1951

NANALAL BHOGILAL v. AMBALAL SOMNATH

Dixit J.

Nos. 1 and 2 not paying the amount as directed by the decree the third defendant was entitled to recover the amount by sale of the property, it seems to me that it is not possible to successfully contend that this part of the decree was, therefore, not executable. In my opinion, therefore, this contention must equally fail.

As the two contentions urged in support of the appeal fail, the appellate decision will have to be affirmed. The result is that this appeal fails and the same will be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CRIMINAL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

1951 *Jan.* 30

STATE *v.* RAMNIKLAL N. JOSHI (ORIGINAL ACCUSED).*

Essential Supplies (Temporary Powers) Act (XXIV of 1946) s. 7—Essential Articles Restricted Acquisition and Possession Order, 1943, clause (2) sub-cl. (2) and clause 3A (1)—'Normal quantity', meaning of—Normal quantity prescribed for each individual essential article is not to be exceeded—Lumping together of various essential articles is not contemplated by the order—Order of discharge of accused—Filing of revision—Application by the State—Limitation—Six months from the date of decision complained against—Rules of the High Court, Appellate Side, Rule 73.

The object of the Essential Articles Restricted Acquisition and Possession Order, 1943, is to put a restraint on the acquisition and possession of essential articles so as to ensure fair and equal distribution of those articles amongst the public.

For calculating the normal quantity which a house-holder is deemed to require, one has to aggregate the quantities reckoned on the basis laid down in the Notification, i. e. in the light of the limit fixed for each essential article. The total quantity of any particular essential article in the possession of a person is not to exceed the limit fixed in the Notification issued under the proviso to clause (2) sub-clause (2).

For the determination of the 'normal quantity' the lumping together of the various essential articles is not contemplated by the order.

For filing a criminal revision application by the State the period of limitation is six months from the date of the decision complained against.

* Criminal Revision Application No. 1372 of 1950.

Criminal Revision Application against the order of V. R. Shah, Additional Sessions Judge, Surat, confirming the order passed by A. N. Vensia, Resident First Class Magistrate, Surat.

The accused Ramniklal was prosecuted under s. 7 of the Essential Supplies (Temporary Powers) Act, 1946, on account of an alleged breach by him of the provisions of clause 3-A of the Essential Articles Restricted Acquisition and Possession Order, 1943.

On August 11, 1949, the house of the accused was searched and it was found that some of the 6 essential Articles were found in excess of the quantity permitted.

	Bengali Md.	Seers	Annis
Wheat in excess by ...	1	11	4
Rice in excess by ...	...	25	14

The accused was the head of the family and was in possession of 6 ration cards including his own and he was entitled to draw 12 units. Wheat found in his possession was 2 Bengali maunds, 31 seers and 4 annis and rice found in his possession was 2 Bengali maunds, 5 seers and 14 annis. In law he would not be entitled to be in possession of more than 1 Bengali maund 20 seers.

The accused raised a preliminary objection to the trial stating that even on the assumption that the allegations made by the prosecution as to the quantity of the food grains (6 essential articles) found in his possession were true in law, he committed no offence since on the 6 ration cards he was entitled to be in posession of the aggregate quantity of 9 Bengali Maunds. The accused relied on Clause 2, Sub-cl. 2, of the Order.

The learned Magistrate accepted the contention of the accused and discharged him on 9th January 1950.

The State of Bombay filed a revision application to the High Court against the Order of discharge (Criminal Revision Application No. 472 of 1950). On May 18, 1950 it was ordered to be returned for being presented to the Sessions Court at Surat.

Accordingly the State of Bombay filed a Criminal Revision Application in the Court of Sessions Judge at Surat. The learned Judge by his order dated July 5, 1950 held that *prima facie* on the facts alleged by the prosecution, the accused would be guilty of the breach of the provisions of the Essential

1951

STATE
v.
RAMNIKLAL
N. JOSHI

Vyas J.

Articles Restricted Acquisition and Possession Order, 1943. He however, dismissed the application as being barred by limitation.

The State of Bombay applied in revision against the order.

