

from Delhi, who accompanied us to this place. The children are happy uptill now. Let us see how they would feel after a day or two. We feel loneliness in the absence of Dicky. He will be coming on 8th June and the happiness would return on that day. Today, Manju has gone to appear in the practical examination. We would go to see a girl tomorrow. God knows the matter materialises or not.

I hope everybody at the house would be happy. Good wishes to all and respect to Aru and Ashu.

Please take care of your health and don't worry about anything.
Reply soon.

In remembrance,
Yours Anila."

The language of this letter improbably rather belies the incidents alleged by the husband in the petition. The contents speak a volume of love not only for the husband but for the younger members of his family. She writes to the husband not only for her/their children but also the members of her parent's family.

(14) P.W. 2 Man Singh has *prima facie* perjured himself in judicial proceedings and has thereby committed the offences mentioned in Section 193, Indian Penal Code.

(15) For the reasons stated above, the appeal fails and is dismissed with costs quantified at Rs. 2,000.

(16) For the reasons recorded at pages 6 to 10 of the judgment, let notice to issue to Man Singh, son of Shri Vijay Ram, agriculturist resident of Shezadpur (U.P.) for April 30, 1992 to show cause why criminal prosecution be not launched against him. The husband is directed to cause his presence in Court on that date.

R.N.R.

Before Hon'ble J. S. Sekhon, J.

JOGINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 274-SB of 1986.

Auguts 20, 1992.

Inter Zonal Wheat and Wheat Products (Movement Control) Order, 1964—Clause 3(1)—Tractor trolley apprehended about 20 paces

from Haryana barrier carrying 30 quintals of wheat—Held that reasonable possibility cannot be ruled out that accused might have changed mind about exporting wheat out of Punjab Zone—Cannot be said that they attempted to export wheat out.

Held, that the possibility of the accused changing their mind before crossing the border cannot be ruled out and thus it was not an attempt on their part to export the wheat out of the zone but at the most, it was a preparation for doing so which is not punishable. The provisions of clause 3 of the said order prohibit the export or attempt to export or abet the export of wheat or any other wheat product from one zone to another except with the permission in writing of the Central Government or of an officer authorised in that behalf by the Central Government. In the case in hand, according to SI Kashmira Singh, the tractor trolley was apprehended about 15/20 paces from the Haryana border in the area of village Chural Kalan. Thus the reasonable possibility cannot be ruled out that the accused might have changed their mind for exporting wheat out of the Punjab zone. Therefore, it cannot be said that they had attempted to export wheat out of this zone.

(Para 8)

Essential Commodities Act (10 of 1955)—Section 7—Criminal Trial—Possession—Accused sitting besides driver—Whether in possession of wheat—Held that reasonable possibility that he was merely taking a lift cannot be ruled out.

Held, that there is also considerable force in the contention that Joginder Singh accused was not in possession of the wheat as he was sitting by the side of the driver driven by Amar Singh because only those persons who are either sitting on wheat on the trolley or the driver of the tractor can be said to be transporting the wheat and not a person who happened to sit by the side of the driver as reasonable possibility cannot be ruled out that he was merely having a lift on the tractor.

(Para 9)

Appeal from the order of the Court of Shri G. L. Chopra, 1st Addl. Sessions Judge (Special Judge), dated 25th April, 1986, convicting and sentencing the appellant.

Charge Under Section :—U/S 7 of the Essential Commodities Act read with Clause 3(1) of the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964.

Sentences :—R.I. for two years and a fine of Rs. 500 or in default of payment of fine further R.I. for 3 months.

Challan No. 4/8/18 of 4th August, 1983/15th April, 1985/9th January, 1986.

Offence under Section 7 of the Essential Commodities Act.

J. R. Mittal, Senior Advocate with Baldev Singh, Advocate, for the Appellant.

P. S. Thiara, AAG, Punjab, for the Respondent.

JUDGMENT

J. S. Sekhon, J.

(1) Joginder Singh appellant was held guilty of the charge punishable under Section 7 of the Essential Commodities Act read with Clause 3(1) of the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964 by the learned Additional Sessions Judge, Sangrur exercising the powers of the Special Judge under the provisions of Essential Commodities Act and awarded sentence of two years' RI and fine of Rs. 500 or in default of payment thereof, to further suffer three months' RI. The wheat was ordered to be confiscated to the State. Feeling aggrieved against the said orders of conviction and sentence, the accused has come up in appeal.

