CRIMINAL MISCELLANEOUS

Before Gurdev Singh, J.

BHAGWAN SINGH,—*Petitioner*

versus

THE STATE AND ANOTHER,—*Respondents*

Criminal Miscellaneous No. 1120 of 1963.

Defence of India Act (LI of 1962)—S.18—Non-appealable order of conviction—Whether can be interfered with under Art. 226 or 227 of the Constitution of India—Limits of such interference—Defence of India Rules (1962)—Rules 25(2) and 141—The Punjab Commodities Price Marking and Display Order, 1962, promulgated under—Whether was duly published—Essential Commodity—Who is to determine.

Held, that section 18 of the Defence of India Act, 1962, does not allow the right of appeal to an accused person who has been convicted by the Special Tribunal and sentenced to imprisonment for a term of less than five years. A person who has been convicted and sentenced to imprisonment for a term of less than five years has no right of appeal and the jurisdiction of the High Court under the Code of Criminal Procedure to revise his order of conviction is also barred. But the power of the High Court under Article 226 or 227 of the Constitution has not been taken away by section 18 of the Defence of India Act and in suitable cases the High Court can go into the validity or correctness of the Special Tribunal's order, acting under the powers vested in it by Articles 226 and 227 of the Constitution. But it is not open to the High Court under Article 227 of the Constitution to go into the sufficiency or otherwise of the evidence on which the conviction proceeds. When the Parliament has not provided any right of appeal or revision against the order of the Special Tribunal, it is not open to the High Court to go into the findings of fact recorded by the Special Tribunal.

Held, that under Rule 141 of the Defence of India Rules, 1962, the mere notification of the Order promulgated under Rule 125(2) of the said Rules will suffice, and it is not open to an accused person to contend that he was not aware of the provisions of the Order in question. It is further provided in sub-rule (2) of Rule 141 that even if the provision with regard to the publication or notification contained in sub-rule (1) has not been complied with, it will be open to the prosecution to prove that the accused was aware of the Order in question. The Punjab Commodities Price Marking and Display Order, 1962, was promulgated by the Governor of Punjab, under Rule 125(2) of the Defence of India Rules, and was published in the Punjab Government Gazette where all statutory rules and orders are published and it must, therefore, be presumed that it was duly published and its publication was in compliance with the provisions of the law and the rules. In the instant case, the petitioner never pleaded ignorance of the order, and, in fact, the recovery of the price list, which was taken into possession by the Inspector, Food and Supplies, at the time of the raid from his premises, leaves no doubt that he was fully aware of the provisions of the Punjab Commodities Price Marking and Display Order, 1962. Thus the petitioner's conviction is not open to attack on the ground of non-compliance with sub-rule (1) of rule 141 of the Defence of India Rules, 1962.

Held further, that it is for the Central Government or the State Government to determine what articles or things are essential to the life of the community and Rule 125(2) of the Defence of India Rules, 1962, empowers the Central Government or the State Government to issue an order for ensuring the availability of "any article or thing at fair price" and to achieve this object the Punjab Commodities Price Marking and Display Order, 1962, was promulgated.

Petition under Article 227 of the Constitution of India praying that the order of respondent No. 2, dated 3rd September, 1963, be quashed and the petitioner be released from the custody of the State.

H. S. GUJRAL AND SUSHIL MALHOTRA, ADVOCATES, for the Petitioner.

N. S. KEER, ADVOCATE, for the Advocate-General,

AND C. D. DEWAN, DEPUTY ADVOCATE-GENERAL.

ORDER

Singh, GURDEV SINGH, J.—In this petition under Article 227 of the Constitution Bhagwan Singh, a cycle-repairer of Abohar, challenges the validity of the order, dated 3rd September, 1963, of the Special Tribunal at Ferozepur appointed under section 13 of the Defence of India Act, 1962, by which the petitioner has been convicted under rule 125(9) of the Defence of India Rules, 1962, read with rule 4 of the Punjab Commodities Price Marking and Display Order, 1962, and sentenced to six months' rigorous imprisonment and Rs. 300 as fine. In default of payment of fine, the petitioner has been ordered to undergo further rigorous imprisonment for three months.

