, 1944, We can, therefore, take it that the slips could not have been handed over to the accused till a few days after that date.

11. As regards the tex-marks the case for the accused was that the tex-marking was not completed till November 23, 1944. Learned Counsel has shown to me an order of the Trying Magistrate dated June 27, 1946, in which he mentioned that it had been clearly admitted by Mr. Mohd. Waqil, prosecution witness, that the tex-marking actually went on up to November 11, 1944, and then the Magistrate said that he was fully prepared to concede that the actual tex-marking on these bundles might be taken to have been done on the last date of tex-marking of slips as stated by Mr. Mohd. Waqil, prosecution witness, i.e., November 11, 1944. It must be mentioned that the month and year put on the bales was August, 1944, although it is clear that the marking was done much later. Similarly the slips bore the month of August, 1944.

12. The admitted facts, therefore, are that the actual tex-marking was completed on some date in the month of November, 1944, and the learned Magistrate trying the case has accepted it that it may be taken to be November 11. It is also now admitted that the slips were not available for delivery to the accused before either the end of September or the beginning of October. The case of the accused is that after the tex-marking was completed the bales were delivered to him on November 23, 1944, and on that date he was given the printed slips, as it was not possible to place these slips in the bundles inside the bales which were bound with iron books. On November 29, 1944, the accused sold 409 bales to Amar Natb Agarwal of Calcutta, 277 bales were despatched to the buyer and 132 bales remained in the possession of the accused at Gbazipur. It is mentioned in the affidavit that all the 409 bales could not be immediately sent to the vendee as there was some difficulty in getting railway wagons. However that may be, on February 19, 1945, 101 bales were, booked for Cawnpore, according to the instructions of the buyer, from Tarighat on the East Indian Railway which is the nearest railway station for Cawnpore from Ghazipur. Sixtyfour bales reached Dildarnagar on or about March 14, 1945, and they were seized by the officers of the Supply Department. On the same date 37 bales that had remained at Tarighat railway station were also seized. The remaining 31 bales had been sent to a village near Dildarnagar by other means of transport and they were seized on April 5, 1945.

13. The first case is with reference to 101 bales 64 out of which had been seized at Dildarnagar while they were in the custody of the railway and 37 bales at Tarighat railway station before they could be despatched by the East Indian Railway. The second is with reference to 31 bales that were seized at some village near Dildarnagar on April 5, 1945.

14. The sanction for the prosecution of the first case was given by the District Magistrate. Rai Bahadur Mr. Rama Kant on March 30, 1945, and for the second was given by Mr. Bhagwati Prasad, District Magistrate, on May 5, 1945.

15. The charge against the accused in the first case reads as follows:

That you on or about March 14, 1916, at Tarighat were found in possession of

101 bales of cotton yarn which were possessed by you unopened and without being disposed of beyond six months from the date of tex-marking of the yarn. And that you thereby committed an offence punishable u/s 81 (4) D. I. R. and within my cognizance by contravening S. 14 (2) and proviso to S. 15A Cotton Cloth Yarn Control Order 1945....

16. The charge in the second case is:

That you on or about April 3, 1945 at V. Bahlolpur had in your possession 31 bales of cotton yarn without having tex-mark and price slips on them and further that you held this stock beyond six months from the date of tex-marks on the cotton yarn undisposed in your possession and that you thereby committed an offence punishable u/s 81 (4) if D.I. R by contravening the provisions of Section 13(1) C and the provisions of Section 15 A of Cotton Cloth and Yarn Control Order, 1946.

17. Mr. Peare Lal Banerji on behalf of the accused has urged that on the admitted facts of the case no offence can be deemed to have been committed. According to him, the tex-marking has now been admitted and held to have been completed at least not before November 11, 1944, and the printed slips were not handed over to the accused before the end of September or the beginning of October, 1944. He has urged that his client bad, therefore, six months time from after the date when the tex-marks had been put on, within which period he could dispose of the goods and from the facts stated above it is clear that he had still considerable time to do so.

