

The State of Punjab v. Bakshish Singh, etc. (Gujral, J.)

(13) As the report of the Public Analyst shows, the content of fat in the sample analysed by the Public Analyst was 3.6 per cent instead of its being the prescribed standard of 4 per cent. Similarly, the percentage of solids not fat was found by the Analyst to be 5.8 per cent instead of the prescribed percentage of 8.5 per cent of solids not fat. These variations in fat and in solids not fat could be the result of moisture or water contained in bottles and not as a result of the milk purchased being sub-standard. The petitioner is entitled to be given the benefit of doubt as the prosecution have failed to establish that the bottles used were dry and clean as enjoined by Rule 14 of the Rules.

(14) In the result, the revision petition is allowed. The conviction and sentence of the petitioner are set aside and he is acquitted.

N. K. S.

APPELLATE CRIMINAL

Before H. R. Sodhi and Man Mohan Singh Gujral, JJ.

THE STATE OF PUNJAB,—Appellant.

versus

BAKSHISH SINGH AND OTHERS,—Respondents.

Criminal Appeal No. 819 of 1967.

May 13, 1970.

Rice (Northern Zone) Movement Control Order, 1958—Clause 3-A—Conviction for violation of—Proof of location of the border area—Whether essential.

Held, that a bare reading of clause 3-A of the Rice (Northern Zone) Movement Control Order, 1958, shows that before a person can be convicted for violation of clause 3-A it has to be established whether the spot where the rice is found at any particular time was within the border area as defined in the explanation to clause 3-A or outside the border area. Unless the boundary of the border area is clearly located it will not be possible to ascertain whether the rice was being taken from any place outside the border area to a place within the border area or to any place outside the border area from any place in that area or from any place in the border area to any other place in that area. Mere movement of rice is not penal and it becomes penal only when an attempt is made to transport it to or

from the border area or within the border area. If the movement is only outside the border area, Clause 3-A would have no application. That it is necessary to establish that the spot where rice is detected was within the border area before a person can be convicted for violating clause 3-A of the order. (Para 4)

Appeal from the order of Shri Avtar Singh Gill, Chief Judicial Magistrate, Ferozepore, dated 7th June, 1967, acquitting the accused.

I. S. TIWANA, ASSISTANT ADVOCATE-GENERAL, PUNJAB, for the appellant.

B. S. KHOJI, ADVOCATE, for the respondents.

JUDGMENT.

MAN MOHAN SINGH GUJRAL J.—(1) Bakshish Singh, Ved Parkash and Salwinder Singh were tried for exporting 50 quintals and 99 kilograms of rice by truck bearing number PNF 7872 to Rajasthan without permit in contravention of clause 3A of the Rice (Northern Zone) Movement Control Order, 1958, which is punishable under section 7 of the Essential Commodities Act, 1955, and were acquitted by the Chief Judicial Magistrate, Ferozepore, by his order dated 7th June, 1967. Being aggrieved the State has come up in appeal against this order.

(2) The case of the prosecution is that on 5th January, 1966, Dalip Singh, Assistant Sub-Inspector of Police-station Khuyan Sarwar formed a raiding party consisting of Raj Kumar, Lachhman Singh, Mukhtiar Singh and Tulsi Ram Food Inspector in order to hold a picket to check smuggling. The picket was held in the area of village Old Asman Khera on the katcha road leading to Rajasthan. The parties saw a truck coming from the side of New Asman Khera at about 2 a.m. and placed a log of wood on the path with the result that the truck had to be stopped. Bakhshish Singh was found driving the truck while the other two accused were seen sitting on the front seat along with the driver. All the accused came down and disclosed their identity. The truck was then searched and was found to contain eighty bags of paddy. Rice was taken into possession and a memo was sent to the police-station on the basis of which a case was registered against the accused. After the completion of the investigation the accused were challaned.

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(3) When examined under section 342 of the Criminal Procedure Code Bakshish Singh denied that he was driving the truck in question and added that the truck was being driven by another Sikh driver and had been stopped near village Daulatpura. It is further stated that no rice was being exported. Ved Parkash and Salwinder Singh also denied that they were exporting any rice.

(4) The learned trial Court while coming to the conclusion that the case against the accused had not been proved took into consideration the fact that there was no evidence on the record to prove that the truck was found within five-mile belt along the Punjab State border. In order to appreciate the view taken by the learned trial Court, reference will have to be made to clause 3A of the Rice (Northern Zone) Movement Control Order, 1958, made under section 3 of the Essential Commodities Act, 1955, the relevant portion of which reads as under :—

“3A. Restrictions on Transport of Rice to or from or within the Border Area.—No person shall transport, attempt to transport or abet the transport of rice—

- (a) to any place in the border area from any place outside that area, or
- (b) from any place in the border area to any place outside that area, or
- (c) from any place in the border area to any other place in that area,

except under and in accordance with a permit issued by the Government of the State of Punjab or any other person authorized by that Government in this behalf :

* * * * *

Explanation.—For the purposes of this clause ‘border area’ means the area falling within the five mile belt all along the Punjab State border adjoining the territories of Rajasthan, Uttar Pradesh and West Pakistan.”

A bare reading of the above provision shows that before a person can be convicted for violation of clause 3A it has to be established whether the spot where the rice is found at any particular time was within the border area as defined in the explanation to clause 3A or outside the border area. Unless the boundary of the border area is clearly located it will not be possible to ascertain whether the rice was being taken from any place outside the border area to a place within the border area or to any place outside the border area from any place in that area or from any place in the border area to any other place in that area. Mere movement of rice is not penal and it becomes penal only when an attempt is made to transport it to or from the border area or within the border area. If the movement is only outside the border area, clause 3A would have no application.

(5) Considering the evidence on the record in the light of the above observations we find that it has not been brought out as to whether the truck bearing number PNF 7872 which was carrying the rice was found inside the border area or outside the border area and how far away from the border area. We have been taken through the entire evidence by the learned Assistant Advocate-General and we have not been able to find any definite statement which would establish beyond doubt the location of the spot where the truck was stopped and the distance of that spot from the boundary of the border area whether inside or outside the border area. All that the evidence shows is that the picket was held in the area of village Old Asman Khera at 500 LMP' on the way to Rajasthan border. There is not a word in the evidence of any of the witnesses as to what was the distance of the spot from the Rajasthan border or from the boundary of the border area. This being the state of evidence it cannot be held that the rice was being transported into or from the border area. We have, therefore, no hesitation in holding that the view taken by the trial Court is perfectly correct. The result is that the appeal fails and is dismissed.

H. R. SODHI, J.—I agree.

N. K. S.