The petitioner had been running a business of cycle repairing at Abohar and also used to deal in cycle spare-parts. It is alleged that on 1st April, 1963, Raj Kumar, P.W., a local rickshaw-puller, who was in need of tyre for his cycle-rickshaw, visited the petitioner's shop for purchasing the tyre. The petitioner Bhagwan Singh, quoted Rs. 14.50 as its price. Since the price demanded by the petitioner was excessive, Raj Kumar did not purchase the tyre and instead contacted Swaran Singh, P.W., Inspector, Food and Supplies, and complained against the petitioner. After recording his statement the Inspector decided to lay a trap. Raj Kumar produced two G. C. notes of Rs. 10 and Rs. 5. After noting their numbers Inspector Swaran Singh returned the same to him, directing him to go to the petitioner's shop and purchase the tyre. P.Ws. Devi Chand and Diwan Chand were instructed to go with Raj Kumar and give a signal to the Inspector. Raj Kumar, Devi Chand and Diwan Chand proceeded to the petitioner's shop, while Inspector Swaran Singh remained behind at some distance. Raj Kumar asked for a Super India cycle

tyre. The petitioner took it out and gave it to Raj Kumar, who handed over the two currency notes of Rs. 10 and Rs. 5 to him. The petitioner put both the currency notes in his cash box and told Raj Kumar, that he had charged Rs. 15 for the tyre. Devi Chand and Diwan Chand thereupon gave the appointed signal, on which Inspector Swaran Singh at once came on the scene. He took the cycle tyre from Raj Kumar and recovered from the petitioner's cash box both the G. C. notes of Rs. 10 and Rs. 5 which he had prior to the raid made over to Raj Kumar after noting their numbers. The price list of the tyres, etc., which the petitioner had displayed at his shop was taken hold of. The price of the Super India Cycle-rickshaw tyre stated therein was only Rs. 10.16 nP. In view of the fact that the petitioner had charged Rs. 15 from Raj Kumar, Swaran Singh immediately reported the matter to S. I. Parphul Singh, and this led to the petitioner's prosecution under rule 125(9) of the Defence of India Rules for violation of rule 4 of the Punjab Commodities Price Marking and Display Order, 1962.

The petitioner was tried by a Special Tribunal, Ferozepur, appointed under section 18 of the Defence of India Act and the Rules framed thereunder. It consisted of three members, namely, Shri Sant Ram Garg, District and Sessions Judge, Shri Bhim Singh, District Magistrate, and Shri Mohinder Singh Joshi, Senior Subordinate Judge of Ferozepur.

The prosecution case was supported at the trial not only by Raj Kumar, P.W. 1, and Swaran Singh, P.W. 4, Inspector, Food and Supplies, who had organized the raid, but also by Devi Chand, P.W. 2, and Krishan Lal, P.W. 3, who had followed Raj Kumar, as shadow witnesses and were present at the time of the purchase of the tyre from the petitioner by Raj Kumar.

In the course of his statement at the trial, the petitioner did not deny having sold the tyre to Bhagwan Singh and received Rs. 15 in the form of two currency notes that were subsequently recovered from his cash box. He, however, took up the plea that he did not charge Rs. 15 as price of the tyre, but only Rs. 10.16 on account of its price, 60

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nP., as sales tax and 0.25 nP. for his labour in fitting the tyre to the rickshaw, but before he could return the balance, the Inspector, Food and Supplies, came up and caught hold of him. The defence version was sought to be supported by the evidence of Guranditta Ram, D.W. 1, and Nand Lal, D.W. 2, but the learned Tribunal rejected the petitioner's plea and accepting the evidence of the aforementioned prosecution witnesses recorded the petitioner's conviction as stated earlier.