18. A long affidavit has been filed in support of the application and from the affidavit it appears that a letter was sent by the Deputy Secretary to the Local Government to the, District Magistrate on March 27, 1945, that if the marking was made, as a matter of fact, in September, then the purchaser would be entitled to dispose of the bales within six months of the marking, but in spite of that letter the prosecution was sanctioned and was started and it has now been going on for a year and a half and I am informed a special counsel has been appointed to conduct the prosecution. It is mentioned in Paragraph 11 of the affidavit that the reason for this zeal is not the vindication of the law but the annoyance at the fact that the accused refused to pay bribe to the District Supply authorities. It appears from the affidavit that a representation was made to the Local Government and the Local Government asked. Mr. Beggie, Deputy Textile Controller and head of the Enforcement Branch, Cawnpore, U. P., to make an enquiry. Mr. Beggie is said to have made an enquiry and submitted his report sometime in August or September, 1945, and from that report, a portion of which has been reproduced in Paragraph 16 of the affidavit, it appears that Mr. Beggie was satisfied that the intention behind the prosecution was to harass the accused. He further said that

it is reported by a reliable source in Ghazipur that the D. S O. G. Is. and D. M. and his staff were linked together and were in the habit of taking bribes and

huge pretty amounts from the public.

19. The District Magistrate and the prosecuting magistrate in their explanation say that they did not know anything about Mr. Beggie's report, but notice of this application and a copy of the affidavit was served on the Government Advocate on July 1, 1946 and I should have thought that since then the prosecution had sufficient time to find out if the quotation in the affidavit was, in any material particular, incorrect. If the allegations were as stated in this affidavit, I should have thought that the Local Government and the prosecution would be more concerned with making enquiries into the conduct of then officer rather than with this prosecution which after all, even if the entire argument is accepted on behalf of the Government Advocate would amount to a mere technical offence.

20. I have already set out above the charge Against the accused. The facts being now admitted by the prosecution that the tex-marking was not completed till some date In the month of November and the printed slips were not ready for delivery to the accused before the beginning of October or the end of September, it is urged that It is not the date when the tex-marking was done that is relevant but this Court must consider the last day of the month marked on the cloth or yarn as the relevant date. No doubt under Cluase 14 of the Rules is mentioned that no person shall buy or sell or keep in his possession any such cloth or yarn in unopened bales or cases for more than six months after the said date and the said date is said to be the last day of the month marked on the cloth or yarn in accordance with the direction of the Textile Commissioner under Clause 10, but the other provisions of this order and the notifications issued there under make it clear that the month that is to be marked, if the marking is put by the manufacturer, is the month of delivery and if it is put by the Provincial Government bales in the possession of dealers" which had been surrendered by them of which had been seized by the Government, it is to be the month and year when the marking is done. Under Clause 10 of the Rules the Textile Commissioner has by notification in the Gazette of India, to direct now the marking is to be made by the manufacturer or by the dealer, and under notification No. 100 printed at p. 128 of the Civil Supplies Manual it is the month and the year of marking which is to be stamped or impressed on the bales.

21. The learned-Government Advocate has urged that it is at the sweet will and pleasure of the Provincial Government to put down any month and any year that they choose and therefore the sales should have been within six months of August, 1944 being the date put on the bales and the slips. I am not prepared to accept that contention. To my mind, the rules and the notifications clearly provide that it is the month and the year when the marking is done which should be the month and year putt down on the bale and this is obvious because it is after that that the dealer is given further six months. within which to sell his goods I have already said before that though the tex-marking was done in the month of November, 1944, on the bales August, 1944 was marked and similarly on the printed slips the month of August, 1944 was printed. If the learned

Government Advocate relies on the fact that the six months are to be reckoned from the last day of the month marked on the yarn, he must also bear in mind that the month has to be marked in accordance with the directions of the Textile Commissioner under Clause 10, and I can find nothing in that clause or in the notification which authorises an officer in the Supply Department to put a month other than the month in which the marking was actually done.

