
(1951) 07 BOM CK 0013
In the Bombay High Court

State Government of Madhya Pradesh	Vs	APPELLANT
Hiralal Tejulal		RESPONDENT

Date of Decision : 27-07-1951

Acts Referred:

Central Provinces and Berar Specified Commodities (Control) Act, 1946 — Section 12

Citation : (1952) CriLJ 325

Hon'ble Judges : Sen, J;Hemeon, J

Bench : Division Bench

Judgement

1. Respondent Hiralal was tried on two charges, viz., (i) for selling cement at a price higher than the price fixed by the Deputy Commissioner, Akola, and (ii) for selling 4 bags of cement without the authority of the Deputy Commissioner, Akola. on the 4th June 1949, at Balapur, punishable respectively under Clauses 2 and 2(b) of the Central Provinces and Berar Cement (Control) Order, 1947, hereafter called the Order, read with Section 12 of the Central Provinces and Berar Specified Commodities (Control), Act, 1946. Clause 2 of the Order is as follows:

No person shall sell or offer to sell cement at a price higher than that fixed by the Provincial Government.

Clause 2(b) of the Order says that no person shall Sell cement when the quantity to be sold is less than 100 bags unless authorised In writing by the Deputy Commissioner of the district in which he resides or carries on business or by the person appointed by the Deputy Commissioner in writing in that behalf. The power of the Provincial Government under Clause 2 of the said Order so far as It relates to the fixation of retail prices was to be exercised by the Deputy Commissioner of the district by virtue of Notification No. 7672-11060-VII-P.C., dated the 19th/22nd November 1947.

2. The respondent was acquitted and his acquittal is challenged in this appeal by the State Government, Madhya Pradesh.

3. The respondent is a merchant in Balapur and deals in stationery and articles of cutlery. He is not a dealer in cement. He is also not authorized by the Deputy Commissioner to sell cement. The case of the prosecution was that he sold bags of cement on the 4th June 1949 to Purnaji (P.W. 3) at the rate of Rs. 16/- per bag. The price fixed by the Deputy Commissioner for the Akola Centre at the material time was Rs. 4/7/- by his order, dated the 13th September 1948 (Exhibit P-12.) To prove the sale, the prosecution examined Purnaji (P.W. 3) and Motiram (P.W. 5.)

4. On the 2nd June 1949, S.H. Garde (P.W. 4), Station Officer, Balapur, received a memo (Exhibit P-6) from the Circle Inspector to the effect that the respondent used to sell cement though he was not authorized by the Deputy Commissioner, Akola. He was asked to take steps for the detection of the offence. On the same day, he and the Circle Inspector, Balapur, got in touch with Purnaji. It was arranged that Purnaji was to go to the shop of the respondent and purchase cement. They were to provide him with funds.

5. Purnaji came to Balapur on the 3rd June 1949 and went to the shop of the respondent who agreed to sell cement to him. He was asked to come at about 5 p.m. He went at the appointed hour, but the respondent asked him to come the next day as the stock of cement from Khamgaon had not arrived. Next day, he went to the shop in pursuance of the instructions of S.H. Garde (P.W. 4). The respondent told him to come in the afternoon for taking the cement bags. Purnaji and Motiram were searched and a hundred rupees note initialled by Shri D.G. Deshpande (P.W. 2), Naib-Tahsildar, Balapur, was handed over to Purnaji. A memorandum (Exhibit P-2) was drawn up. A cart was provided to them to bring cement. Purnaji went to the shop and gave the note to the respondent who returned Rs. 36/-. The respondent instructed his servants to place 4 bags of cement in the cart brought by Purnaji. At the time a signal was given to Garde by Motiram (P.W. 5). He came to the shop with Shri Deshpande. The hundred rupee note, the amount of Rs. 36/- returned by the respondent to Purnaji and 4 bags of cement were seized.

6. The respondent denied the sale and his version of the transaction was as follows:

Purnaji had said that he was badly in need of cement. Upon this, I told him that foreign cement was available at Khamgaon and the number of persons were purchasing that cement, and I told him to go there and purchase it. But he said that he won't be able to get it. Since he had agreed to pay me commission, I had sent my man to Khamgaon. But he did not reach (return) in time. When Purnaji said that he would go back, I asked him to pay advance upon which he paid me Rs. 64/- as advance.

He admitted that he was not authorized by the Deputy Commissioner to sell cement, that the hundred rupee note was given to him and that he had returned Rs. 36/- to Purnaji. He also admitted that the 4 bags of cement were kept in the

cart of Purnaji. The reason for doing so may be stated in his own words:

I told him that as there was no room in my godown to keep the cement bags that were to be received from Khamgaon, he should take (the cement bags from my godown the cement bags that were lying in my godown at that time) in his bullock cart to my newly constructed house and keep them there so that I will be able to keep the cement bags in my godown which were to be received from Khamgaon. And I further told him that he should then come on the next day and fake away those cement bags. He agreed to this and the bags were being loaded in his bullock cart.