Besides contending that there was no reliable or sufficient evidence to support the petitioner's conviction, Shri H. S. Gujral, appearing on behalf of the petitioner, has urged:—

(i) that the Tribunal had no jurisdiction to try the offence for which the petitioner was charged and he could only be proceeded against in an ordinary criminal Court,

(ii) that the petitioner could not be convicted for breach of any of the provisions of the Punjab Commodities Price Marking and Display Order, 1962, as the prosecution had not placed any material before the Tribunal to prove that this Order had been duly published in accordance with the mandatory provisions of rule 141 of the Defence of India Rules, 1962,

(iii) that the tyre for the sale of which the petitioner has been convicted was not "an essential Commodity" and thus the provisions of the Punjab Commodities Price Marking and Display Order, 1962, did not apply to it, and

(iv) in any case, the petitioner's conviction was liable to be set aside as it was based upon the evidence of persons, who were connected with the raid and there was no independent corroboration of their testimony.

Shri Gujral's attempt to assail the petitioner's conviction on merits is futile. It is not open to this Court under

Article 227 of the Constitution to go into the sufficiency or otherwise of the evidence on which the conviction proceeds. It is not a case of total absence of evidence and the findings of fact recorded by the Tribunal cannot be reopened. Sub-section (2) of section 18 of the Defence of India Act, 1962, gives a right of appeal to a person convicted by a Special Tribunal appointed under the Act only in cases where the sentence awarded is death or imprisonment for life or imprisonment for a term of five years or more. The petitioner, who has been sentenced to six months' rigorous imprisonment and Rs. 300 as fine has no right of appeal. This provision of law further lays down:—

> "Notwithstanding the provisions of the Code, or of any other law, for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal."

From this it is obvious that not only the petitioner had no right of appeal, but the jurisdiction of this Court under the Code of Criminal Procedure to revise the petitioner's order of conviction is also barred. Though at one stage it was contended on behalf of the State that in view of the prohibition contained in the above provision of law this Court cannot go into the validity or correctness of the Special Tribunal's order even under Article 227 of the Constitution, the learned Deputy Advocate-General had to concede that nothing contained in sub-section (2) of section 18 of the Defence of India Act, 1962, can in any way affect the jurisdiction of this Court vesting under Articles 226 and 227 of the Constitution. This is in consonance with the rule laid down by their Lordships of the Supreme Court in *In Re The Kerala Education Bill*, 1957(1).

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(1) 1959 S.C.R. 995.

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When the Parliament has not provided any right of appeal or revision against the order of the Special Tribunal, it is not open to this Court to go into the findings of fact. Even if, as has been urged by Shri H. S. Gujral, it is open to this Court to go into the question whether a part of the evidence was admissible or not, there is, however, no occasion to interfere with the finding of the Tribunal with regard to the petitioner's guilt as Shri Gujral was unable to point out any inadmissible evidence. His sole contention has been that the evidence of trap witnesses could not be acted upon without independent corroboration. The order of the Tribunal indicates that this aspect of the matter was present to the minds of its members and they found ample circumstantial and direct corroboration of the testimony of Raj Kumar and Inspector Swaran Singh. Recently, in *Satyanarayan-Laxminarayan Hedge and others.* v. *Malikarjun Bhavanappa Triumale* (2), their Lordships considered the nature of the jurisdiction exercised by the High Court under Article 227 of the Constitution and observed:—

> "Article 227 of the Constitution corresponds to section 107 of the Government of India Act, 1915. However, wide it may be than the provisions of section 115 of the Code of Civil Procedure, it is well established that the High Court cannot, in exercise of its power under that section, assume appellate powers to correct every mistake of law. Where there is no question of assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality in the procedure or any breach of any rule of natural justice, but, if anything, it may merely be an erroneous decision which error, not being apparent on the face of the record, cannot be corrected by the High Court in revision under section 115 of the Code of Civil Procedure or under Article 227 of the Constitution."

Their Lordships further observe that where an alleged error is far from self-evident and if it can be established,

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(2) A.I.R. 1960 S.C. 137.

it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of *certiorari* according to the rule governing the powers of the superior Court to issue such a writ.

