
(1949) 11 AHC CK 0019
In the Allahabad High Court
Case No : Criminal Appeal No. 469 of 1948

Rex	Vs	APPELLANT
L. Johari Mal and Another		RESPONDENT

Date of Decision : 17-11-1949

Acts Referred:

Uttar Pradesh Sugar Factories Control Act, 1938 — Section 15(1), 27(5)

Citation : AIR 1950 All 337 : (1950) 20 AWR 248

Hon'ble Judges : Seth, J; P.L. Bhargava, J

Bench : Division Bench

Advocate : Gopalji Mehrotra, for N.N. Mitter, for the Appellant; Mukund Lal Agarwal, S.N. Mulla, S.P. Kumar and G.S. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Seth, J.—This is an appeal by the Provincial Government against the respondents, Lala Johari Mal and Lala Ram Mohan Lal, who were convicted by a Magistrate of the first class for an offence u/s 27(5)(b), U. P. Sugar Factories Control Act (I [I] of 1938), but who have been acquitted on appeal by the learned Sessions Judge of Pilibhit.

2. It is not necessary for us to enter into the numerous questions of fact and law which were argued before the learned Magistrate and before the learned Sessions Judge, for, in our opinion, this appeal fails on a very short ground.

3. Section 27 (5) (b), under which the respondents were prosecuted, makes it penal for any person to purchase or sell cane in a reserved area in contravention of the provisions of Sub-section (3) or Sub-section (4) of Section 18 of the Act. Sub-section (3) of Section 18 of the Act prohibits the purchase of cane grown in a reserved area without the permission of the Provincial Government, by the purchasing agency or by any person other than the occupier of the factory for which such area has been reserved. The case against the respondents is that they have, without the permission of the Provincial Government, purchased cane

grown in an area reserved for the L. H. Sugar Factory and Oil Mills of Pilibhit.

4. "Reserved Area" is defined by Section 2 (1) of the Act to mean an area specified in an order issued u/s 15. The case of the respondents inter alia, is that they have not purchased any cane grown in a reserved area. So that if the prosecution has not established that the cane alleged to have been purchased by the respondents was the cane grown in a reserved area, the case against the respondents must fail.

5. It has already been pointed out that "reserved area" has been defined to be an area specified in an order issued u/s 15 of the Act. We have, therefore, to see, whether an order contemplated by Section 15 was made in this case in respect of the area from where the respondents are alleged to have purchased the cane. Section 15 reads as follows :

"The Cane Commissioner may, after consulting the advisory committee or committees, if any, of the area concerned and the occupier of the factory can, after considering any objections that may be raised, issue an order declaring any area to be a reserved area for the purposes of the supply of cane to a particular factory during a particular crushing season or seasons, and may likewise at any time cancel such order or alter the "boundaries of an area so reserved."

According to this section reservation of an area is made by a declaration of the Cane Commissioner by which a specified area is reserved for a particular factory during a particular crushing season. The requirements of a proper order u/s 15, therefore, are a specification of the area reserved and a specification of the factory for which that area is reserved. An order which does not contain these particulars cannot be regarded to be a proper order u/s 15 of the Act.

6. It is the case for the prosecution that the area where the cane was grown, which is alleged to have been purchased by the respondents, was reserved for L. H. Sugar Factory and Oil Mills of Pilibhit. The order u/s 15 (I), relied upon by the prosecution, is in these words:

"Under S. 15 (1), United Provinces Sugar Factories Control Act of 1938. I hereby reserve the villages supplying cane at the following centres for the factories mentioned against them for supply of cane during the crushing season 1946-47. The working of rail centres is subject to their being opened and provision of wagons being made by the Railway authorities concerned."

This is followed by two columns, headed as the "Name of Factory" and "Centres reserved". There is no column for the area reserved. Under the first column at item No. 2 is mentioned "Pilibhit". There is, however, no mention of any Sugar Factory. It is not the case for the prosecution that the name of the factory, for which the disputed cane was reserved, is ("Pilibhit Factory", for it is an admitted case that the name of that factory is L. H. Sugar Factory and Oil Mills. There is also no satisfactory evidence on the record to prove that there is no other Sugar factory at Pilibhit. Therefore, the first requirement of a proper order Under

Section. 15 (I), namely, that it should specify the factory for which the area is reserved, is lacking so far as the order in this case is concerned. Under the second heading it is only the centres that are mentioned and, as we have already said, there is no specification of the area or areas reserved. This is another serious defect in the order relied on by the prosecution.

7. It is contended by the learned counsel for the complainant that the words, "the villages supplying cane at the following centres", are sufficient to specify the area which was intended to be reserved. In our opinion these words are in no way sufficient. The language used in the order is not, "the areas which had supplied cane at the following centres in any particular season", but the words are, "Supplying cane at the following centres." "Therefore, these words do not indicate with any precision the area intended to be reserved. There may be villages which had supplied in one year cane to one centre. In another year to another centre and in a third year to no centre at all. An area could be specified in this manner only, if the particular year during which that area had supplied cane to a particular centre had been specified. Even then we would have considered the specification of the area to be unsatisfactory, although we might not have gone to the length of holding that it made the order defective. We would have regarded it to be unsatisfactory, because such a description would leave the order still vague, and we consider that an order, a contravention of which may lead to penal consequences, should be definite and precise and should not be couched in vague language.

8. It has been said in evidence that a list was sometimes prepared showing the exact areas which were intended to be reserved for the L. H. Sugar Factory and Oil Mills. The original of the list is not on the record. What purports to be a copy of that list has been put on record as Ex. P-2. But it is apparent from the deposition of. P. W. Chotey Lal, an assistant in the Commissioner's Office, that the copy, Ex. p-2, has not been compared with the original. It does not, therefore, constitute proper secondary evidence of the original document, and, therefore, cannot be taken into consideration as evidence. Moreover, there is nothing to prove that this list was a part of the order, which we have already mentioned, at the time when it was promulgated. The evidence, on the other hand, suggests that the order was passed before the list was prepared. Be that as it may, the list, not being a proper secondary evidence of the original, has to be rejected from evidence, and we are thus left with the-order without any specification of the area and-without any specification of the factory for which, the area was reserved.

9. We are thus of the opinion that the prosecution has failed to prove the existence of a proper order contemplated by Section 15 (I) of the Act, reserving the area, from where the respondents are alleged to have purchased sugarcane, for the L. H. Sugar Factory and Oil Mills, Pilibhit, and has thus failed to prove an essential element required to constitute an offence u/s 27 (5) (b) of the Act. In this state of evidence, the respondents cannot be convicted of the offence

charged. We are, therefore, not prepared to interfere with the order of acquittal that they have obtained from the learned Sessions Judge.

10. This appeal is accordingly dismissed.