H. M. Choksi, Government Pleader for the State.

D. V. Patel, Advocate for the Accused.

VYAS J. This is a revision application by the Government of the State of Bombay for the setting aside of the order of discharge passed by the Resident Magistrate, First Class, Surat, on January 9, 1950. By that order the learned Magistrate discharged the opponent accused Ramniklal N. Joshi, who was prosecuted under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946) on account of an alleged breach by him of the provisions of Clause 3-A (*1*) of the Essential Articles Restricted Acquisition and Possession Order, 1943. A revision application against the said discharge was made in the High Court by the State of Bombay, but the High Court made the following order on May 18, 1950; "Papers to be returned to the appellant with a direction that he may present them to the Sessions Court, Surat."A revision application was then filed by the State in the Court of Session at Surat. The Additional Sessions Judge, Surat, dismissed it, holding it to be time-barred. He observed that in view of the bar of limitation, it was not necessary to go into the merits of the case, but said that on merits it was clear that the accused had contravened the provisions of cl. 3A (*1*) of the Essential Articles Restricted Acquisition and Possession Order, 1943. The Additional Sessions Judge having dismissed the revision application, the Government of the State of Bombay has approached this Court in revision against the order of discharge.

At the outset the learned Government Pleader enquired whether this Court had any objection to his arguing the matter in view of the fact that at one time the opponent and he were practising as members of the Surat bar. On this Court assuring him that it had no objection whatever to his arguing the application, he proceeded with his arguments.

Dealing first with the point of limitation, on which ground the Additional Sessions Judge, Surat, dismissed the application filed before him, it is to be noted that the order of the Magistrate discharging the accused was passed on January 9, 1950. The revision application before the Court of Sessions, Surat, was filed on May 29, 1950. The present application was filed

in the High Court on October 19, 1950. Now, we are not referred by the learned advocate for the opponent to any provision in the law of limitation which says that this application is barred by time or that the one filed before the Sessions Court, Surat, was so barred. Our attention is drawn to r. 119 of the Criminal Manual issued by the High Court of Bombay, 1947 (p. 98), which says :

"Applications for the exercise of the revisional jurisdiction in criminal matters to a Sessions Judge or a District Magistrate must be made within 30 days from the date of the decision complained of, exclusive of the time required for obtaining the necessary certified copies:

Provided that such an application may be admitted after the said period, if the applicant satisfies the Court that he had sufficient cause for not making the application within such period."

This is merely a working rule issued for the guidance of the Criminal Courts subordinate to the High Court and does not, and cannot, lay down any law on the subject of limitation. If an appeal against an acquittal could be filed by Government within six months from the date of an acquittal, the period for the filing of a revisional application, as far as Government is concerned, could obviously not have been intended to be less than six months. In our opinion, therefore, the revisional application made by the State of Bombay before the Court of Session at Surat on May 29, 1950, was within time and should not have been dismissed on the ground of limitation by the learned Additional Sessions Judge. Rule 73, Chapter XIII, of the Rules of the High Court of Judicature at Bombay, Appellate Side, 1950, (page 30) says :

"(1) Applications by the Government for the exercise of the Court's Revisional Jurisdiction in Criminal matters must be made within six months from the date of the decision complained against, exclusive of the time required for obtaining copies."

Clearly, therefore, even according to the rule No. 73, the period for the filing of revisional applications by Government to the High Court is six months from the date of the decision complained against. The order of the Additional Sessions Judge, Surat, being dated July 5, 1950, the present application by the State which was made on October 19, 1950, is accordingly within time.

A preliminary point was taken by Mr. Patel for the opponent, namely, that the order of the learned trial Magistrate discharging the opponent, having been passed on January 9, 1950, the matter has already become more than a year old now and

1951

STATE v. RAMNIKLAL N. JOSHI

Vyas J.

therefore we should be reluctant to interfere with the discharge. It is to be noted however that this application has been made to us for the interpretation of an important provision of law which is contained in the proviso to cl. 2, sub-cl. (2), of the Essential Articles Restricted Acquisition and Possession Order, 1943, and we do not feel justified in rejecting it merely on the ground that it is made to us a little more than a year after the order of discharge passed by the learned trial Magistrate in favour of the opponent, As we have just pointed out above, there is no bar of limitation against it.

