

APPELLATE CRIMINAL

Before Man Mohan Singh Gujral and S. C. Mital, JJ.

THE STATE OF HARYANA,—Appellant

versus

PARKASH CHAND,—Respondent.

**Criminal Appeal No. 1352 of 1969.**

January 6, 1971.

*Essential Commodities Act (X of 1955 as amended by XXXVI of 1967)—Section 7—Unintentional contravention of—Whether punishable—Haryana Hydrogenated Vegetable Oil Dealers Licensing Order (1967)—Order cancelling a licence granted under—Such order providing for the disposal of the stock of vegetable oil with the licensee within seven days—Charge of storage of vegetable ghee for sale without licence against such licensee—Prosecution—Whether must prove the date of the receipt of cancellation order by the licensee.*

Held, that section 7(1) of the Essential Commodities Act, 1955, as it stands after its amendment in 1967, has expressly ruled out the element of *mens rea*. It follows, therefore, that whether the contravention mentioned in section 7 is done knowingly, intentionally or not, it becomes punishable under sub-section (1) of section 7 of the Act. (Para 4)

Held, that where the endorsement on the order of cancellation of the licence under Haryana Hydrogenated Vegetable Oil Dealers Licensing Order, 1967, provides that the stock of vegetable oil, if any, with the licensee should be disposed of by the licensee within seven days of the receipt thereof, it is incumbent on the prosecution to prove the date on which the licensee receives copy of such order and that the seven days' limit given to him to dispose of his stock had expired for proving the charge of storage of vegetable ghee for sale without licence under the Order. (Para 5).

*Appeal from the order of the Court of Shri A. K. Jain, Chief Judicial Magistrate, Gurgaon dated 12th September, 1969 acquitting the accused.*

H. N. MEHTANI, ASSISTANT ADVOCATE GENERAL, HARYANA, for the appellant.

R. N. MITTAL, ADVOCATE, for the respondent.

JUDGMENT

S. C. MITAL, J.—(1) This appeal is directed against the judgment of the Chief Judicial Magistrate, Gurgaon, acquitting Parkash Chand

of the charge under section 7 of the Essential Commodities Act, 1955, for contravening the provisions of the Haryana Hydrogenated Vegetable Oil Dealers Licensing Order, 1967.

(2) The salient facts are that the licence of Parkash Chand, issued under the Order aforesaid was cancelled by the District Magistrate, Gurgaon, on 13th August, 1968. On coming to know of it, Parkash Chand on the following 28th sent telegram Exhibit D.A./1 to Amrit Vanaspati Co., Ltd., Ghaziabad, directing it not to despatch the truck, but before the receipt of the telegram, the truck loaded with vegetable ghee tins had left Ghaziabad. It arrived in Palwal, the place of business of Parkash Chand, on the 29th. At the time, Parkash Chand was not present and despite the protest of his son, the truck was unloaded and the goods were put in the godown of Parkash Chand. On the 31st August, 1968, the godown was raided by Sub-Inspector Man Singh and 500 tins of vegetable ghee were recovered therefrom. Upon a consideration of the entire material on record, the Chief Judicial Magistrate came to the conclusion that there was no *mens rea* on the part of Parkash Chand and that it was not established that Parkash Chand had knowledge of the storage of the ghee in his godown. In *Nathulal v. State of Madhya Pradesh* (1), their Lordships of the Supreme Court laid down, "an offence under section 7 of the Essential Commodities Act, 10 of 1955, for breach of section 3 of the Madhya Pradesh Foodgrains Dealers Licensing Order, 1958, necessarily involves a guilty mind as an ingredient of the offence. Considering the scope of the Act it would be legitimate to hold that an offence under section 7 of the Act is committed by a person if he intentionally contravenes any order made under section 3 of the Act." Relying on this authority, the Chief Judicial Magistrate passed the impugned judgment.