(2) In brief the facts of the prosecution case are that on 11th October, 1982, Kashmira Singh Sub-Inspector of Food and Civil Supplies Department posted at Chural Kalan barrier on the boundary of the States of Punjab and Haryana intercepted with the help of Constable Kulwant Singh, a tractor trolley carrying wheat towards the barrier. Hardial Singh accused (since acquitted) was driving the tractor while Joginder Singh appellant was sitting by the side of the driver. The trolley was loaded with loose wheat besides with 12 small bags of wheat. The accused failed to produce any permit for exporting the wheat out of Punjab. Kashmira Singh Sub-Inspector then sent intimation Ex. PA at 7 P.M. to the police of Police Station, Munak through Constable Kulwant Singh on the basis of which formal F.I.R. Ex. PA/1 was recorded at the Police station at 7.30 PM on that day. A case under section 7 of the Essential Commodities Act was registered against the accused. ASI Balwant Singh alongwith other police officials then arrived at the spot. The wheat on weighment came to 30 quintals. The tractor trolley and the wheat were taken in possession,—vide memo Ex. PB. He also prepared rough site plan Ex. PC of the spot and arrested the accused. The statements of the witnesses were recorded.

(3) After completion of investigation, the accused was arraigned for trial on such like allegations.

(4) Before the trial Court in order to prove its above referred case, the prosecution examined four witnesses. SI Kashmira Singh PW1 and Constable Kulwant Singh PW2 supported the above referred ocular version while ASI Balwant Singh proved the investigation conducted by him and AMHC Sadiq Ali PW4 proved daily diary report No. 29 Ex. PD dated 22nd April, 1983.

The version of Hardial Singh co-accused of the appellant before the trial Court in his statement under section 313 Cr.P.C. was that of innocence and false implication contending that he was not driving the tractor at the time of its seizure and recovery of wheat but in fact his brother Amar Singh was driving the tractor and Joginder Singh was sitting by him when they were arrested but later on it transpires that since the registration certificate of the tractor was in his name and that of Joginder Singh, the aforesaid Amar Singh was arrested by depicting his name as Hardial Singh. He also maintained having remained in Jail after his arrest while Amar Singh also was detained in the Jail and got himself bailed out in the name of Hardial Singh. Joginder Singh appellant also denied the prosecution allegations but maintained that he alongwith his brother Amar Singh were present on the tractor trolley which was apprehended at a distance of one mile from the barrier. Amar Singh was driving the tractor. He also maintained that they were carrying the wheat produced by them on their own land to deliver it to Malkit Singh, Gram Sewak at village Munak. He also stated that Hardial Singh co-accused was never arrested by the police nor was sent to Jail. The bail order of Amar Singh was obtained by giving his name as Hardial Singh and that Hardial Singh never signed any police papers.

(5) In defence, the accused examined Dewan K. S. Puri Document Expert DW1 who after examining thumb-impressions Q1 on the search memo opined that it does not tally with the thumb-impressions of Hardial Singh co-accused but with the thumb-impressions of the left thumb of Amar Singh. Balbir Singh Sarpanch DW2 of village Kunran also stated about the accused being his co-villager and that they had another brother named Amar Singh. Malkiat Singh Gram Sewak, Agriculture Inspector appeared as DW3 and supported the above referred version of the accused.

(6) The trial Court, however, believing the prosecution evidence convicted and sentenced Joginder Singh accused-appellant as stated above while Hardial Singh co-accused of the appellant was acquitted by holding that he was not driving the tractor but his brother Amar Singh was doing so.

I have heard the learned counsel for the parties besides perusing the record.

(7) No doubt, the trial Court had first given show cause notice to the accused on 1st September, 1983 for violating the provisions of Punjab Wheat Dealer's Licencing Order, 1982 and thus committed

on offence under section 7 of the Essential Commodities Act but later on,—*vide* order dated 24th April, 1985 the charge was re-framed for violation of the provisions of clause 3(1) of the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1964 but since in the year 1964 Haryana State has not come into existence but was created on 1st November, 1966, there is no question of violation of the provisions of the said Order as the present area of Haryana State as well as other area of Punjab were part of the same State and same wheat zone, yet all the same, it is of no consequence as no prejudice had occurred to the accused due to the above-referred defective charge because the witnesses had been cross-examined effectively keeping in view that the States of Haryana and Punjab were separate and that the wheat was being taken from Punjab towards Haryana barrier. As a matter of fact, the accused had violated the provisions of clause 3 of the Inter-Zonal Wheat and Wheat Products (Movement Control) Order, 1973 wherein State of Punjab and Union Territory from one zone while the State of Haryana a different zone. Consequently, I find no force in this contention of the learned counsel for the appellant that entire trial has been vitiated due to non-framing of proper charge.

(8) Mr. Mittal on the strength of the Single Bench of this Court in *Harchand Singh and another v. The State of Punjab* (1), contends that the possibility of the accused changing their mind before crossing the border cannot be ruled out and thus it was not an attempt on their part to export the wheat out of the zone but at the most, it was a preparation for doing so which is not punishable. There is sufficient force in this contention as the provisions of clause 3 of the said order prohibit the export or attempt to export or abet the export of wheat or any other wheat product from one zone to another except with the permission in writing of the Central Government or of an officer authorised in that behalf by the Central Government. In the case in hand according to SI Kashmira Singh, the tractor trolley was apprehended about 15/20 paces from the Haryana border in the area of village Chural Kalan. Thus the reasonable possibility cannot be ruled out that the accused might have changed their mind for exporting wheat out of the Punjab zone. Therefore, it cannot be said that they had attempted to export wheat out of this zone.

(9) The Apex Court also in *Malkiat Singh and another v. The State of Punjab* (2), had taken a similar view by holding under

(1) 1985 (1) Chandigarh Law Reporter 167.

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

section 3 of the Punjab Paddy (Export Control) Order, 1959 that preparation to commit an offence is not punishable but only an attempt to export paddy is punishable. In that case, a truck carrying 75 bags of paddy was intercepted at Samalkha barrier. The paddy was given to the Transport Company at Malerkotla (Punjab) for being transported to Delhi. Under these circumstances, it was held that at the most the act of the accused would amount to preparation for committing an offence of transporting the paddy and not attempt to export.

There is also considerable force in the other contention of Mr. Mittal that Joginder Singh accused was not in possession of the wheat as he was sitting by the side of the driver driven by Amar Singh because only those persons who are either sitting on wheat on the trolley or the driver of the tractor can be said to be transporting the wheat and not a person who happened to sit by the side of the driver as reasonable possibility cannot be ruled out that he was merely having a lift on the tractor. The factum that according to the version of Joginder Singh appellant he and his brother Amar Singh were transporting this wheat to village Chural Kalan for delivering it to Malkiat Singh then Gram Sewak is of no consequence to infer that Joginder Singh was also transporting the wheat because this version of the accused is incapable of being disjuncted and has to be accepted or rejected as a whole.

(10) Consequently, the order of conviction of the trial Court is not sustainable on this ground also.

(11) Lastly, Mr. Mittal contends that the challan having been filed on 4th August, 1993 after the expiry of the period of six months, the provisions of section 167 sub-section (5) of the Code of Criminal Procedure shall bar the Court from taking cognizance of the offence because the Investigating Officer had not taken any special permission of the Court for extension of time in the investigation of the case. He has relied upon the observations of the Division Bench of this Court in *State of Haryana v. Rajinder Singh* (3), in this regard. The provisions of Section 167 (5) Cr.P.C. read as under : --

"Section 167

(1)	xx	xx	xx	xx
(2)	xx	xx	xx	xx
(3)	xx	xx	xx	xx
(4)	xx	xx	xx	xx

(5) If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice, the continuation of the investigation beyond the period of six months is necessary.

(6) xx xx xx xx

A bare glance through the same leaves no doubt that only the investigation beyond the period of six months is barred and not the taking of the cognizance of the offence by the court on the basis of evidence already collected during investigation before the said period of six months while sitting in the Division Bench with B. S. Nehra, J. in Criminal Appeal No. 183/DBA of 1987 *State of Haryana v. Meer Singh* disposed of on 13th July, 1992, we have taken a different view than the one taken by the Division Bench in Rajinder Singh's case (*supra*) as this authority was not brought to the notice of that Bench. Although this controversy is required to be settled by a Larger Bench of this court yet all the same, since the appeal is being accepted on other grounds, there is no necessity to refer the case to the Larger Bench.

(12) For the reasons recorded above, there is no option but to accept this appeal and acquit the appellant by setting aside the orders of conviction and sentence. It is ordered accordingly. Fine if, paid, shall be refunded. The wheat or its sale proceeds shall be released to Joginder Singh appellant.

J.S.T.

Before : Hon'ble S. D. Aggarwala & J. L. Gupta, JJ.

BALBIR SINGH WASU,—*Petitioner.*

versus

LAKHBIR SINGH WASU AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 694 of 1993.

October 5, 1993.

Letters Patent Appeal—Clause X—Maintainability of appeal—Proceedings in probate case in the High Court are original proceedings—Order of Single Judge permitting Executor of Will to distribute cash in accordance with the terms of the Will, effects valuable vital rights of parties—Appeal lies against such an interlocutory order.