This would take us next to the merits of the case. Now, the facts from which this application has arisen are briefly as follows: On August 11, 1949, the house of the opponent was searched and he was found in possession of the following quantities of the below mentioned essential articles :—

	Bengali maunds.	Seers.	Annis.
(1) Wheat	2	31	4
(2) Rice	2	5	14
(3) Jowar	1	12	14
(4) Jowar Ponk	0	2	0
(5) Bajri	0	15	0
(6) Jav-Barley	0	4	6
(7) Flour of Maize and Jav Barley	0	8	8
Total ...	7	5	14

As stated above, the essential articles found in possession of the opponent were six in number, and the total quantity of them all taken together was 7 Bengali maunds, 5 seers and 14 annis. On these facts, the opponent was prosecuted in the Court of the Resident Magistrate, First Class, Surat, under s. 7 of the Essential Supplies (Temporary Powers) Act (XXIV of 1946) for the breach of cl. 3A (1) of the Essential Articles Restricted Acquisition and Possession Order, 1943. The case of the prosecution was that in respect of each essential article the normal quantity which each member of the opponent's household was entitled to possess on the special basis prescribed by Government Notification No. 181 (4A) (b)/D. R., dated December 24, 1948, issued under the proviso to cl. 2, sub-cl. (2), of the Essential Articles Restricted Acquisition and

Possession Order, 1943, was 10 Bengali seers (800 tolas). The essential articles possessed in this case being six in number the normal quantity which each member of the household was entitled to possess was the aggregate of the quantities permissible in respect of each essential article on the basis prescribed in the above mentioned Government Notification. The said aggregate in this case would be six times 10 Bengali seers, i.e., 1 Bengali maund 20 seers, as the articles were six in number. As the household of the opponent consisted of six members, it was entitled to possess six times the above aggregate, i.e., 1 Bengali maund 20 seers multiplied by 6=9 Bengali maunds. The important point is that according to the contention of the prosecution, although the opponent, as a householder, was deemed to require as his normal quantity 9 Bengali maunds, he was not entitled to exceed the limit laid down for each individual essential article in the Notification which was issued under proviso to cl. 2, sub-cl. (2), of the Order. As the household of the opponent consisted of six members, it was entitled to possess six times 10 Bengali seers=1 Bengali maund 20 seers of each essential article. As the quantities of wheat and rice which were found in possession of the opponent were in excess of the limit of 1 Bengali maund 20 seers, it was contended by the prosecution that the opponent was guilty of a breach of cl. 3A (*1*) of the Order.

The contention of the defence was that all the essential articles could be legally lumped together and the normal quantity which a householder would be entitled to possess should then be calculated. It was contended that the normal quantity would be the aggregate of the normal quantities prescribed for each of the essential articles lumped together. In other words, the practical effect of this submission was that the number of essential articles should be multiplied by the number of members comprising the household and the measure of the normal quantity prescribed for each essential article. The resultant quantity would be the normal quntity which a householder would be entitled to possess, irrespective of whether the basis laid down for determining the normal quantity of each essential article was exceeded or not. This was the defence submission.

The trial Magistrate accepted the view of the defence and held that the opponent was entitled to possess 9 Bengali maunds taking into account the number of essential articles possessed and the number of members comprising the household, irrespective of whether the normal quantity fixed for

1951

STATE
v.
RAMNIKLAL
N. JOSHI

Vyas J.

each essential article was exceeded or not. Accordingly he discharged the opponent. In the body of his order he observed as under :—

"In this case six essential articles are possessed and required by the accused as allowable by law and, therefore, *800×6=4800 tolas=1* maund 20 seers is the normal quantity in respect of each member of the household as envisaged by proviso (*b*) to cl. 2 of sec. 2 of the said order. As there are six members in the household, the family is deemed to require nine Bengali Mds. of the essential articles of foodgrains and is entitled to possess the same amount. The weight of the essential articles found from the house of the accused is 7 Bengali maunds 5 seers 14 annis which is much below and not in excess of the normal quantity allowable to him.....

Thus the limit even according to the calculation of the prosecution will be 9 Bengali maunds for a household of six members representing 12 units, while the foodgrains actually recovered from the house of the accused according to the complainant is 7 Bengali manuds 5 seers 14 annis which cannot be said to be hoarding of foodgrains beyond the limit which the family is entitled to keep. Moreover, there is no distinction created by any law between one essential article and another essential article. They are all called foodgrains which are deemed to be essential and are on the same level."

It would thus be clear that the learned Magistrate's view was that different essential articles could be lumped together and need not be taken into account separately or individually for determining the total quantity which a householder would be entitled to possess or deemed to require.