7. The trial Court accepted his explanation and held that the cement bags were not sold by the respondent, but were being sent in Purnaji's cart to his house under construction.

8. Purnaji and Motiram had stated that the bags were sold by the respondent for Rs. 64/-, The evidence of these witnesses is criticised on the ground that Purnaji was a decoy and Motiram is associated with the police. It is also pointed out that the explanation of the respondent in Court was the same as when he was questioned by the police officers. The defence was not an after-brought, but was genuine. The counsel also urged that the explanation is reasonable and should be accepted.

9. We have examined the evidence of Purnaji and Motiram carefully and we are unable to discover any reason for rejecting their testimony. Motiram is a school-master and is not shown to be under the influence of the police. The fact that he was asked to forecast the result of a particular investigation and read the horoscope of some members of the family of the Circle inspector does not show that he is amenable to influence of the police. He did not know the respondent and the latter is not able to give reason why the witness should give evidence against him.

10. Purnaji is not an accomplice. It is true that he lent his aid for the purpose of detecting an offence. In *R. v. Dowling* (1848) 3 C.C. 609, it is held that if a witness merely lent himself to a scheme for the purpose of convicting the guilty, he is not an accomplice. In *R. v. Despard* (1803) 28 H.S.T. 346. Lord Ellenborough said:

But there is another class of persons which cannot properly be considered as coming within the description, or as partaking of the criminal contamination of an accomplice; I mean persons entering into communication with the conspirators with an original purpose of discovering their secret designs and disclosing them for the benefit of the purpose.

Even applying the rule stated by Niyogi, J., in *B.N. Mukherji v. Emperor* ILR (1945) Nag 178. when a case depends mostly if not entirely on the evidence of the police witnesses and spies, their evidence must be subjected to close and critical examination and received with a great deal of caution. We see no cogent

reasons to disbelieve the evidence regarding sale.

11. We are satisfied about the truth of the statement made by Purnaji and Motiram. The discrepancies in the evidence of Purnaji to which reference is made by the trial Court are not of such a character as to show that his testimony on the Point of sale is false.

12. We have no hesitation in rejecting the explanation of the respondent that the bags were [being sent to his house. That explanation, in our opinion, is false even though it was given out immediately. There is no evidence that the respondent had made any arrangements to get cement from Khamgaon. The respondent had not examined the person whom he sent to Khamgaon. If the foreign cement from Khamgaon had not arrived, why should he have taken Rs. 64/- from Purnaji. If he wanted to send the cement bags to his house which was under construction, why should he ask Purnaji to take them in his cart. This specific defence that the bags were meant for his house was not put to Purnaji and Motiram. They should have been asked whether the bags were kept in the cart with instructions to take them to the respondent's house. If the bags were required by the respondent they would have been taken earlier to his house. We are not prepared to believe the statement of Mohd. Sikandar (D.W. 1) that as the cart was going empty, the respondent asked the cartman to take the four bags of cement to his house. We hold that the four bags of cement were sold by the respondent.

13. There is no substance in the contention that there was no bar to the sale of foreign cement and the Control Order has no application to foreign cement. The language of the Order is in very wide terms and covers Indian as well as foreign cement. We hold the respondent guilty of contravening the provisions of Clause 2(b) of the Order punishable u/s 12 of the Central Provinces and Berar Specified Commodities (Control) Act, 1946. We sentence him to pay a fine of Rs. 200/-, in default he shall suffer rigorous imprisonment for 3 months.

14. Turning to the charge of -sale at a price higher than that fixed by the Deputy Commissioner, the acquittal must stand but for a different reason. There is no clear evidence regarding the fixation of price of cement at Balapur. The learned Government Pleader contends that the price fixed for the Akola centre governs the sales in Balapur. He refers to the statement of Govinda (P.W. 6) that the rates of cement which are prevalent at Akola are applicable at Balapur, No order of the Deputy Commissioner has been filed to support the statement. In the absence of cogent evidence on the point of price at Balapur, the respondent cannot be punished for contravention of Clause 2 of the Order.

15. The appeal succeeds in respect of the acquittal of the respondent for contravention of Clause 2(b) of the Order read with Section 12 of the Central Provinces and Berar Specified Commodities (Control) Act, 1946. He is convicted on this count and sentenced to pay a fine of Rs. 200/-. In default, he shall suffer R.I., for 3 months. The appeal in respect of the acquittal of the respondent for

contravention of Clause 2 of the Order read with Section 12 of the Central Provinces and Berar Specified commodities (Control) Act, 1946, is dismissed.