
(1967) 04 AHC CK 0020
In the Allahabad High Court
Case No : Criminal Appeal No. 253 of 1965

State of U. P	Vs	APPELLANT
Laxmi Narain, Accused		RESPONDENT

Date of Decision : 11-04-1967

Acts Referred:

Defence of India Rules, 1962 — Rule 125(9), 141

Citation : (1967) 04 AHC CK 0020

Hon'ble Judges : K.C.PURI, J

Final Decision : Dismissed

Judgement

1. This is a Government appeal against the acquittal of Lashmi Narain by the Additional District Magistrate, Kheri. The respondent was prosecuted for an offence under

subrule (9) of Rule 125 of the Defence of India Rules 1962 read with clause 19(a) of the U. P. Foodgrains (Control, Requisition and Distribution) Order, 1963, hereinafter referred to as Order. The respondent was found in possession of 106 Quintals 32 K.Gs. and 500 Grams of foodgrains on 26/9/1964 at 7 A.M. This stock was in excess of the prescribed limit, that is, 100 Quintals and was found stored for over a week. It was further found by the Magistrate who had effected raid that the respondent had kept his stock register wherein the entries were posted only upto 24/9/1964. He was consequently found to have committed breach of the condition of cl. 3(ii) of the Foodgrains Licence of Form B as granted under the U. P. Foodgrains Dealers Licensing Order, 1964.

2. The respondent had not disputed the recovery but had pleaded that he was not aware of the amended Order.

3. The learned Magistrate acquitted the appellant on the first count placing reliance on the decision of this Court in Udai Narain Singh v. State of U. P., 1964 AWR (HC) 707. In the said decision it has been held:

"Failure on the part of the authorities to make any provision for the mode in

which the producers or the dealers were to act in the event of excess quantity of foodgrains remaining with them undisposed of itself constituted lawful excuse within the meaning of that expression in Rule 5 of the Defence of India Rules with the result that mere possession of foodgrains in excess of the permitted quantity after the prescribed date did not amount to contravention of any of the provisions of the order."

4. This decision was subsequently overruled in 1965 ALJ 862, State of U. P. v. D.D. L. Lal. It was a Full Bench decision wherein it has been held that "failure of the Order to provide for a mode in which the dealers were to act in the event of the excessive stocks remaining with them undisposed of did not amount to lawful excuse. Desai, C. J., speaking for the Court observed:

"The question of lawful excuse is one of fact and it cannot be laid down as a matter of law that the omission to provide for an alternative is a lawful excuse".

In this case therefore the acquittal on that score could not have been sustained.

5. The learned counsel for the respondent further contended that at the very earliest the respondent had indicated that he was not aware of promulgation of the amended order and yet the prosecution had not placed anything on the record to prove that the same had been duly published in accordance with the modes which had been prescribed for the publication thereof. In this connection it was pointed out that the Governor had himself prescribed with reference to subrule (1) of Rule 141 of the Defence of India Rules, 1962, specific modes for the publication of the said Order, namely, that notice thereof shall be given by publication in Gazette and also by affixation on the noticeboards of the offices of all Regional Food Controllers and District Supply Officers and of the Courts of all District Magistrates in Uttar Pradesh. Since specific modes had been prescribed the compliance thereof was essential. In cases where no specific mode has been prescribed for publication of a notice, it may be left to the discretion of the authority concerned that it may adopt any method which may reasonably bring to the notice of the public the promulgation of the relevant order. But where specific modes have been laid down for the publication thereof then it is incumbent upon the authorities concerned to adopt the said modes and to establish that the said modes were duly adopted. There is no gainsaying the fact that an amendment of the said order was published in the Gazette. But there is no evidence to show that the second mode referred to above had been followed. The result is that the directions mentioned in the order itself have not been proved to have been complied with. So subrule (1) of Rule 141 of Defence of India Rules not having been followed the respondent cannot be assumed to have had knowledge of the promulgation of the said Order. The learned Magistrate was consequently right in acquitting the respondent on the aforesaid second count.

6. Since it has been held that the acquittal of the respondent was justified on account of the want of proof of the due publication of the aforesaid order there is no force in this appeal which is hereby dismissed.

Appeal dismissed.