

R.Kasinathan Vs. State by

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Court : Chennai

Decided On : Jul-10-2014

Judge : P.N.Prakash

Appellant : R.Kasinathan

Respondent : State by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 10.07.2014 CORAM THE HONOURABLE Mr.JUSTICE P.N.PRAKASH Criminal Appeal (Md.No.831 of 2003 R.Kasinathan ..Appellant/2nd Accused -versus State by Inspector of Police, Civil Supplies CID., Madurai and District..Respondent/Complainant PRAYER This Criminal Appeal has been filed under Section 374 (2) Cr.P.C.praying to set aside the conviction and sentence passed on him by the learned Special District and Sessions Judge for E.C.Act and NDPS Act Cases, Madurai, dated 28.05.2003 and made in S.T.C.No.5 of 1998 by allowing the present Criminal Appeal.

For Appellant : Mr.N.Chandran (No appearance) : Mr.V.Janakiramulu (Amicus Curiae) :For Respondent : Mrs.S.Prabha, Government Advocate (Crl.

side) :

JUDGMENT

This Criminal Appeal has been filed by the second accused challenging the conviction and sentence imposed upon him by the Special Court for E.C.Act and NDPS Act Cases in S.T.C.No.5 of 1998 on 28.05.2003.

The trial Court has convicted the accused for offences under Clause 6(2)(3) of the Tamil Nadu Scheduled Commodities (Regulation and Distribution by Card System) Order, 1982 r/w.

Section 7(1)(a)(ii) of the Essential Commodities Act and sentenced to undergo the minimum sentence of three months and to pay a fine of Rs.25,000/-.

2.It is the case of the prosecution that the fiRs.accused in this case is Madurai Telegraph and Telephone Employees Cooperative Stores Limited and the second accused who is the appellant herein was the salesman in the cooperative store.

The fiRs.accused store is a fair-price shop authorised to sell rice and other food products to family card holders under the Tamil Nadu Scheduled Commodities (Regulation and Distribution by Card System) Order 1982 issued under Section 3 of the Essential Commodities Act.

On 26.06.1997, the Sub Registrar (Public Distribution System).Madurai, by name Thiru.Nagarajan (P.W.2) conducted a surprise inspection at the fiRs.accused fair price shop and found serious irregularities.

There were 622 family cards registered with the fiRs.accused fair price shop.

A2 was responsible for the stocks and sales of the essential commodities to family card holdeRs.A2 has to maintain the Stock Register, 'B' Register and other Registers in the shop.

When P.W.2 inspected 'A' and 'B' Registers and bill books, it was found that 506 Kgs of rice, 32 1/2 Kgs of sugar, 50 litres of kerosene and 5 kgs of wheat were sold on bogus bills without any entries in the family cards.

P.W.2 conducted a thorough investigation and questioned eight family card holders who told him that they had not purchased the items though records have been created to show as if they had purchased rice and other iteMs.P.W.2

submitted a report Ex.P35 on 01.04.1997 to his superior officer (P.W.1) who is the Tahsildar of Civil Supplies (North Range).Madurai.

P.W.1 lodged a complaint (Ex.P1) on 26.06.1997 to the respondent police based on which investigation was taken up and final report was filed against A1 and A2.

In the trial, the prosecution examined six witnesses and marked 37 exhibits.

The trial Court convicted A1 who is the fair price shop and sentenced it to pay a fine of Rs.25,000/-.

Similarly, the trial Court convicted A2 and sentenced him to undergo three months rigorous imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo three months simple imprisonment.

Hence, this appeal.

3.

On 04.06.2014, when this case was listed for final hearing, this Court passed the following order: ".This Criminal Appeal is of the year 2003 which was once dismissed for default and was restored on the orders of this Court.

Even thereafter, the learned counsel for the appellant has not got along with the case.

When the matter was posted on 03.04.2014, there was no representation on behalf of the appellant.

Hence, the matter was posted today under the caption 'for orders'.

Even today, there is no representation for the appellant.

Hence, the matter is directed to be posted under the caption for dismissal on 6.6.2014."

4.

On 06.06.2014, this Court appointed Mr.V.Janakiramulu, Advocate of 18 years standing in the Criminal Bar as Amicus Curiae to argue the case of the appellant, since the Supreme Court has held in 2007 AIR SCW5717 that an appeal should not be dismissed for default and the Court should go through the records and pass the final judgment.

Hence, in the interest of justice, this Court appointed Mr.V.Janakiramulu, Advocate as Amicus Curiae.

The Registry was directed to furnish the typed set of papers to Mr.V.Janakiramulu and accordingly, it was done.

Sufficient time was given to Mr.V.Janakiramulu and ultimately, the case was heard and final orders were reserved on 27.06.2014.

5.Heard the learned counsel for the appellant and the learned Government Advocate (Criminal side) for the State.

6.The learned counsel for the appellant submitted that P.W.1 in his evidence had stated that he had sent the complaint (Ex.P1) in person to the police but whereas the Inspector of Police (P.W.6) in his evidence has stated that he had received the complaint (Ex.P1) by post.