The contention that the Tribunal by which the petitioner has been convicted was not competent to try him is also without substance. Though in the Court of the trial it was never challenged that the three members of the Tribunal, Shri Sant Ram Garg, Ch. Bhim Singh and Shri Mohindar Singh Joshi, had not been appointed to the Special Tribunal, Shri H. S. Gujral raised this question before me at the hearing. The learned Deputy Advocate-General has, however, produced the Punjab Government Gazette (Extraordinary), dated 7th January, 1963, in which the order constituting the Special Tribunal under sections 13 and 14 of the Defence of India Act, 1962, is published. This order was subsequently amended on 10th June, 1963, and 17th June, 1963, as a result of which Shri Sant Ram Garg, Ch. Bhim Singh and Shri Mohindar Singh Joshi were constituted as Special Tribunal for the trial of offences mentioned in column 5 of the notification including offences under any rule made under section 3 of the Defence of India Act, 1962. Thus, the petitioner has been tried by a Tribunal of Competent jurisdiction.

The Punjab Commodities Price Marking and Display Order, 1962, for the contravention of which the petitioner has been convicted was promulgated by the Governor, Punjab, under sub-rule (2) of rule 125 of the Defence of India Rules, 1962. Shri Gujral contends that this Order was not duly published in accordance with the provisions of rule 141 of the same Rules and consequently the petitioner could not be punished. In this connection, he points out that under rule 141 of the Defence of India Rules, 1962, it is incumbent upon the authority promulgating the order to publish notice of the same in such manner as may in the opinion of such authority be best adapted for informing persons whom the Order concerns. The Punjab Commodities Price Marking and Display Order, 1962, was published in the Punjab Government Gazette (Extraordinary), dated 1st December, 1962. This, according to Shri Gujral, is not proper publication and does not constitute sufficient compliance with the provisions of sub-rule (1) of rule 141 of

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the Defence of India Rules, 1962. He argues that it was incumbent upon the Governor, who promulgated the order to specify the mode in which this order was to be published and since he had not done so, the mere publication of the Order in the Official Gazette of the State was not sufficient. Reliance in this connection has been placed on *Leslie Gwilt and another* v. *Emperor* (3), where it was held that unless the prosecution showed in what manner the publication was decided upon, it would not be entitled to the presumption regarding notice to the accused mentioned in the last part of sub-rule (1) of rule 119 of the Defence of India Rules, 1939, and in absence of evidence on that point recourse could not be had to the provisions of section 114 of of the Indian Evidence Act, and no presumption arose that the issuing authority had decided that the notification was to be published in the Government Gazette alone. This authority was relied upon by the same Court in its subsequent decision in *Mhatarji Bhau Patil* v. *Emperor* (4), and it was held that mere publication in the Government Gazette of a notification issued by the District Magistrate under Rule 116 of the Defence of India Rules, 1939, was not sufficient to charge a person with liability for infringement of the terms of the notification.

A similar question arose for consideration before another Division Bench of the Bombay High Court in *Raghunath Krishna Ghanekar* v. *Emperor* (5), to which Gajendragadkar, J., (as he then was) was party. It was held in that case that in absence of evidence regarding the manner of publication which in the opinion of the authority making the Order was best adopted for informing persons whom the Order concerned within the meaning of Rule 119 of the Defence of India Rules, 1939, the mere publication of the Foodgrains Control Order promulgated by the Bombay Government was not enough and the accused could not be convicted when it was not even proved that he was a subscriber to the official Gazette or that he was aware of the provisions of the law which he was alleged to have contravened.

