
(1957) 09 GAU CK 0002
In the Gauhati High Court

State of Manipur (now Union Territory) APPELLANT
Vs
Chunilal Saraogi and Another RESPONDENT

Date of Decision : 03-09-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1958) CriLJ 1487

Hon'ble Judges : J.N. Datta, J.C.

Bench : Single Bench

Judgement

J.N. Datta, J.C.

1. This is an appeal by the Government u/s 417 of the Cri. P." C. against the order of the Magistrate acquitting the two respondents Chunilal Saraogi, a tradesman of Imphal and K. Lei-kham Singh driver of the truck, who were prosecuted for an attempt to export chira (70 maunds in 33 bags) on 5-3-56, in contravention of the provisions of S, 3 of the Manipur Foodgrains (Movement) Control Order, 1956, punishable u/s 7 of the Essential Commodities Act, 1955.

2. The facts are simple and not much in dispute. There is also evidence to prove them. Section 3 of the above-mentioned Order of 1956 runs thus:

3(1) No person shall export or attempt to export or abet the export of any foodgrains from any place in the State to any place outside the State except under and in accordance with a permit issued by the State Government or any officer authorised by the State Government in this behalf.

2. No person shall transport, attempt to transport or abet the transport of any foodgrains into the area of the State lying to the north of the village of Kangpokpi except under and in accordance with a permit issued by the State Government in this be-

Provided that nothing contained in Sub-clauses. (1) and (2) shall apply to the export or transport of foodgrains

i) not exceeding five seers in weight in aggregate by a bona fide traveller as a part of his luggage; or

ii) on Government account; or

iii) under and in accordance with Military Credit Notes.

3. On 5-3-56 both the accused with another man, said to be a handyman of the truck left Imphal in the truck which contained the said 35 bags of chira and 34 bags of chillies. It is in evidence that the bags containing the chira were under the bags containing the chillies for which there was no restriction as regards export. They reached Kangpokpi Police Check Post at about 10-00 a.m. The Officer-in-charge was out and the Head Constable who was-in charge, on checking the truck detected that the bags underneath contained chira. He seized them and brought back the truck and the goods along with the respondents to Imphal, where he gave a report to the Officer-in-charge. The latter seized the truck, the bags containing the chillies, and also an export permit for chira, in the name of Padarn Kumar Saraogi, Maxwell Bazar (Imphal) which was valid upto 24-2-56 only.

4. When examined the first accused Chunilal" admitted that he was carrying the chira for export outside the then State of Manipur but stated that he had a permit for it. No permit in his name was filed, and obviously the reference was to the expired permit in the name of another. On being questioned, he also stated that he did not know that the date of validity of the said permit had expired, and further stated that he had no intention to cheat the Government, but no explanation was offered as to how this accused claimed the benefit of the permit in the name of another for himself.

It appears from the judgment of the learned¹ Magistrate that the learned Counsel for the defence-urged before him that the permit in question was produced before the Officer-in-charge (Head constable) and the accused sought his advice and direction in the matter, and therefore there was an absence of mens rea on the part of the accused, and they could not be convicted. The prosecution on the other hand asserted that the permit was not produced before the Head constable, and in any case the first accused who is a tradesman ought to have known that an expired permit was of no avail.

It might be stated at once that there was no evidence in support of the contention that at the Kangpokpi Check Post this accused had approached the Head Constable and shown him the expired permit, and sought his advice. If he had done so one feels certain that the Head Constable would have seized it also. Again the accused would not have taken the trouble and expense of going 28 miles for that purpose, when he could have easily made that certain at Imphal.

5. The other accused stated that accused Chunilal possessed a permit for the export of the chira in question.

6. Another objection raised before the Magistrate on behalf of the defence, was

that the Head Constable was not competent to search and seize the chira, because Section 4 of the order of 1956 gave that power to an Officer not below the rank of Assistant Sub-Inspector or any other person authorised in that behalf by the State Government.