Hence, the learned counsel submitted that the entire prosecution is suspect.

In this case, the complaint (Ex.P1) was lodged by the Tahsildar (P.W.1) based on the spot inspection conducted by P.W.2 and a report that was submitted by P.W.2.

Therefore, the complaint as such is not a substantive piece of evidence and just because P.W.1 had stated that he had gone in person and given the complaint which is contrary to what P.W.6 had stated, the entire prosecution case cannot be disbelieved.

7.The learned counsel submitted that the two independent witnesses Tmt.Meenakshi (P.W.3) and Thiru.Nagoor Sulthan (P.W.4).who were examined by the prosecution to prove that they did not make any purchase in the family cards, turned hostile and did not support the prosecution case and therefore, the learned

counsel submitted that the prosecution has failed to prove the charge.

It is true that Tmt.Meenakshi (P.W.3) and Thiru.Nagoor Sulthan (P.W.4) turned hostile but that will not definitely mean that the prosecution had failed to prove its case.

In this case, the evidence of P.W.2 who went for spot inspection and found serious discrepancies between the stock available in the fair price shop and the entries made in various ledgers and bill books, incriminates the appellant.

In the stock book at page 22, the stock of the rice has been shown as 4 quintals and three kgs and that has been marked as Ex.P4.

Similarly, the stock of boiled rice has been shown as 5 quintals and three kgs at page 23 (Ex.P5).The Distribution Register (Ex.P6) shows that 21 card holders had obtained family cards, and rice and other items have been supplied to them.

According to the entry in the Distribution Register (Ex.P6) 1 kg of rice was sold to family card No.334 (Ex.P7) belonging to Shanmugam during April 1997 but there was no entry about the sale of sugar in Ex.P7 family card.

8.Similarly the family card of one Palaniammal bearing Card No.334 was marked as Ex.P10.

According to the Distribution Register, during the month of April 1997, 8 kgs of rice was sold to the said card holder.

But there is no corresponding entry in Ex.P10.

Ex.P13 is the family card No.32 belonging to one Raju.

In the Distribution Register, for June 1997, 20 kgs of rice was sold to the said card holder but there is no corresponding entry in the family card Ex.P13.

Ex.P16 is the family card bearing No.233 of one Mayandi.

In the Distribution Register (Ex.P6) it is shown as if 10 litres of kerosene was sold in May, 1997 to the said card holder but there is no corresponding entry in Ex.P16.

Ex.P19 is the family card bearing No.433 belonging to Varusai Rawther.

The Distribution Register (Ex.P6) shows that during May 1997 20 kgs of rice and 2 kgs of sugar was sold to the said card holder but there is no corresponding entry in Ex.P19.

Ex.P22 is the family card bearing No.58 belonging to one Thara Bivi.

In the Distribution Register (Ex.P6) it is shown that in June 1997, 18 Kgs of rice and 3 Kgs of sugar were sold to the said card holder but there is no corresponding entry in Ex.P22.

Ex.P25 is the family card bearing No.99 belonging to one Sulthan Sikkandar.

In the Distribution Register (Ex.P6) it is shown that during May 1997, 10 kgs of rice, 1 1/2 kgs of sugar was sold to the said card holder but whereas there is no corresponding entry in Ex.P.25.

Ex.P28 is the family card bearing No.236 belonging to one Parvathiammal.

The Distribution Register (Ex.P6) shows that during April 1997, 16 kgs of rice was sold to the said card holder but there is no corresponding entry in Ex.P28.

Ex.P31 series are six Bill Books which did not reflect the aforesaid sale of rice, sugar that have found in the Distribution Register (Ex.P6).Therefore, it was evident from the records available that 506 kgs of rice 32 1/2 Kgs of sugar and 50 litres of kerosene and 5 kgs of wheat valued at Rs.10,601/- has been siphoned off by A1 and A2 from the fair price shop.

The defence was not able to substantially demolish the evidence of P.W.2 except by suggesting to him that because of pressure of work, he had failed to make necessary entries in the registeRs.9.Be that as it may, the fact remains that the ration cards are primary evidences and Clause (6) of the Tamil Nadu Scheduled Commodities Order 1982 clearly states that the authorised dealer shall supply the scheduled commodities only to the cardholders and should make necessary entries in the family cards.

Even if we exclude the family cards, the Distribution Register (Ex.P6) shows as if these items were sold to various card holders but bill books Ex.P31, 32 for the same period does not reflect the sale.

10. Under Section 10(C) of the Essential Commodities Act, in a prosecution under the said Act there is a presumption of culpable mental state against the accused and the burden is on the accused to disprove the same which has not been done in this case.

Therefore, the trial Court was right in convicting and sentencing the appellant.

Accordingly, the appeal is dismissed.

The bail bonds are cancelled and the trial Court is directed to secure him and commit him to prison to serve the remaining period of sentence.

To 1. The Special District and Sessions Judge for E.C. Act and NDPS Act Cases, Madurai.

2. The Inspector of Police, Civil Supplies CID., Madurai and District.

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