(3) Learned Assistant Advocate General canvassed before us that the Supreme Court ruling was no longer applicable, for, section 7 of the Essential Commodities Act was amended by Act XXXVI of 1967. Before the amendment, the relevant part of sub-section (1) of section 7 was as under:—

"If any person contravenes any Order made under section 3—  
(a) he shall be punishable ....."

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(1) A.I.R. 1966 S.C. 43.

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As amended, sub-section (1) of section 7 reads thus:—

“If any person contravenes whether knowingly, intentionally or otherwise, any Order made under section 3—

(a) he shall be punishable .....

(The remaining portion of the section is not relevant for our purpose).

(4) Section 7(1), as it now stands, has expressly ruled out the element of *mens rea*, for, the words “or otherwise” are all comprehensive. It follows, therefore, that whether the contravention mentioned in section 7 is done knowingly, intentionally or not, it becomes punishable under sub-section (1) of section 7. It appears that the attention of the Chief Judicial Magistrate was not drawn to the amendment mentioned above. That being so, the ground on which the impugned judgment is based, cannot be sustained.

(5) The other aspect of the case is that the relevant part of the endorsement under order Exhibit P.E., by which the District Magistrate cancelled the licence of Parkash Chand, is as follows:—

“A copy is forwarded to M/s. Parkash Chand Dhuru Kumar, Palwal, for immediate compliance. The stock of vegetable oil, if any, should be disposed of by them within 7 days of the receipt of this order.”

In view of the endorsement quoted above, for the application of the punitive provisions of the Haryana Hydrogenated Vegetable Oil Dealers Licensing Order, 1967, against Parkash Chand, it was incumbent on the prosecution to prove the date on which Parkash Chand received copy of the order Exhibit P.E. and that the seven days limit given to him to dispose of his stock had expired on the crucial date, that is, 31st August, 1968. Our attention has not been drawn to any material on record to satisfy the said two requirements. Upon the evidence on record, all that can be said is that Parkash Chand had knowledge of the cancellation of licence, at any rate, on 28th August, 1968, the date on which he directed the Company above-named telegraphically not to despatch the truck. In the light of what is directed in the endorsement, it can be safely said that the cancellation of his licence was to take effect upon the expiry of seven days of the receipt of the copy of order Exhibit

P.E. That being so, the bare knowledge of the fact that his licence stood cancelled would not in law help the prosecution in proving the charge of storage of vegetable ghee for sale without licence against him.

For the above reasons, we dismiss the appeal.

MAN MOHAN SINGH GUJRAL, J.—I agree.

B.S.G.

APPELLATE CIVIL

Before S. C. Mital, J.

CHARAN SINGH,—Appellant.

*versus*

JAGIR SINGH ETC.,—Respondents.

**Regular Second Appeal No. 840 of 1968.**

February 8, 1971.

*The Punjab Security of Land Tenures Act (I of 1953)—Sections 2(6) and 17-A(1)—The Punjab Tenancy Act (XVI of 1887)—Section 4(5)—Sale of land to a tenant of mortgagee with possession—Pre-emption suit—Whether such sale protected by section 17-A.*

Held, that a perusal of sections 2(6) and 17-A(1) of the Punjab Security of Land Tenures Act, 1953, read with section 4(5) of the Punjab Tenancy Act, 1887, shows that the tenant of a mortgagee with possession nowhere figures. Besides, the exclusion of a mortgagee of the rights of a landowner from the definition of 'tenant' in section 4(5) of the Punjab Tenancy Act leads to the conclusion that a 'tenant' of a mortgagee could never be intended to be included in the term 'tenant'. Moreover, the classes of tenants, namely, a sub-tenant, a self-cultivating lessee, and a joint tenant to whom the legislature intended to give protection of section 17-A of the Punjab Security of Land Tenures Act, 1953, have been specifically mentioned. Hence a sale made to a tenant of mortgagee with possession is not protected by section 17-A of the Act and a suit for pre-emption against a sale to the mortgagee's tenant lies. (Para 3)

*Regular Second Appeal from the decree of the Court of the Additional District Judge, Ludhiana, dated the 27th day of March, 1968 modifying that*