

REVISIONAL CRIMINAL.

Before Rowland, J.

SAKALDEO SINGH

v.

KING-EMPEROR.*

1936.

September,
22.

Sugar-cane Act, 1934 (Act XV of 1934), sections 3 clauses (2) and (3), and 7—Sugar-cane Rules 11, 13, 15, and 20—District Magistrate's order for prosecution for breach of Rules 9 to 11—conviction for breach of Rule 13, whether legal—Sugar-cane Rules 11 and 13, if ultra vires—Penal Code, 1860 (Act XLV of 1860), sections 40, 64 and 67—General Clauses Act, 1897 (Act X of 1897), section 25—imprisonment in default of fine, if can be awarded for breach of Sugar-cane Rules—offence, meaning of.

The District Magistrate ordered the prosecution of the petitioner, a licensed purchasing agent, under rule 15 of the Sugarcane Rules for breach of rules 9 to 11 of the said rules but the petitioner was convicted for breach of rule 13, i.e., purchasing sugar-cane without proper weighment.

Held (i) that the conviction was not illegal. When a prosecution has been instituted of a kind requiring the previous complaint, sanction or order of a particular authority, then once the proceedings are on foot they will take their course in respect of any offence which the facts disclose.

Jamuna Singh v. Laldhari Singh(1), referred to.

Section 7 of the Sugar-cane Act gives very wide powers to local Government to make rules for the regulation of the purchase and sale of sugar-cane by and to licensed purchasing agent and therefore rules 11 and 13 are not *ultra vires*.

The breach of Sugar-cane Rules is an offence within the meaning of section 40 of the Penal Code.

Section 25 of the General Clauses Act makes sections 64 and 67 of the Penal Code applicable to offences under the Sugar-cane Rules and therefore the order passing the sentence of imprisonment in default of fine was not illegal.

*Criminal Revision no. 485 of 1936, from an order of S. K. Das, Esq., I.C.S., Sessions Judge of Saran, dated the 22nd July, 1936, affirming an order of Maulavi S. N. Haider, Subdivisional Officer, Chapra, dated the 2nd June, 1936.

(1) (1934) 15 Pat. L. T. 694.

Ma Khwet Kyi v. King-Emperor(1), distinguished.

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Application in revision.

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The facts of the case material to this report are set out in the judgment of Rowland, J.

Pandey Nawal Kishore Sahay, for the petitioner.

Mr. Gopal Prasad, for the Crown.

ROWLAND, J.—The petitioner is a licensed purchasing agent for a sugar-cane factory and has been prosecuted for an offence against the new Rules framed by the local Government under the Sugar-cane Act, 1934. The finding of the lower appellate court expressed in the concluding portion of his judgment is that the appellant purchased sugarcane both on 19th March, 1936, and 20th March, 1936, without proper weighment, thereby contravening Rules 13 and 11 of the Sugar-cane Rules. The learned Sessions Judge accordingly held that he had rightly been convicted under Rule 15. Now Rule 11 deals with the maintenance of clear and accurate records of all purchases and these records are to show among other particulars the weight of the sugar-cane including the weight of the cart, the weight of the cart itself and the net weight of the sugar-cane purchased. This Rule is obviously framed by some one who supposed as a matter of course that weighment would be made on a mechanical weigh-bridge. In fact unless weighment is made in that manner, it is difficult to see how any clear and accurate record of those particulars can possibly be made. Rule 13 requires the manager or purchasing agent to comply with conditions among which are these: that all dealings and contracts of purchase are to be made and had according to the standard maund and weighments shall be made to the nearest quarter maund; and the scales or weights used must permit of the easy reading of the recorded weight.

(1) (1928) I. L. R. 6 Rang. 791.

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It was first contended for the petitioner that the Rules nowhere provided that weighment must be made on a mechanical weigh-bridge. I think that Rule 13 contains requirements which a mechanical weigh-bridge satisfies and that no other method of weighing has been suggested which would equally satisfy those requirements. Rule 13 is, therefore, broken unless weighment is made either by a weigh-bridge or by some other method which equally satisfies the requirements of the Rule and no other practicable method has in fact been suggested; nor has any other practicable method been suggested of fulfilling the requirements of Rule 11. I am of opinion that the accused on the facts found by the learned Sessions Judge did not obey Rules 11 and 13.

It has, however, been contended that the proceedings are defective, because under Rule 20 no prosecution is to be instituted under these Rules except by order of or under authority from the District Magistrate. The District Magistrate did in fact direct the prosecution of the petitioner in the following terms:

“Prosecute the two men under Rule 15 for infringement of Cane Rules 9—11.”