7. These contentions weighed with the learned Magistrate and he took the view that apart from the search and seizure being illegal, the mens rea of the accused persons was not sufficiently brought out by the evidence and circumstances present, and even more so in the case of the driver accused, and placing reliance on *State of Coorg v. P.K. Assu* AIR 1956 Mys 31 (A) he acquitted both the accused.

8. It is well-settled that unauthorised search & seizure will not vitiate the trial or do away with the offence, unless miscarriage of justice has been caused thereby (see *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, In the present case clearly there was no question of miscarriage of justice having been caused. The learned Magistrate therefore erred in letting this weigh with him.

9. The position of the driver accused was -merely that of a servant or person who has been hired to do work for another. He however admits¹ that he had knowledge that the truck contained chira also, but at the same time he says that the other accused who was the owner possessed a permit for the export of the same. In the circumstances present it can be safely presumed that he must have received this assurance and information from the other accused and it would be too much to expect that a man in his position should verify the validity and correctness of the permit after actually examining it himself unless he had reasons to doubt the correctness of the assurance given by his master or hirer.

To cast such a duty on a mere servant would not only be inconsistent with his position but may give rise to other serious difficulties. There is no evidence even to show that the truck belonged to the main accused and this accused was in his regular employ. In any case there is nothing to show that he was present at the time of loading and knew that the chira bags were placed underneath so as to cover them by the bags containing chillies. In these circumstances it cannot be presumed that he was knowingly helping the main accused in his attempt to smuggle the chira, and in any case, the benefit of doubt must go to him. His acquittal should not therefore be interfered with.

10. But the same cannot be said as regards the other accused. It is impossible to accept that he was not aware of the whole position or that he did not know that the permit under colour of which he wanted to act, had already expired. A permit in the name of another person cannot be used by a different person is more than obvious. The very fact that the chira was hidden by the chilli bags goes to show a guilty conscience. Ignorance of law is no excuse, and it was incumbent upon him that before proceeding he saw that he had a proper permit.

He did not have one and was aware of it is Suite evident from the circumstances present. Thus the presence of a criminal intention was fully established against

the accused Chunilal and the learned Magistrate clearly erred in taking a different view, and relying for it on a story which was advanced for the first time in the course of arguments, and was not supported by any evidence.

11. But in my opinion on the above facts this accused cannot be convicted for an attempt to export outside the State (now territory) in contravention of Section 3(1), but can be convicted only of an attempt to transport beyond Kangpokpi, in contravention of the "provisions of Sub-section (2) of the said Section 3. For crossing the boundary of Manipur, it was necessary to travel a further about 40 miles beyond Kangpokpi and therefore the accused must be given the benefit of the doubt that he might have repented and changed his mind before he reached the Assam boundary. In that case he could be only accused of a preparation but not of an attempt to transport into the State of Assam, and preparation alone is not punishable.

12. I therefore convict the accused Chunilal of an attempt to transport the chira in contravention of the provisions of Section 3(2) of the Manipur Food Grains (Movement) Control Order, 1956, punishable u/s 7 of the Essential Commodities Act, 1955.

13. As regards punishment I think that in the circumstances of the case, and the fact that I propose to order forfeiture of the entire quantity of the chira, a punishment of fine only will meet the ends of justice.

14. The accused is a young man, and it is his first offence I was told in the course of the arguments that the permit in question is in the name of a relation of his and their business is joint. There is however no evidence in support (except that the surname of the accused and that of the person in whose name the permit was issued are the same), but it is not unlikely that it might be so, and that is the reason how he was carrying the permit with him. Again the expired permit was for 760 maunds of chira, while the quantity carried by the accused was only 70 maunds, and in the circumstances present it may not have been at all difficult to obtain a fresh or new permit for it, but that course was most probably not adopted for want of time or some such other reason.

15. I therefore sentence the accused Chunilal Saraogi to pay a fine of Rs. 250/- or in default to undergo R. I. for a period of 4 months. The entire chira with the bags shall be forfeited to the Government. The appeal as against the other accused fails and is dismissed.