APPELLATE CRIMINAL

Before Khosla and Falshaw, JJ.

THE STATE,—*Appellant*

versus

ONKAR SINGH,—*Respondent*

Criminal Appeal No. 361 of 1953.

1954

August, 5th

Essential Supplies (Temporary Powers) Act (XXIV of 1946)—Section 7—Person found guilty of contravening an order promulgated under the Act—Trial held after the Order cancelled—Person whether can be punished.

O. S. was found guilty of contravening the provisions of the Punjab Maize and Maize Products Price Control Order, 1948, on 3rd March, 1953. By a notification, dated the 24th April, 1953, the said Control Order was cancelled with effect from the 27th of May, 1953. O. S. was tried after the cancellation of the Order and acquitted.

Held, that there is obviously a big difference between a self-contained Act which provides for its own expiry on a certain date and a temporary Order of no fixed duration promulgated under a present Act providing for the punishment of contravention of Orders promulgated under its provisions. The Order which has been contravened in the present case was not for any fixed period and the Court has the power to punish an offence under the provisions of section 7 of the Act as long as the offence was committed while the Order was in force in spite of the fact that the Order had been cancelled before the case was brought to trial.

J. K. Gas Plant Manufacturing Co. (Rampur) Ltd. and others v. *Emperor* (1), relied on.

Appeal from the order of Shri Surindar Singh, Magistrate, 1st Class, Jullundur, dated 19th May, 1953, acquitting the accused respondent.

K. S. CHAWLA, Assistant Advocate-General, for appellant.

H. L. Sibal, for Respondent.

---

(1) A.I.R. 1947 F.C. 38.

JUDGMENT

Falshaw, J. FALSHAW, J.—The respondent in this case Onkar Singh was brought to trial in the Court of a Magistrate at Jullundur on the allegation that on the 3rd March, 1953, a test purchase was made at his shop at Banga by Nathu Ram, P.W., acting under the instructions of the police, and the accused charged Nathu Ram Re. 1 for 2 *seers* and 10½ *chattanks* of maize-flour which is at the rate of Rs. 15 per maund as against the price fixed by the Punjab Maize and Maize Products Price Control Order, 1948, which was Rs. 11-14-0 per maund.

In dealing with the case the learned Magistrate found that the facts alleged by the prosecution had been fully established by the evidence produced, and indeed he has observed in his judgment that the facts were not contested by the learned counsel for the accused. He acquitted the accused, however, on a point of law. Apparently before the case was tried in May, 1953, the Punjab Maize and Maize Products Price Control Order, had been cancelled with effect from the 27th of May 1953 by a Punjab Government notification dated the 24th April 1953. In acquitting the accused the learned Magistrate relied on *Fenton Charles Aubrey Kathleen* v. *May Aubrey and others* (1) and *B. Bansgopal* v. *Emperor* (2), according to which unless there is a special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect.

The State has appealed against the acquittal of the respondent on the ground that the law has not been correctly understood by the learned Magistrate, who has failed to appreciate the difference between a temporary Act which ceases to have

(1) A.I.R. 1947 Lah. 414
(2) A.I.R. 1933 All. 669

effect after a certain date specified therein, and an order similar to the Punjab Maize and Maize Products Price Control Order. Such an Order is brought into force under the provisions of a parent Act, which contains provisions for the punishment of contraventions of Orders promulgated under it, and which also remains in force even after an order promulgated under it has ceased to have effect. There is in fact no doubt that in the present case the Essential Supplies (Temporary Powers) Act, 1946, under which the respondent was prosecuted, was still in force at the time of the trial and still is in force. It is contended on behalf of the State that the case is essentially similar to *J. K. Gas Plant Manufacturing Co. (Rampur) Limited and others* v. *Emperor* (1), in which the jurisdiction of a special tribunal, constituted to try offences under the Defence of India Rules, to continue the trial of certain offences consisting of contraventions of the Iron and Steel (Control of Production and Distribution) Order, 1941, was upheld, although the said order had expired on the 30th of September, 1946, and the Tribunal had framed charges only on the 14th October, 1946. The Order which has been contravened in the present case would appear to bear the same relation to the Essential Supplies (Temporary Powers) Act as the Iron and Steel (Control of Production and Distribution) Order bore to the Defence of India Rules under which it was promulgated. There is obviously a big difference between a self-contained Act which provides for its own expiry on a certain date, and a temporary Order of no fixed duration promulgated under a parent Act providing for the punishment of contravention of Orders promulgated under its provisions.

(1) A.I.R. 1947 F. C. 38.

The State
v.
Onkar Singh

Falshaw, J.

The order which has been contravened in the present case was not for any fixed period and was presumably cancelled when the Government thought that conditions no longer necessitated its continuance, and in my opinion there can be no doubt about the power of the Court to punish an offence under the provisions of section 7 of the Act as long as the offence was committed while the Order was in force in spite of the fact that the Order had been cancelled before the case was brought to trial.

On behalf of the respondent reliance was placed on a decision of the Supreme Court in *Keshavan Madhava Menon v. The State of Bombay* (1), but I do not think that this case helps his argument, since the question which was being decided was whether the effect of Article 13(1) of the Constitution on existing laws hit by it was the same as the effect of the expiry of a temporary statute, and the question of cancelled or superseded Orders promulgated under a still continuing law containing provisions for the punishment of contravention of Orders was not considered at all.

In the circumstances I am of the opinion that the view taken by the learned Magistrate was wrong and that the respondent ought to have been convicted. I would accordingly accept the appeal of the State and convict Onkar Singh, respondent, under section 7 of the Essential Supplies (Temporary Powers) Act, but since the case is now more than a year old and his profiteering was on a small scale I would only sentence him to a fine of Rs 100 or in default one month's rigorous imprisonment. He must surrender to his bail-bond, which will be cancelled if he pays the fine. Otherwise he must serve the sentence in default.

Khosla, J. KHOSLA, J.—I agree.

(1) 1951 S.C.R. 228.