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Gitesh Ranjan Deb Vs. State of Assam

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Court : Guwahati

Decided On : Feb-06-2004

Judge : P.G. Agarwal, J.

Acts : Assam Public Distributors of Articles Order, 1980; Essential Commodities Act, 1955 - Sections 7(9); Assam Public Distribution and Articles Order, 1982; Assam Trade Articles Licensing Control Order, 1982

Appeal No. : Criminal Appeal No. 136 of 1995

Appellant : Gitesh Ranjan Deb

Respondent : State of Assam

Advocate for Def. : P.C. Gayan, PP

Advocate for Pet/Ap. : N.K. Singh, M. Singh, G. