
(1978) 11 RAJ CK 0012
In the Rajasthan High Court
Case No : Criminal Appeal No. 241/78

The State of Rajasthan

APPELLANT

Vs

Roop Nath and Others

RESPONDENT

Date of Decision : 28-11-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1978) WLN 418

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Judgement

S.C. Agrawal, J.—This appeal has been filed by the State u/s 377 Cr.P.C. against the order dated 30.h March 1978 passed by the Chief Judicial Magistrate Bhilwara, in Cr. Case No. 52/1974 whereby the Chief Judicial Magistrate convicted the respondents of the offence u/s 3 read with Section 7 of the Essential Commodities Act, 1955 for contravention of provisions of the Rajasthan Guest Control Order, 1972 and imposed a sentence of imprisonment till the rising of the court and fine of Rs. 20/- on each of the respondents In this appeal, the State has prayed for the enhancement of the sentence imposed upon the respondents.

2. The case of the prosecution is that on receiving information that a feast on the occasion of the death of his mother, was being arranged by Roop Nath son of Chhagan Nath, in village Dhamaniya, Ajay Pal Singh, S.H.O Bhilwara, went to village Dhamaniya and found that Roop Nath son of Devi Nath and Partap Nath son of Balunath were preparing Malpuas. Pyaracath was mixing flour with Gur Dharemnath was removing boiled potatoes in other Kadhais and Roopa was filling the water tank with water. Ajaypal Singh further found that about 200 persons had assembled to take part in the feast and that the feast was being held in contravention of the provisions of the Rajasthan Guest Control Order, 1972. He thereupon seized 2 quintals and 80 Kg of prepared Malpuas, 5 Kg of the mixture of flour and gur used for preparation of Malpuas; 40 Kg. of boiled potatoes and

20 Kg of wheat flour. After investigation the challan was presented against the three respondents and Dharamnath, Pyarnath and Roops u/s 3/7 of the Essential Commodities Act in the Court of S.D.M. Mandalgarh Subsequently the case was transferred to the Court of Chief Judicial Magistrate, Bhilwara.

3. After trial the Chief Judicial Magistrate acquitted the accused Dharamanath, Pyaranath and Rupa but convicted the respondents of the offence u/s 3/7 of the Essential Commodities Act on the view that from the seizure of 280 Kgs. of Malpuas it was established that Roop Nath son of Chhagan Nath had arranged a feast for more than 100 persons and the provision of the Rajasthan Guest Control Order had been contravened. While dealing with the question of sentence, the Chief Judicial Magistrate has observed that the acts of the accused persons were not such as to cause any substantial harm to the general public and that having a feast on the occasion of marriage or death is part of the social structure of this country and it can not be said that as a result of such feast any harm is caused to society. The Chief Judicial Magistrate held that the case was covered by the provisions of Sub-section (2B) of Section 7 of the Essential Commodities Act and that it was a fit case for not awarding the minimum sentence prescribed under the law and he, therefore, awarded the sentence of imprisonment till rising of the court and imposed a fine of Rs. 20/ on each of the respondents.

4. In support of the appeal, the learned Public Prosecutor has submitted that the Chiff Judicial Magistrate had erred in applying the provisions of Sub-section (2B) of Section 7 of the Essential Commodities Act to the facts of the present case and that in the facts and circumstances of the present case, the sentence awarded by the Chief Judicial Magistrate was grossly inadequate. Even the notices of the appeal have been duly served on the respondents they have not chosen to appear in this Court to contest the appeal.