In *Debi Prasad* v. *Emperor* (6), a Full Bench of the Allahabad High Court, however, ruled

(3) A.I.R. 1945 Bom. 368.
(4) A.I.R. 1945 Bom. 389.
(5) A.I.R. 1947 Bom. 239.
(6) A.I.R. 1947 All. 191.

that Rule 119 of the Defence of India Rules, 1939, affected only the operation of the order and not its validity. It was held in that case that the publication of the U. P. Cotton Cloth and Yarn Control Order in the official Gazette gave rise to the presumption under section 114 of the Indian Evidence Act that the provisions of Rule 119(1) of the Defence of India Rules, 1939, including the provision for determining the most suitable form of publication, were fully complied with. The same view was taken by a Full Bench of the Patna High Court in *Mahadeo Prasad Jayaswal* v. *Emperor* (7), and it was held that where an order of a general nature made by the Central or the provincial Government under the Defence of India Rules has been notified in the official Gazette where all statutory rules and orders were published normally and it appeared that the order had been so published because its publication was essential under rule 119, it could be presumed that the publication was made not merely in partial compliance with rule 119 but in compliance with all its provisions, including the provision as to the determination of the most suitable form of publication. According to both these Full Bench decisions, the order for the breach of which the petitioner has been convicted must be considered to have been duly published.

It may, however, be pointed out at once that all the authorities referred to above relate to the requirements of rule 119 of the old Defence of India Rules, 1939. A corresponding provision regarding the publication of the order made under the Defence of India Act or Rules of 1962, is found in rule 141 of the Defence of India Rules, 1962. On a comparison of these two provisions, we find that after sub-rule (1) of rule 141 of the Defence of India Rules, 1962, which is almost in the same terms as sub-rule (1) of the old rule 119, the following sub-rule (2) has been added:—

> "141 (2). If in the course of any judicial proceedings a question arises whether a person was duly informed of an order made in pursuance of these Rules, compliance with sub-rule (1), or where the order was notified, the notification of the order, shall be conclusive proof that

(7) I.L.R. 24 Patna 781.

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he was so informed; but failure to comply with sub-rule (1)—

(i) shall not preclude proof by other means that he had information of the order,

(ii) shall not affect the validity of the order."

Thus, under the existing law, the mere notification of the order will suffice, and it is not open to an accused to contend that he was not aware of the provisions of the order in question. It is further provided in this sub-rule (2) of rule 141 of the Defence of India Rules, 1962, that even if the provision with regard to the publication or notification contained in sub-rule (1) is not complied with, it will be open to the prosecution to prove that the accused was aware of the order in question. In the instant case, the petitioner never pleaded ignorance of the order and, in fact, the recovery of the price list, which was taken into possession by the Inspector, Food and Supplies, at the time of the raid from his premises, leaves no doubt that he was fully aware of the provisions of the Punjab Commodities Price Marking and Display Order, 1962. Thus the petitioner's conviction is not open to attack on the ground of non-compliance with sub-rule (1) of rule 141 of the Defence of India Rules, 1962.

I also find no force in Shri Gujral's submission that the petitioner was not guilty of violation of clause (4) of the Punjab Commodities Price Marking and Display Order, 1962, as "essential Commodity" was not defined either in the Defence of India Rules or in the order itself, and the rickshaw tyre did not constitute an essential commodity. Section 3 of the Defence of India Act, 1962, empowers the Central Government to make such rules as appear to it necessary or expedient so to do for maintaining supplies and services essential to the life of the community. Sub-rule (2) of rule 125 of the Defence of India Rules, 1962, framed thereunder authorizes the Central Government or the State Government to issue an order regulating or prohibiting the production, manufacture, supply and distribution, etc., of various articles if it is of the opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, efficient conduct of the military operation or maintenance or increase of supplies and service essential to the life of the community or for securing

the equitable distribution and availability of any article or thing at fair prices. It is in exercise of those powers that the Punjab Commodities Price Marking and Display Order, 1962, was promulgated. What articles or things are essential to the life of the community is for the Central or the State Government concerned to determine. In fact, the language of sub-rule (2) of rule 125 of the Defence of India Rules, 1962, is wide enough to empower the Central Government or the State Government to issue an order for ensuring the availability of "any article or thing at fair price," and this is what has been sought to be achieved by clause (4) of the Punjab Commodities Price Marking and Display Order, 1962, for breach of which the petitioner has been convicted.

For the foregoing reasons I find that the impugned order of the Special Tribunal is perfectly valid and it cannot be interfered with in exercise of the powers of this Court under Article 227 of the Constitution. The petition is accordingly dismissed.

R.S.