

Before M. M. Punchhi, J.

DARBARA SINGH,—*Petitioner.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Criminal Revision No. 350 of 1977*

November 26, 1979.

*Essential Commodities Act (X of 1955)—Section 7—Haryana Coarse Grains (Export Control) Order 1972—Clause 3—Export of coarse grains outside the State banned—Truck carrying prohibited food grains intercepted at 50 yards from the border—Offence of attempt to export—Whether committed—Theory of change of mind—Relevant factors.*

*Held*, that time factor and not only the distance assumes significance in a set of movement. A truck would require hardly a few seconds to cover a distance of 50 yards whereas a bullock cart in order to cross that much distance would require atleast five to seven minutes. The time for giving the necessary thought to effect change in the mind is a consideration which cannot be lost sight of. Where a truck carrying prohibited food grains is intercepted at a distance of about 50 yards from the border, it can hardly be conceived that the accused could have in a span of few seconds or within a distance of 50 yards changed his mind not to take his truck any further and not to commit the crime. If the theory of change of mind is pressed to illogical ends, there would hardly be left any field for the penal clause of attempt to cover the distance between preparation and actual commission. If there is nothing to indicate that within this distance of 50 yards there was any village within the State of Haryana or there was any road or path which could lead side wards, it appears that when the offending truck had been intercepted at a distance of 50 yards from the border, it was a clear indication that it had intended to cross it. (Para 4).

Narinder Singh, Advocate, *for the Petitioner.*

P. N. Makani, Advocate, *for A. G. Haryana.*

#### JUDGMENT

M. M. Punchhi, J. (Oral).

(1) This order will dispose of two revision petition. Criminal Revision No. 350 of 1977 is at the instance of Darbara Singh alias

Dalbara Singh, who has been convicted under section 7 of the Essential Commodities Act, 1955, for having contravened clause 3 of the Haryana Coarse Grains (Export Control) Order, 1972 (for short referred to as the Order) and has been sentenced to pay a fine of Rs. 2,000, in default rigorous imprisonment for six months. He was found to be the driver of truck No. PUP-8481, which was found to be involved in an attempt to smuggle 95 bags of Bajra from Haryana to Punjab in violation of the aforesaid Order. Criminal Revision No. 375 of 1977 is at the instance of Gurbax Singh, who claims himself to be the owner of the aforesaid 95 bags of Bajra. The trial Court ordered confiscation of the Bajra and that order has been upheld by the appellate Court. Darbara Singh challenges his conviction and sentence whereas Gurbax Singh challenges the order of forfeiture.

(2) The case of the prosecution was that on the night intervening 23/24th November, 1973, A.S.I. Moti Lal, P.W. 3, presumably on secret information, held a *nakabandi* on the bridge of Khanauri minor, which was situated in the area of village Dandoli in Haryana. It is further alleged that across the bridge of the Khanauri minor, the Punjab border is about 50 yards and the first village on the Punjab side is Shergarh. It is also alleged that from the bridge, village Dandoli (Haryana) is  $1\frac{1}{2}$  furlongs on the southern side and village Shergarh (Punjab) is 2 furlongs on the northern side. It is stated that about 4 a.m., truck No. PUP-8481 came from the side of village Dandoli and its direction was suggestive of going towards Shergarh in Punjab. The truck was intercepted by the said A.S.I. Moti Lal, PW-3, who had in his company at that time O. P. Miglani PW-1, Assistant Excise and Taxation Officer, and Prem Dass Dewan, PW-2, an Inspector, Taxation. The truck, on search, was found to contain 95 bags of coarse grain to which the Control Order was undisputably applicable. The same was taken into possession and in the normal course after completion of investigation, the case was put up for trial before the learned Chief Judicial Magistrate, Jind. The prosecution examined O. P. Miglani PW-1, Prem Das Dewan PW-2 and A.S.I. Moti Lal PW-3 and closed its case. The accused Darbara Singh admitted that the truck was found to contain 95 bags of Bajra but denied the place of recovery of the said truck and put it that it was taken into possession by the PWs at village Hansdehar (Haryana) where it was being loaded with Bajra. That village is stated to be the residence of Gurbax Singh, the other petitioner, who claimed, as a rightholder of the said village,

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to be able to produce 95 bags of Bajra which, after loading it, had been despatched by him to be taken to Narwana (within the territory of Haryana). It was denied by the accused that the foodgrains were attempted to be taken to Punjab and he sought support from DW-1 Gurbax Singh. The trial Court recorded an order of conviction and sentenced the accused Darbara Singh to three months' rigorous imprisonment and a fine of Rs. 500. On appeal, the substantive sentence of imprisonment was set aside but the fine was increased to Rs 2,000. This is how the matter has come to this Court in revision and has been put up with the other revision with regard to forfeiture of the foodgrains, to be disposed of together.

