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## CASE ANALYSIS: ONKAR NATH & ORS. V. THE DELHI ADMINISTRATION

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Rohini Abhyankar, Symbiosis Law School, Nagpur

Amisha Mehta, Symbiosis Law School Nagpur

**Case Title:** Onkar Nath & Ors. v. The Delhi Administration

**Date of Judgement:** 15.02.1977

**Court:** Supreme Court of India

**Quorum:** Justice Y.V. Chandrachud. (P.K. Goswami, P.N. Shinghai, JJ)

**Citation:** AIR 1977 SC 1108

**Legal Provisions Specified:** § 56, 57 of the Indian Evidence Act, 1872; Rule 118, 119 of the Defence of India Rules, 1971

### INTRODUCTION

The instant judgement is a criminal appeal by special leave which arose during the time of Emergency period when political unrest led to questions regarding power of executive in passing orders relating to public safety and where the Hon'ble Supreme Court deals with the interpretation and application of § 57 of the Indian Evidence Act, 1872 (herein after referred to as '§ 57 of the Act') and clarifies the scope and limitations of it; when the appellants were prosecuted under Rule 118, 119 of the Defence of India Rules, 1971 (herein after referred to as the Rules).

Rule 118(1) of the Rules states that the government by an order could make provisions prohibiting strikes relating to any industrial disputes, and Rule 118 (2) provided that contravention of the same would be punishable with imprisonment upto three years or fine or both.<sup>1</sup> Rule 119 talks about essential services and provides authority to the government to

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<sup>1</sup> The Defence of India Rules, 1971, Rule 118 (India).

implement certain conditions on all or any of its employees by an order, if it deems that the employees are essential for securing the defence of India.<sup>2</sup>

The Hon'ble court in the judgement examines the scope of judicial notice while deliberating if publicly known facts could replace and allow presumption of essential ingredients being fulfilled without direct conclusive evidence suggesting the same.

## FACTS

The Respondents before the Hon'ble Supreme Court was the Prosecution before the Metropolitan magistrate and is the Delhi Administration. The appellants were Onkar Nath and others who were Railway employees and leaders of Northern Railwaymen's Union.

The Government of India, using the authority given under Rule 118(1) of the Rules issued an order via Ministry of Labour on November 26<sup>th</sup>, 1973; which stated that "the Central Government hereby prohibits a strike in connection with any industrial disputes in the said Railway services in India for a period of six months".<sup>3</sup> This order was passed with opinion that it was necessary and expedient for maintaining sufficient supplies and services, which are essential to life of the community.

Further, the meeting conducted by the Union on May 5<sup>th</sup>, 1974 at Tughlakabad Railway Yard was followed by strikes by Railway workers from May 8<sup>th</sup>, 1974. Thus, according to the prosecution the meeting was act of inciting the Railway workers to go on a strike; which thereby breached the order passed in November 1973 leading to the prosecution of appellants.

The matter was initially dealt by Metropolitan Magistrate, who convicted the appellants under the Rules 118 and 119 and sentenced six months of rigorous imprisonment. Unsatisfied with the results, the judgement was appealed before the learned Additional Sessions Judge, who also upheld the conviction with the sentence. A Revision before the Hon'ble Delhi High Court was filed against the decision, where in the learned court also upheld the conviction, however with changes to the sentence. The High court changed the period of imprisonment to the period already undergone, thereby reducing the sentence.

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<sup>2</sup> Id., Rule 119

<sup>3</sup> *Onkar Nath & Ors. v. The Delhi Administration*, AIR 1977 SC 1108 (India).

## **ISSUES**

The key issues before the Hon'ble Court were –

- Whether the conviction of the appellants could be upheld in absence of direct and reliable evidence proving that the strike was resultant of the meeting and industrial dispute as in contravention of the Order under Rule 118 of the Rules?
- Whether the conclusion drawn by the lower courts relying upon the judicial notice of occurrence of strike was justified?
- Whether the prosecution had established proof of checking essentials, required for a strike to be within the meaning of Rule 118(1) of the Rules?

## **ARGUEMENTS**

Appellants – The appellants contended that the prosecution had failed to establish any direct or reliable proof of essential ingredients of the offence being fulfilled. The decision was based on mere summary and impression of the speech, and not the words spoken by the accused. The evidence was lead based on hearsay statements which was insufficient and inadmissible. Thus, due to absence of reliable evidence, the offence was not made out.

Respondents – The respondents contended that the lower courts were justified in their decision and taking of judicial notice, as it was a fact that the strike did occur. The respondents, though not verbatim had furnished sufficient evidence that conveyed the substance of the meeting and speech. Further, the circumstances post-meeting and occurrence of strike was public knowledge, thereby, supporting the prosecution's case. The prosecution suggested that, by the very nature of actions done by agitated labourer and strike, it is clarified that the dispute is industrial, thus, falling within the scope of § 56 and 57 of the Act<sup>4</sup>.

## **JUDGMENT**

The Hon'ble Supreme Court in this case allowed appeal, set aside the order of conviction and sentence, and acquitted the appellants. The Court deliberated on three aspects.

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<sup>4</sup> The Indian Evidence Act, 1872, §§ 56, 57 (India).

Firstly, on the question of evidence the court found that the prosecution witnesses were unreliable to prove the actual fact that the strike in question was in relation to industrial dispute. S.D. Sharma's testimony was purely hearsay, which is not admissible as per evidence law, and Dilbagh Rai, was the investigating officer was not direct party to the strike. Hence, both having no personal knowledge about the speech. The third witness Jasbir Singh although was physically present at the meeting, failed to present the actual words used. His statements were his gist of the words in the meeting, which concluded that the appellants incited the workers and threatened dire consequences. This was held insufficient by the Court to convict the appellants under Rule 118(1) of the Rules. The Court reasoned that what is chargeable for offence is the actual words spoken by the speakers, not a witness interpretation of their overall act.