Although the learned Additional Sessions Judge, Surat, dismissed the revisional application of the State against the discharge of the opponent on the ground of limitation, he took a contrary view from that of the learned Magistrate on merits. He expressed himself as follows in his judgment :—

"The opponent desires the Court to say that because one member can possess 10 B. seers of each variety of essential articles, therefore, the normal quantity that he can possess is 1 B. M. 20 seers and as there are six members in his household, the normal quantity that he can possess is 9 Bengali maunds. The fallacy in his argument lies in adding one kind of commodity to another for the purposes of determining the normal quantity of any one article. One can add up only like quantities. Wheat cannot be added to Jowar. He cannot add to a normal quantity of wheat, the normal quantity of Jowar. When the words 'normal quantity' are used in this proviso, it is clear that they are used in reference to one individual essential article. Therefore, when the proviso speaks that the 'quantities reckoned on the said basis' are to be 'aggregated' in order to arrive at the normal quantity which the householder can possess it is clear that the quantities to be aggregated are the normal quantities of each individual essential article.

In my opinion, therefore, what the proviso means is that one must first reckon the normal quantity which each individual member can possess on the basis prescribed by Government, then he has to aggregate the normal quantities in respect of each article in order to arrive at the total normal quantity that the householder can possess in respect of each individual essential article. That would be arrived at by multiplying the normal quantity of each essential article that can be possessed by one member by the number of members in his household.....In my opinion therefore the order of discharge passed by the learned trial Magistrate is not proper and if the application were to be disposed of on merits of the case I would have set aside that order and directed the Magistrate to proceed further with the trial of the case."

As we have stated already, the learned Judge dismissed the revisional application on the ground of limitation. If he had not held that the application was time-barred, he would have set aside the order of discharge passed by the learned Magistrate.

The Essential Articles Restricted Acquisition and Possession Order, 1943, was applied to Surat District from December 26, 1948, onward by Government Notification No. 169 (4)/D. R. This order was made on January 19, 1943, and cl. 2, sub-cl. (2), of it originally provided as follows :

"(2) 'Normal quantity' means in relation to the quantity of any essential article required by any person, such quantity as would be required for use and consumption in the household or establishment or of the animals in the custody of that person during a period of one month or such longer period as ought fairly to be allowed in view of the existence of any special circumstance."

Had the matter rested there, the Court in each individual case would have had to use its discretion for determining the normal quantity of any particular essential article in regard to a household or establishment. However, on September 27, 1943, the following proviso was added to cl. 2, sub-s. (2) :

"Provided that in respect of any area the Provincial Government may by notification in the Official Gazette prescribe any special basis for determining the normal quantity and thereupon the normal quantity shall be reckoned in such area on the said basis and for this purpose a householder in such area shall be deemed to require as his normal quantity the aggregate of the quantities reckoned on the said basis in respect of each member of his household including such servants as form part of the household."

On December 24, 1948, Notification No. 181 (4A) (b)/D. R. was issued by the Government of Bombay under this proviso prescribing a special basis for determining the normal quantity in respect of each essential article. That notification was in the following terms :

1951

STATE v. RAMNIKLAL N. JOSHI

*Vyas J.

"In pursuance of the proviso to sub-clause (2) of clause 2 of the Essential Articles Restricted Acquisition and Possession Order, 1943, the Government of Bombay is pleased to direct that the basis for determining the normal quantity in the area specified in the schedule hereto annexed shall be at the rates specified below, namely:—

Class of persons	Quantity
1	2
1. Persons other than manual labourers of the age of 6 years and above.	800 tolas per head.
2. Children below six years of age.	400 tolas per head.
3. Manual labourers who are holders of supplementary ration cards or entitled to obtain supplementary ration otherwise than on a ration document under the provisions of the Bombay Rationing Order, 1943.	1,080 tolas per head.
4. Manual labourers other than those falling under category 3.	800 tolas per head.
5. Holders of foodgrain ration permits issued under the provisions of the Bombay Rationing Order, 1943.	400 tolas per unit specified on the ration permit."