(3) The learned counsel for the petitioners primarily contended that the Punjab border was at a distance of about 50 yards from the place where the truck was intercepted. According to him, the act of the accused-petitioner, at best, could be treated as preparatory to the offence and not be termed as an attempt. In support thereof he sought reliance from two decisions of the Supreme Court reported in *Malkiat Singh and another v. The State of Punjab*, (1), and *Nasu Sheikh and others v. The State of Bihar*, (2). In the former case, the vehicle contravening the relevant Order was a truck which was found about 18 kilometres away from the border. Their Lordships of the Supreme Court considered that the truck-driver could have changed his mind from reaching the final suggested by the prosecution in addition to the possibility of calling off his journey on the way in some village. That authority has obviously no bearing to the present controversy. In the latter case, the offending vehicles were bullock-carts found at a distance of 75 yards from the Bihar-West Bengal border and even the prosecution had not mentioned the distance for laying down the foundation for guilt. It later came in evidence that the distance was to that extent. On the parity of the view taken by their Lordships of the Supreme Court, it was strenuously urged that the distance of 75 yards in that case and 50 yards in the present case is practically similar and on that strength the accused-petitioner be given the benefit of doubt. It was also pressed into service that the accused-petitioner might have changed his mind, in the same manner as it figured in the aforesaid two judgments of the Supreme Court, by not proceeding towards Punjab.

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(1) A.I.R. 1970 S.C. 713.

(2) A.I.R. 1972 S.C. 1610.

(4) I have given my careful consideration to the view canvassed but I find myself unable to accept this suggestion. Time factor and not only the distance assumes significance in a set of movement. A truck would require hardly four seconds to cover a distance of 50 yards assuming the speed to be 40 kilometres per hour, whereas a bullock-cart, in order to cross that much distance, would require at least five to seven minutes. The time for giving the necessary thought to effect change in the mind is a consideration which cannot be lost sight of. In the instant case, it can hardly be conceived that the accused-petitioner could have, in a span of two to four seconds or within a distance of 50 yards, changed his mind not to take his truck any further and not to commit the crime. If the theory of change of mind is pressed to illogical ends, there would hardly be left any field for the penal clause of attempt to cover the distance between preparation and actual commission. It appears to me that when the offending truck had been intercepted on the bridge of the Khanauri minor, it was a clear indication that it had intended to cross it, for it had left behind that territory which was on the southern side of the Khanauri minor. On the northern side of the Khanauri minor, the only road which was available was towards Shergarh village covering a distance of 2 furlongs and 50 yards ahead from the bridge was the Punjab border. Nothing could be read from the evidence or from the investigation file which could even remotely indicate that after crossing the bridge, there was any village of Haryana or there was any road or path which could lead sideways. Even the defence suggestion that the grain belonged to Gurbax Singh and that he had loaded the same from village Hansdehar also remains on the southern side of the Khanauri minor, and will not help the accused-petitioner. This aspect of the case does not cut much ice. It was next contended by the learned counsel that the police party had prior information and it was incumbent on them to associate with them some members of the public in order to vouchsafe the authenticity of the prosecution case. The police party had put up a *nakabandi* and the movement of the accused-petitioner was only anticipated. It could not be treated to be on the footing of surety so that a witness must have been or should have been available to lend support to the official witnesses. No *animus* has been suggested against the official witnesses and there is no reason why they should have falsely implicated the accused-petitioner in the crime. As per the finding of the Courts below and which has remained unchallengeable, it was the accused-petitioner

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who was driving the offending vehicle. The conviction thus seems to be well based and it is held accordingly.

(5) It was then contended that the sentence of the accused-petitioner tends to be severe. Some precedents were cited to suggest the discretion exercised one way or the other. They do not appear to be noteworthy, for there can be no precedent on a discretion. The concept of punishment is multifaced. What can suit one situation may wholly be unsuitable to another. The accused-petitioner was 22 years of age at the time of the commission of the offence. The sentence of fine of Rs. 2,000 with no substantive imprisonment imposed cannot be said to be harsh by any measure. There is no scope for interference in the matter. Criminal Revision No. 350 of 1977 has thus to fail and is hereby dismissed.

(6) As a corollary, and there cannot be any escape from it, the foodgrains in respect of which the offence was committed have got to be confiscated. Discretion of the Court does not figure there; it pertains to receptacles and vehicles and not to the articles, the export of which was prohibited by the Control Order. On the offence being proved, the State gets them by confiscation. In the result, Criminal Revision No. 375 of 1977 too fails and it is so ordered.

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N. K. S.

*Before A. S. Bains, J.*

BHARAT SINGH,—*Appellant.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Criminal Appeal No. 278 of 1978.*

November 30, 1979.

*Explosive Substances Act (VI of 1908)—Section 5—Possession of explosive substance (grenades)—No evidence to show that the possession was for an unlawful purpose—Mere possession—Whether an offence.*