5. The incident in respect of which the respondents have been prosecuted took place on 22nd February, 1974 i.e. prior to the enactment of the Essential Commodities (Amendment) Act, 1974, which came into force on 29th August, 1974, whereby Section 7 was substituted and a minimum sentence of imprisonment for 3 months was laid down in respect of contravention of orders passed under Clauses (a) to (g) of Sub-section (2) of Section 3 of the Act. The present case is therefore, governed by the provisions of the Essential Commodities Act, 1955 as they stood prior to the said amendment. Under the provisions of Section 7 of the Essential; Commodities Act, as they stood on 22nd February, 1974, ho minimum sentence was provided and it was laid-down that a person who contravenes any order, other than an order made with reference to Clause (h) and Clause (i) of Sub-section (2) of Section 3, would be punishable with imprisonment for a term which may extend to 3 years and was also be liable to fin; and that if the court is of the opinion that a sentence of fine only will meet the ends of justice it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment Thus under the aforesaid provisions, it was open to

the learned Magistrate not to impose the sentence of imprisonment and to impose the sentence of the fine only but for the purpose of doing so it was necessary for him to record his reasons why the sentence of fine only would meet the ends of justice.

6. It is, therefore, necessary to consider whether the reasons given by the Chief Judicial Magistrate for imposing the sentence of imprisonment till the rising of the court and a fine of Rs. 20/- only can be regarded as valid reasons. The Chief Judicial Magistrate has observed that the practice of giving a feast on the occasion of marriage or death might be an offence in the eye of law but it is a source of happiness in the life of our people in the village and this is more so in the case of people belonging to the backward classes. The Chief Judicial Magistrate has observed that such harmful practices prevalent in the society cannot be eradicated by law and for their eradication it is necessary to change the mental attitude of the people by educating them. The Chief Judicial Magistrate has, however, gone further to observe that no harm is earned to the society by holding such feasts in contravention of the law.

7. I find it difficult to agree with the reasons given by the Chief Judicial Magistrate. It cannot be disputed that the practice of having a feast on the occasion of death or marriage have harmful consequences on the economic life of the people, especially those belonging to the backward classes and that for eradication of such harmful practice it is necessary to educate the people to change their mental attitude. But from this it does not follow that till then these practices should be condoned & the law prohibiting this practice should not be enforced. In my view the Chief Judicial Magistrate was not right in proceeding on the basis that holding of a feast in contravention of the Rajasthan Ration Control Order does not cause any harm to the society. The Rajasthan Ration Control Order was issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act which enables such an Order being issued for the purpose of maintaining or increasing the supply of essential commodities or for securing their equitable distribution and availability on fair price. A contravention of the provisions of the Rajasthan Ration Control Order is, therefore, bound to have an adverse effect on the supply and distribution of essential commodities and their availability on fair prices specially at a time when there is shortage of food grains. The organisation of a feast for more than 100 persons is bound to create scarcity of essential commodities which are in short supply resulting in increase in the price of the said commodities & thus making it more difficult for other citizens to obtain them for their daily needs. The Chief Judicial Magistrate was, therefore, not justified in taking such a lenient view of the matter in so far as the imposition of punishment was concerned.

8. The question that next arises is as to whether the sentence imposed by the Chief Judicial Magistrate should be interfered in the facts and circumstances of the present case. Taking into consideration the fact that the incident took place as far back as in 1974 I am of the view that it would not be appropriate to enhance

the sentence of imprisonment imposed by the Chief Judicial Magistrate and the ends of justice would be served if the sentence of fine imposed on Roopnath son of Chhagan Nath, Respondent No. I, who had organised the feast on the occasion of his mother's death, is enhanced to Rs. 1000/-. The sentence of one imposed on Respondents Nos. 2 & 3 Roop Nath son of Devi Nath and Pratap Nath son of Bilu Nath are maintained.

9. The appeal is, therefore, partly allowed and the judgment and order of the Chief Judicial Magistrate, Bhilwara, dated 30th March, 1978 in Cr. Case No. 52/1974 is affirmed with the modification that sentence of fine imposed on Roopnath son of Chhagan Nath is enhanced to Rs, 1000/-. The amount of fine will have to be deposited within one month and in the event of default in the payment of fine the accused will undergo simple imprisonment for a period of one month.