22. Learned Counsel has then urged that the terms and conditions of sale which were settled with the approval of the Textile Commissioner altered the law and in this particular case it must be deemed that the officers of the Supply Department were entitled to put the month of August, 1944 as the month of marking even though they were doing it in the month of November. So far as I can read the rules the Textile Commissioner has in certain cases only the right to make an exception in the case of a dealer who is not able to comply with the provisions of law and sell his goods within a certain period of six months u/s 15A. I do not think that by a private agreement, entered into with the consent of the Textile Commissioner, the law as regards tex-marking contained in the Cloth and Yarn Control Order and in the notification can be altered. Further I do not think the conditions of sale are capable of this interpretation that any officer was authorised to put in the month of November, a false date that the marking had been done in August. All that the condition of sale provided was that the marking would be done within August 31, 1944. If the Supply Department thought that they had a right to mark these bales only up to that date, I do not see why they should have done the marking in the month of November.

23. Learned Counsel for the Government has also urged that if the Supply Department wrongly marked the bales, it must be held that the bales were not marked at all in accordance with the provisions of Clause 10 and the accused must be held to be guilty for being in possession of bales which had not been marked in accordance with the provisions of law. This argument comes with ill grace from the prosecution. Firstly, that is not a part of the charge and is only an attempt to make out entirely a new case, and secondly, if the officers of the Provincial Government delayed the marking of these bales and put down a wrong month at the time of the marking, then instead of prosecuting their own officers who, on its contention, were guilty, it cannot with any sense of justice proceed against the dealer who after all had to take goods as marked by its officers.

24. To my mind, the present prosecution amounts to an abuse of the process of the Court. This Court is reluctant to interfere with ordinary course of law and substitute its own judgment for the judgment of the Magistrate who is trying the case before the completion of the trial. But, in my opinion, where the facts are so, preposterous that this Court feels satisfied that on the admitted facts there is no case against the accused and where this Court is clearly of the opinion that a further prolongation of the prosecution would amount to harassment of the process of the Court it is the duty of this Court to interfere u/s 561A of the Cr. P. C. and put an end to this abuse.

25. As I have already said, the most that can be said for the prosecution, putting a very limited interpretation on the language of Clause 14 (2), is that, though the tex-marking was actually done November, the tex-marking bore the month of August, 1944 and the cloth should have been disposed of within six months from August. 1944. But I am satisfied that it is not a correct interpretation and when the tex-marking was not done by the officers of the Government before November, 1944 the prosecution can hardly afford to take such a strict view and make such a fuss about vindicating the law. That is all that I need say so far as the first case.

26. In the second case the charge consists of two parts. The first is that the 31 bales of cotton yarn had not the price slips in them at the time when they were taken into custody. When the learned-trying Magistrate inspected these bales he found that most of the bundles contained the slips. The suggestion for the prosecution is that the slips been put in after the-bales were seized. There is no evidence on the record to justify such a serious allegation. The term as proposed by the U. P. Government contained in the letter from the Deputy Secretary to the District Magistrate was that the purchasers should be told(sic) that

before the yarn is put on sale at destination they must insert in each bundle one slip.

27. The obvious meaning of this was that if the slips had not been put the bundle before they were despatched at Ghazipur they should have been put in at the destination before they were delivered to the purchasers. It is the case for the prosecution that when these goods were Seized they were still in the custody of the accused and he had not parted with the possession of those bales. ,It could not, therefore be said that by not inserting the slips before he started carrying the-gooods from Ghazipur he had already completed a breach of the rule or of the notification. In the absence of any evidence that the slips were inserted after seizure while the bales were in the custody of the officer of the Provincial Government, I donot think that it is of any use that the prosecution on this part of the charge should go one any farther.

28. The second part of the charge in this case is exactly similar to the charge in the first case already disposed of by me above and it is not necessary for me to add anything farther to what I have said After considering the whole matter

29. I feel satisfied that it is a fit, case where I should exercise the jurisdiction of this Court under Section. 561A, Code of Criminal Procedure and direct that the prosecution should be qashed, and I order accordingly.

30. Learned Counsel for the accused has prayed that I should direct that the bales should new be handed over to the accused. The learned Government Advocate has urged that the Textile Commissioner should be approached in this conaction(sic) and I have no doubt that proper orders will be passed by him.. In case it is necessary I give leave to the accused to money this Court again.