Now, the question before us is as to the interpretation of the expression "and for this purpose a householder in such area shall be deemed to require as his normal quantity the aggregate of the quantities reckoned on the said basis in respect of each member of his household" occurring in the proviso to cl. 2, sub-cl. (2), of the Essential Articles Restricted Acquisition and Possession Order, 1943. Two conflicting constructions have been pressed before us. The learned Government Pleader has argued that the normal quantity which a householder would be deemed to require would be the aggregate of the normal quantities in respect of each individual essential article, i.e., the aggregate of the quantities reckoned on the basis prescribed in the Notification No. 181 (4A) (b)/D. R., dated December 24, 1948. The aggregate of the quantities thus reckoned is to be multiplied by the number of members comprising a household, and the resultant quantity would be the normal quantity which a household could lawfully possess. The

defence view is that all the essential articles could be lumped together and then the normal quantity which a householder would be deemed to require should be calculated. That normal quantity would be the aggregate of the quantities reckoned on the basis prescribed in the Government Notification quoted above, regardless of whether the limit laid down for each individual essential article is exceeded or not.

Now, the best guidance on the point of construction is the language itself. The material words in the proviso to cl. 2, sub-cl. (2), of the Order are " a householder shall be deemed to require as his normal quantity the aggregate of the quantities reckoned on the said basis in respect of each member of his household." Let us assume that the household consists of one member only. What would be the normal quantity which he would be entitled to possess, assuming that he wants to have six essential articles. The special basis for determining the normal quantity in respect of each essential article is prescribed in the Notification No. 181 (*4A*) (*b*)/D. R., dated December 24, 1948. That basis is 10 Bengali seers for each essential article. Thus, the member concerned will be entitled to possess 10 Bengali seers of wheat, 10 Bengali seers of rice, 10 Bengali seers of jowar, and so on, in other words, 10 Bengali seers of each essential article. Therefore the total quantity which he could lawfully possess would be the aggregate of the above mentioned quantities, namely 10 Bengali seers in respect of each essential article. If the number of essential articles is six, he could possess 1 Bengali maund 20 seers, but without exceeding the limit of 10 Bengali seers in respect of any particular essential article. This, in our opinion, seems a plain and natural construction of the proviso. It would mean that if the household consists of six members, the normal quantity which the householder would be deemed to require would be 1 Bengali maund 20 seers, multiplied by six=9 Bengali maunds. But he would not be entitled to exceed the limit of 1 Bengali maund 20 seers in respect of any particular essential article.

On a careful persual of the entire Order, we find no justification for the construction that the Order permits the lumping together of the essential articles for the purpose of calculating the normal quantity which a householder would be deemed to require. Exchange of one essential article for another essential article is not contemplated by the Order. This means that a householder, whose household consists of six members, cannot say that he will not have 1 Bengali maund 20 seers of Jowar,

1951

STATE
v.
RAMNIKLAL
N. JOSHI

Vyas J.

1 Bengali maund 20 seers of Bajri, 1 Bengali maund 20 seers of rice and so on, but will exchange those quantities for the corresponding quantities of wheat. Whether he wishes to possess rice or jowar or bajri up to the quantity of 1 Bengali maund 20 seers each or not, he can only possess 1 Bengali maund 20 seers so far as wheat is concerned. In our opinion, therefore, lumping of essential articles is not envisaged by the Order.

The object of the Essential Articles Restricted Acquisition and Possession Order, 1943, is to put a restraint on the acquisition and possession of essential articles so as to ensure fair and equitable distribution of those articles amongst the public. Clearly therefore such a construction should be placed upon its provisions as would advance the object underlying the making of it. Now, if we were to construe the proviso to cl. 2, sub-cl. (*2*), of the Order, so as to mean that a householder could exchange any number of the essential articles which he would not wish to possess for only one or two articles, the only result would be to encourage hoarding, to combat which evil the Order was passed. In this particular case we have seen that the opponent had six essential articles in his house. If we were to construe the proviso to cl. 2, sub-cl. (*2*), as he wants us to do, the result would be that he could lawfully possess 9 Bengali maunds of any particular one of these articles and nil or negligible quantities of the other articles. This would amount to hoarding and would defeat the object of a fair and equal distribution of essential articles amongst the public.