The Sessions Judge has found that the petitioner committed a breach of Rule 13; and it is said that a breach of this Rule was not within the cognisance of the court before which a prosecution was instituted for breach of Rules 9—11. I do not find much substance in this argument. It has been held in several cases that when a prosecution has been instituted of a kind requiring the previous complaint, sanction or order of a particular authority, then once the proceedings are on foot they will take their course in respect of any offence which the facts disclose. There is ample authority for this. It is sufficient at present to refer to *Jamuna Singh v. Laldhari Singh*⁽¹⁾—once the bar to the court taking cognisance of the case is

(1) (1934) 15 Pat. L. T. 694.

removed then if it appears that some other offence also has been committed, it is not necessary to have a fresh complaint.

Another point taken is that if the meaning of the Rules is as understood by the courts below and the Rules make it obligatory on the purchasing agent to buy in a particular manner by weight, then the Rules go beyond the scope of the Act and are *ultra vires*. For this contention reference is made to the provisions of the Act itself and the powers conferred on the local Government by it. Section 3(2) empowers the local Government to fix a minimum price for the purchase of sugar-cane in a controlled area; and section 3(3) authorises the local Government to prohibit in a controlled area the purchase of sugarcane for a factory otherwise than from the grower or a licensed purchasing agent. Then there is power in section 7 to make rules for the purpose of carrying into effect the objects of the Act and in particular to provide for

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(e) the issue of licences to purchasing agents, the fees for such licences, and the regulation of the purchase and sale of sugarcane by and to such agents; and

(f) the records, registers and accounts to be maintained for ensuring compliance with the provisions of this Act.

Sub-clause (2) authorises the local Government to provide that a breach of sub-clause (2) (c) or (f) may be punished with fine not exceeding two thousand rupees. The power to make rules for the regulation of the purchase and sale of sugar-cane by and to licensed purchasing agents, seems to me to be a very wide power indeed; and I have no doubt at all that Rules 11 and 13 are within the powers conferred by section 7 of the Act.

These are all the points taken for the petitioner as against the conviction. One further point is raised with regard to the sentence imposed. The magistrate imposed a fine of Rs. 200 and directed that in default of payment the accused should suffer

1986. simple imprisonment for two months. It is said for the petitioner that the Act while authorising the imposition of a fine does not authorise the imposition of any sentence of imprisonment. The answer to this is in sections 64 to 67 of the Indian Penal Code read with sections 40 to 42. In sections 64-67 the word 'offence' is used in the meaning given in the second clause of section 40, that is to say,

"a thing punishable under the Penal Code, or under any special or local law as hereinafter defined."

The definitions are in sections 41 and 42, 'special law' being a law applicable to a particular subject and a 'local law' being a law applicable only to a particular part of British India. Thus an offence under a local or special law is an offence for the purpose of sections 64 to 67. Under section 64 in every case of an offence punishable with fine only in which the offender is sentenced to a fine, it shall be competent to the court to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment; and under section 67 the amount of imprisonment is defined and limited. There is thus a power to impose a sentence of imprisonment in default of payment when an offender is convicted of an offence punishable under a special or local law although such law makes no specific provision for imprisonment in default. But it has been argued that though this principle may be applicable when an offence is created by any section of a special or local law, it does not apply when the offence is created by a rule made in exercise of a rule-making power. For this proposition reliance is placed on *Ma Khvet Kyi v. King-Emperor*(1), a case in which a single Judge of the Rangoon High Court held that the provisions of the Penal Code relating to abetment did not apply to an abetment of a breach of the bye-laws framed by a District Council under the authority of the Burma Rural Self-Government Act. The terms of that Act

(1) (1928) I. L. R. 6 Rang. 791.

and of the rules and of the bye-laws are not before me; nor the provisions of the General Clauses Act, if any, in the light of which Acts of the Burina legislature are to be interpreted. But what we are dealing with here is an act made punishable by rules framed under the authority of an Act of the Governor-General in Council, the interpretation of which is controlled by the General Clauses Act, Act X of 1897. Section 25 of that Act makes applicable sections 63 to 70 of the Penal Code to all fines imposed under any Act, regulation, rule or bye-law, unless the Act, regulation, rule or bye-law contains an express provision to the contrary. I have no doubt therefore that the provisions of sections 64 and 67 of the Indian Penal Code are applicable to the fines imposed under rules framed under the Sugar-cane Act, and there is no want of power to impose a sentence of imprisonment in default of payment of the fine.

In the result the application fails and the rule is discharged.

Rule discharged.

J. K.

REVISIONAL CRIMINAL.

Before Rowland, J.

SUKHDEO PRASAD TIWARI

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 242 and 342—summons case—non-examination of accused under section 242, when vitiates the trial—non-examination of accused under section 342, effect of—prejudice.

*Criminal Revision no. 466 of 1936 from an order of Radha Charan Das, Esq., District Magistrate of Sambalpur, dated the 17th June, 1936, modifying an order of Rai Bahadur Madhukar Sahai, Honorary Magistrate, Jharsuguda, dated the 9th April, 1936.

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