Further, the Court supported the rulings of the lower courts, asserting that the imminent railway strike and its actual occurrence constituted facts of public awareness which the courts shall take judicial notice of and are need not to be proven. The Court observed that the list of judicially noticeable facts under § 57 of the Act<sup>5</sup> is not exhaustive and that courts may take notice of notorious historical or public events without requiring formal proof. Court also stated that requiring such universally known facts to be proven by formal proofs would lengthen the judicial process causing delay.

However, the Court drew clear distinction between taking judicial notice of the fact that a strike occurred and requiring proof of the statutory condition that the strike must be "in connection with an industrial dispute" under Rule 118<sup>6</sup>. In the present case Rule 118 specifically dealt with strike in connection with industrial dispute, therefore judicial notice of strike can be taken but the particular strike was in connection with industrial dispute shall be proven by direct evidence which the respondent has failed to do so.

Conclusively, the Court held that judicial notice can cover the fact that strike happened, but it cannot cover the question whether that strike was in connection with industrial dispute as it is a specific fact which must be proved by evidence. It also stated that not all the strikes are about industrial disputes and Rule 118 does not prohibit all strikes but only industrial dispute connected strikes hence evidence is necessary and it cannot be presumed by the court that the

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<sup>5</sup> Id., § 57.

<sup>6</sup> The Defence of India Rules, 1971, Rule 118 (India).

said strike by appellant was of strike in connection of industrial dispute. Due to the respondent's failure to prove their allegation the court allowed the appeal and the appellants were acquitted on evidentiary ground.

### **CRITICAL ANALYSIS**

This judgment offers important guidance on the evidentiary standards required in criminal trials. In this case the court emphasised on need of direct evidence over hearsay or other type of evidences. In criminal proceedings, the standard of proof is proof beyond reasonable doubt, mere hearsay evidence and witness where is not able to present the actual words of the accused does not remove reasonable doubt and are not much reliable. The statement given by Jasbir Singh in the present case cannot be solely relied upon as it did not reproduce the actual words said by the appellants rather it was the understanding of himself from the discussion that took place on 5<sup>th</sup> May about the strike, and apart from this summary he didn't have any direct evidence. From this holding it can be inferred that witnesses' statements can be affected by weak memory, personal bias, pressure from others, or even possibility of them turning hostile and change their testimony, because of which it is risky to base conviction only on one witness's interpretation instead of clear and direct evidence. Thus, the judgment reinforces that in criminal cases, only strong, direct and reliable evidence can justify depriving an accused of their liberty. But if we see the other side, it is difficult to present the verbatim of such meetings as they are not recorded. If the court always insist on production of actual words, then there is a risk that serious misconduct may escape liability simply because no one remembered the actual words said by the accused. The court may have deliberated more on whether more witnesses present the same gist it might reach the standard of proof or not. This judgment has failed to explore this side of the issue.

The decision is also significant for understanding the doctrine of judicial notice under the Indian Evidence Act. The Court recognised that the list of judicially noticeable facts in § 57 of the Act is not complete or closed. In simple terms, this means courts are not restricted only to the examples written in the section. They can also take judicial notice of other facts which are clearly known to the public, if it is necessary and practical to do so. This approach widens the scope of judicial notice and helps avoid wasting time on proving things that everybody already knows. In later decisions, the Supreme Court has expressly relied on the principle of judicial

notice articulated in this case. In *Venture Global Engineering LLC v. Tech Mahindra Ltd.*<sup>7</sup>, the Court treated the widely publicised letter dated 07.01.2006 of Mr. Raju as not requiring further formal proof, describing it as a “notorious fact” known to the whole world and to those in the trade. By applying the principle from *Onkar Nath* to say that the Raju letter did not need further proof, the Supreme Court confirmed the continuing authority of this judgment on the scope and function of judicial notice in Indian evidence law. In *Kalpana Mehta v. Union of India*<sup>8</sup>, the Supreme Court, in the context of reliance on Parliamentary Standing Committee reports, again acknowledged that courts may, in appropriate cases, act on facts of public notoriety without insisting on formal proof.

The Supreme Court in this case also drew a clear distinction between (a) the general fact that a strike occurred, and (b) the more specific question whether that strike was “in connection with an industrial dispute” as required by Rule 118. The first is a broad, general fact of public history, which can be assumed without proof. The second is a legal-factual ingredient of the offence, which must be proved by evidence. This distinction makes or understanding more clear with relation to the concept that when a fact is in general in character it can be considered as judicially noticeable fact but when it includes any specific condition or aspect then it shall be proven with the help of evidence and cannot be simply presumed. Thus, this decision highlights the importance of direct evidences and shows that court must carefully consider which facts the court shall take judicial notice of and which facts require any formal evidence.

## CONCLUSION

In conclusion, the judgement gave a broad interpretation to § 57 by not limiting its scope to circumstances mentioned in the provision. It also laid down a guiding principle, that for conviction under penal provisions essentials of those, need to be mandatorily proved through direct evidence. It established that although the scope of § 57 is broad, it cannot replace proof required to establish existence of essential condition of penal provision. It can be inferred from this decision that judicial notice is meant to save time of the court; and not to substitute proofs or to fill gaps in prosecution’s case. Further, it can’t be used by prosecution to bypass their failure to produce reliable evidences for filling these gaps; thereby, giving accused(s) the benefit of doubt leading to their acquittal.

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<sup>7</sup> *Venture Global Engineering LLC v. Tech Mahindra Ltd*, MANU/SC/1373/2017 (India).

<sup>8</sup> *Kalpana Mehta v. Union of India*, MANU/SC/0519/2018 (India).