Furthermore, if we examine the scheme of the Essential Articles Restricted Acquisition and Possession Order, 1943, we find that it speaks of "the normal quantity" in relation to each individual essential article. Clause 2, sub-cl. (*2*), lays down that the term "normal quantity" means in relation to the quantity of any essential articles required by any person such quantity as would be required for use and consumption in the household or establishment during a period of one month, etc., etc. The point is that the basis laid down for determination of the normal quantity was laid down in relation to any particular essential article. When sub-cl. (*2*) speaks of use and consumption during a period of one month, it obviously refers to a particular individual essential article. The proviso to sub-cl. (2) empowers Provincial Government to issue notification prescribing special basis for determining the normal quantity. Now, if we turn to the Notification No. 181 (*4A*) (*b*)/D. R., dated December 24, 1948, we find that the basis fixed therein

1951

STATE v. RAMNIKLAL N. JOSHI

Vyas J.

was for determining the normal quantity in regard to each essential article. For calculating the normal quantity which a householder is deemed to require, we have to aggregate the quantities reckoned on the basis laid down in the Notification, i.e., in the light of the limit fixed for each essential article. Clause 3 (*1*) of the Order says that no person shall, except under a proper licence, acquire any essential article if by so doing the quantity thereof in his possession or under his control shall exceed the normal quantity required by him. Here again, what the Order contemplates is that the normal quantity prescribed for each individual essential article is not to be exceeded. Clause 3, sub-cl. (*2*), lays down :

"The restriction in sub-clause (*1*) shall not apply to such part of the quantity of any essential article in the possession or under the control of any person as has been acquired by him before the coming into force of this Order, provided that no person shall acquire any further quantity of any essential article if thereby the total quantity of such article in possession or under his control exceeds the normal quantity required by him."

The object again is to emphasize that the total quantity of any particular essential article in the possession of a person is not to exceed the limit fixed in the Notification issued under the proviso to cl. 2, sub-cl. (*2*). Then we proceed to cl. 3A (*1*) which says that no person shall have in his possession or under his control, except under a licence, any essential article in excess of the normal quantity. Here again the words "normal quantity" are used in relation to any particular essential article. Turning to cl. 4 of the Order, we find that it prohibits a sale, transfer or other disposal of any essential article to another person, if by such transfer the quantity prescribed for each essential article is exceeded. It is thus clear that the determination of the normal quantity under the Essential Articles Restricted Acquisition and Possession Order, 1943, is not to be done regardless of the limit as to the quantity laid down for each individual essential article. In other words, for the determination of the normal quantity the lumping together of the various essential articles is not contemplated by the Order. Under these circumstances we must accept the construction which the prosecution is asking us to put on the expression "for this purpose a householder in such area shall be deemed to reckon as his normal quantity the aggregate of the quantities reckoned on the said basis in respect of each member of his household," occurring in the proviso to cl. 2, sub-cl. (*2*), of the Order, and hold that in possessing the various essential articles no householder could lump together all the essential articles, regardless of the limit fixed for each individual essential

1951

STATE
v.
RAMNIKLAL
N. JOSHI

Vyas J.

article in the Government Notification No. 181 (*4A*) (*b*)/D. R., dated December 24, 1948.

There is one important circumstance which is worthy of special mention in this case. On January 10, 1949, the opponent applied for a licence to possess wheat in his house in excess of the basis laid down in Government Notification No. 181 (*4A*) (*b*)/D. R., dated December 24, 1948, (1 Bengali maund 20 seers). The licence was granted to him on January 24, 1949, and it expired on February 26, 1949. In that licence it was clearly stated that in respect of wheat, rice and jowar he could lawfully possess each one of those essential articles up to the limit of 1 Bengali maund 20 seers without a licence. But a licence was granted to him to keep wheat up to the extent of 1 Bengali maund 25 seers. As we have just pointed out, the licence expired on February 26, 1949, but it would clearly show that the opponent knew very well that the normal quantity, as far as each essential article was concerned, which he could keep in his possession (without a licence) pursuant to the Notification above mentioned was 1 Bengali maund 20 seers. When he wanted to possess wheat in excess of 1 Bengali maund 20 seers, he had to apply for a licence in that connection and he did apply for it. We are referring to these facts in order to point out that even the opponent himself knew very well that as the law stood on the date on which he applied for a licence he could lawfully keep only 1 Bengali maund 20 seers of each of the different essential articles as a householder without a licence. The present offence of possessing wheat and rice in excess of the limit of 1 Bengali maund 20 seers each was detected on August 11, 1949. On that date admittedly the opponent had no licence for possessing excess quantity of any essential article. We are therefore clearly of the opinion that the grounds put forward by the learned trial Magistrate for discharging the opponent are unsustainable.

For reasons stated above, we allow the application, set aside the order of discharge passed by the Resident Magistrate, First Class, Surat, in favour of the opponent and direct that the Magistrate shall retry the case and proceed to dispose of it according to law.

Order set aside—case sent back for re-trial.

J. G. R.