

Prem Chand Jain Vs. State

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Court : Guwahati

Decided On : Jun-03-1969

Judge : M.G. Pathak, J.

Appellant : Prem Chand Jain

Respondent : State

Judgement :

M.G. Pathak, J.

1. This is a reference under Section 438, Cr. P. C. made by the learned Sessions Judge, Goalpara with recommendation for setting aside the impugned order and for return of paddy or the sale price thereof to the accused-petitioner.

2. The petitioner's shop at Sukchar was searched by the Supply Inspector on 12-11-65 and found a stock of 58 bags of Ahu paddy weighing 34.80 quintals and the paddy was seized. The accused-petitioner could not produce any license for dealing in paddy as required under Clause 3 of the Assam Foodgrains (Licensing & Control) Order, 1961 (hereinafter called the 'Assam Order 1961'). The Supply Inspector submitted an offence report against the petitioner with necessary sanction for prosecution under Section 7 of the Essential Commodities Act for violation of the provisions of the said Clause of the Assam Order 1961. The case was tried summarily by the learned Magistrate as provided in Section 12-A of the Essential Commodities Act, 1955.

3. The prosecution examined three witnesses in the case including the Supply Inspector. The defence did not deny the fact that 58 bags of paddy were found in his possession by the Supply Inspector, The contention of the accused-petitioner was that prior to the seizure of paddy, on a bazar day, some persons numbering about 22 who brought paddy to Sukchar bazar for sale were unable to dispose of the same and so they left the paddy at his godown to be lifted later on and that the paddy did not belong to the petitioner. In support of his contention the petitioner examined one witness.

4. On a consideration of the evidence adduced by the parties, the learned Magistrate found that the accused stored the paddy for sale in his shop in violation of the provisions of Clause 3 of the Assam Order 1961 and accordingly he convicted the accused under Section 7 of the Essential Commodities Act and sentenced him to rigorous imprisonment for one month and to pay a fine of Rupees 500/- in default to rigorous imprisonment for another month. The seized paddy was also confiscated. As the order of the learned Magistrate was not appealable as provided under Sub-section (3) of Section 12A of the aforesaid Act, the accused petitioner moved a revision petition under Section 435, Cr. P. C. before the Sessions Judge, who has referred the case as stated above.

5. The learned Courts below have found that the evidence of the prosecution witnesses in the case proved beyond reasonable doubt that on 12-11-65 the shop of the accused was searched by the Supply Inspector P. W. 3 and on such search 58 bags of paddy weighing 38.80 quintals of paddy were found in his possession. As stated hereinbefore the accused also admitted possession of the seized paddy.

6. The point that falls for determination in this case is whether mere possession of paddy in question was sufficient to bring home the offence under Section 7 of the Essential Commodities Act to the accused. The learned Sessions Judge found that there was no evidence that the accused was ever seen dealing in paddy in his shop. On the other hand, the Supply Inspector P. W. 3 stated that he had no information if the accused dealt in rice or paddy. The accused was charged for violation of Clause 3 of the Assam Order 1961 which runs as follows:

3. Dealings to be licensed: No person shall engage in any business which involves the purchase, sale or storage for sale of any foodgrains in wholesale quantities, except under and in accordance with the terms and conditions of a license issued under this Order:

Provided that nothing in this clause in so far as sale or storage for sale of food-grains is concerned, shall apply to a producer.

Explanation: The expression 'purchase or sale in wholesale quantities' means the purchase or sale in quantities exceeding ten maunds or 3.73 quintals in any one transaction, and the expression 'storage for sale in wholesale quantities' means storage in quantities exceeding fifteen maunds or 5.60 quintals.

Admittedly the petitioner is not a producer and the quantity of paddy found in his possession exceeds 5.60 quintals. The petitioner also had no license for dealing in paddy under the said Order. The only point to be considered is whether the petitioner can be said to have engaged in a business which involves the purchase, sale or storage for sale of paddy, as contemplated under Clause 3 of the Assam Order 1961. As observed earlier, there is no evidence in the case to the effect that the petitioner was even seen dealing in paddy in his shop and P. W. 3 stated that he had no information whether the accused dealt in rice or paddy. In order to establish a case under Clause 3 of the said Order, the prosecution must show that the accused engaged in business of storage for sale of paddy in wholesale quantities.

