MANGI LAL

v.

STATE OF MAHARASHTRA

September 9, 1969

[S. M. SIKRI, G. K. MITTER AND P. JAGANMOHAN REDDY, JJ.]

Maharashtra Jwar (Restriction on purchase and sale and control of movement) Order, 1964—Provision for forfeiting packages, covering and receptacles in—If authorises forfeiture of Juar—Defence of India Rules, r. 125(a)—Rule if ultra vires as contravening s. 114 Evidence Act.

The appellant was convicted and sentenced under r. 125(a) Defence of India Rules for contravening cl. 4(b) of the Maharashtra Jwar (Restriction on purchases and sale and control of movement) Order, 1964, for contravening Buldana District Price Control Order, 1965; and for contravening cl. 3 of the Maharashtra Foodgrains (Declaration of Stock) (Second) Order, 1964. The Magistrate further ordered that the *maddamal* (Juar) before the court be confiscated by the Government. The appellant appealed unsuccessfully to the Sessions Judge. But the High Court set aside the conviction and sentence under cl. 3 of the Maharashtra Food Grains (Declaration of Stock) Order, and maintained the other convictions in an appeal to this Court the appellant contended that (i) the High Court having set aside the conviction under cl. 3 of the Maharashtra Foodgrains (Declaration of Stocks) (Second) Order, 1964 the order for forfeiture could not be maintained because the Maharashtra Jwar (Restriction on Purchase and sale and control of movement) Order, 1964, and the Buldana District Jwar (Price Control) Order 1965 did not contain any provision authorising the court to forfeit; and (ii) r. 141(2) of the Defence of India Rules, 1962 was *ultra vires* because it laid down a rule of evidence contrary to the law contained in s. 114 of the Indian Evidence Act.

HELD : (i) The order of forfeiture was illegal. The only provision contained in the Maharashtra Jwar (Restriction on Purchase and Sale and Control of Movement) Order, 1964, is regarding forfeiture of packages covering or receptacles in which any stocks of juar are found. This does not enable the Court to order forfeiture of juar. The Buldana District Juar (Price Control) Order authorises the Collector to seize stocks but does not enable the Court to forfeit juar. [274 H]

(ii) r. 141(2) is within the powers conferred by s. 3(1) of the Defence of India Act. The fact that the rule is contrary to an existing Act does not matter because s. 43 of the Defence of India Act provides that "the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act." [275 F—G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 193 of 1967.

Appeal by special leave from the judgment and order dated March 7, 1967 of the Bombay High Court, Nagpur Bench in Criminal Revision Application No. 306 of 1966.

A *G. N. Dikshit, S. K. Bisaria* and *R. N. Sachthey,* for the appellant.

H. R. Khanna and *S. P. Nayar,* for the respondent.

The Judgment of the Court was delivered by

B **Sikri, J.** This Court granted special leave to appeal in this case limited to the following two points :

(1) whether the confiscation of the foodgrains in the house of the appellant was legal; and

(2) whether r. 141(2) of the Defence of India Rules, 1962 is not *ultra vires* the Defence of India Act.

C

The facts relevant to the first point are as follows : Certain shpherds belonging to a wandering tribe were apprehended by the police one night while they were carrying 12 baggages containing juar on the backs of 12 horses. On being questioned they informed the police that they had purchased all this quantity D of juar from the appellant at the rate of 78 paise per kg. On this information the police raided the houses of the appellant and further found 34 quintals and 63 kgs of juar. The appellant had two houses at Janephal and in one house 3 quintals and 48 kgs while in the other house 31 quintals and 18 kgs. of juar was found, which was seized by the police. The last declaration E of stock which had been given by the appellant was on June 5, 1965.

The appellant was tried and convicted on three courts by the Judicial Magistrate, First Class, Mehkar. He was convicted under r. 125(9), Defence of India Rules, for contravening cl. 4(b) of the Maharashtra Jwar (Restrictions on purchases and sale and F control of movement) Order, 1964, and sentenced to rigorous imprisonment for six months and fine of Rs. 500/-, in default further rigorous imprisonment for six months. He was further convicted for contravening Buldana District Price Control Order, 1965, and sentenced to rigorous imprisonment for six months and fine of Rs. 500/-, in default rigorous imprisonment for six months. He was also convicted for contraven- G vening S. 3 of the Maharashtra Declaration of Stock Order, 1964, and sentenced to rigorous imprisonment for six months and fine of Rs. 500/- in default further rigorous imprisonment for six months. The sentences of imprisonment on each count were directed to run concurrently. The Magistrate further ordered that the *maddemal* before the Court be confiscated to the H Government.

The appellant appealed unsuccessfully to the Sessions Judge. He then filed a revision before the High Court. The High Court

set aside the conviction and sentence passed on the appellant in respect of contravention of cl. 3 of the Maharashtra Foodgrains (Declaration of Stocks) (Second) Order, 1964. But while maintaining the conviction for the other two charges the High Court modified the sentences passed on the appellant and instead of the sentences awarded by the lower courts sentenced the accused to imprisonment already undergone and fine of Rs. 1,000 on each of the two counts. The High Court observed :

> "The order regarding forfeiture of the juar seized from the house of the accused is maintained. The juar seized from the house in the occupation of Ratanlal will however be released."

The learned counsel contends that the High Court having set aside the conviction and sentence in respect of contravention of cl. 3 of the Maharashtra Foodgrains (Declaration of Stocks) (Second) Order, 1964, it was illegal to maintain the order regarding forfeiture of the juar seized from the house of the appellant because, he says, the Maharashtra Jowar (Restriction on Purchase and Sale and Control of Movement) Order, 1964, and the Buldana District Juar (Price Control) Order, 1965, did not contain any provision authorising the Court to forfeit the juar, the subject-matter of the contravention of these two orders.

Rule 125(9) provides :

> "(a) If any person contravenes any provision of this rule or any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both : Provided
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> . . . . .
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> (b) If any order made under this rule so provides, any court trying a contravention of the order may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to Government."

The learned counsel for the State has not been able to point out any provision in the two orders mentioned above containing any provision contemplated in r. 125(9)(b). The only provision contained in the Maharashtra Jowar (Restriction on Purchase and Sale and Control of Movement) Order, 1964, is regarding forfeiture to the Government of packages, coverings or receptacles in which any stocks of jowar are found. This obviously does not enable the Court to order forfeiture of Juar.

A The Buldana District Juar (Price Control) Order, 1965, it is true, authorises the Collector to seize stocks but does not enable the Court to forfeit the juar. In the result we hold that the order of the High Court maintaining the order of forfeiture is allegal and liable to be set aside.

B On the second point the learned counsel for the appellant contends that r. 141(2) of the Defence of India Rules, 1962, is *ultra vires* because it lays down a rule of evidence contrary to the law contained in section 114 of the Indian Evidence Act. Rule 141(2) is in the following terms :

> "141(2) If in the course of any judicial proceedings
> C 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 he was so informed; but a failure to comply with sub-rule (1)—
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> D (i) shall not preclude proof by other means that he had information of the order,
>
> (ii) shall not affect the validity of the order.

Section 3 of the Defence of India Act enables the Central Government, by notification in the Official Gazette, to make such
E rules as appear to be necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community. Sub-s. (2) mentions various matters on which rules can be made, but this is without prejudice to the
F generality of the powers conferred by sub-s. (1).

It seems to us that r. 141(2) is within the powers conferred by s. 3(1) of the Defence of India Act. The fact that the rule is contrary to an existing act does not matter because s. 43 of the Defence of India Act provides that "the provisions of this Act or any rule made thereunder or any order made under any such
G rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act." The section contemplates that the rules may be inconsistent with existing legislation but by virtue of s. 43, if otherwise valid, they would have effect notwithstanding that they are
H inconsistent with existing legislation. We use the words "if otherwise valid" because the rules must fall within the powers given under s. 3(1). Section 3 gives very wide powers. It seems to us that r. 141(2) falls within s. 3 because it is essential

to the scheme of the Defence of India Rules. The Rules must necessarily provide for the publication of orders made under the Rules and they must also provide for proof in judicial proceedings of the fact of publication. A

The learned counsel has not been able to show us any case in which a rule like r. 141(2) has been challenged, much less declared *ultra vires*, both in England and in India. B

In the result the appeal is partly allowed, the order of the High Court maintaining the forfeiture of the seized stock of juar set aside and the rest of the order of the High Court maintained.

Y.P. *Appeal partly allowed.*