7. For the interpretation of Clause 3 of the Order, the learned Counsel for the petitioner has referred to the case of Manipur Administration v. M. Nila Chandra Singh, reported in : 1964 CriLJ465 . In that case, the Supreme Court considered the question whether mere possession without any evidence to the effect that the accused engaged in business of storage for sale would be an offence under Section 7 of the Essential Commodities Act. In that case, the Supreme Court observed as follows:

In dealing with the question as to whether the respondent is guilty under Section 7 of the Essential Commodities Act, it is necessary to decide whether he can be said

to be a dealer within the meaning of Clause 3 of the Order. A dealer has been defined by Clause 2 (a) and that definition we have already noted. The said definition shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 mds. or more at any one time, it would be noticed that the requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale or storage; and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single casual or solitary transaction of sale, purchase or storage that would make a person a dealer. It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied. If this element of the definition is ignored, it would be rendering the use of the word 'business' redundant and meaningless.

At another place in the same judgment, the Supreme Court observed as follows

At this stage it would be convenient to refer to the relevant provisions of the Order. Clause 2 (a) defines a dealer as meaning a person engaged in the business of purchase, sale or storage for sale, of any one or more of the foodgrains in quantity of one hundred maunds or more at any one time. Clause 2 (b) defines foodgrains as any one or more of the foodgrain specified in the Order including products of such foodgrains other than husk and bran. It is common ground that paddy is one of the foodgrains specified in Schedule I. Clause 3 with which we are directly concerned in this appeal reads thus:

(1) No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority;

(2) For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale.

In the said case, the Supreme Court was dealing with Manipur Foodgrains Licensing Order, 1958. The provisions of Clause 3 of Assam Order 1961 are similar to those of Clause 3 of the Manipur Foodgrains Control Order, except for the deeming provision in the Manipur Order, which is not to be found in the Assam Order 1961.

8. Since in the instant case there is no evidence that the petitioner engaged in any business involving the purchase sale or storage for sale of paddy, the charge against the petitioner cannot be said to have been proved in the case in view of the Supreme Court's decision referred to above. Even if the defence case that some villagers coming to the bazar kept the paddy in question with the petitioner is disbelieved as has been done by the learned Magistrate, yet the only thing that may be said to be proved against the petitioner by the prosecution is that the petitioner had been found in possession of the paddy in question. In order to bring home the offence under Section 7 of the Essential Commodities Act to the petitioner, the prosecution should have established that the petitioner engaged in some business involving purchase, sale or storage for sale of paddy. The prosecution having failed therein, the conviction and sentence of the petitioner cannot be sustained in law.

9. In this connection, the learned Counsel for the petitioner also referred to an unreported judgment of this Court in Criminal Revn. No. 147 of 1964 (Assam). In that case Nayudu, C. J., following the aforesaid Supreme Court's decision, held that before a conviction could be reached under the Assam Order 1961, it must be established (1) that the person convicted was engaging himself in any business; (2) that this business involved the purchase, sale or storage for sale of any foodgrains; (3) that the quantities of the foodgrains, involved should be of wholesale quantities, namely, in excess of ten maunds in one transaction of purchase or fifteen maunds of the storage of the foodgrains; and (4) that this should have been done without a license. I am in respectful agreement with this observation. I hold that the prosecution has not been able to prove the case against the petitioner.

10. The learned Counsel for the State referred to another unreported judgment of this Court in Criminal Revn. No. 4 of 1967 (Assam). On a perusal of the judgment, I find that the Supreme Court's decision reported in : 1964 CriLJ465 was not brought to the notice of the Court in that case and as such that decision does not help the prosecution in the instant case.

11. In the result, the conviction and sentence of the petitioner are quashed. The seized paddy or the sale price thereof should be made over to the accused-petitioner. The reference is accepted.

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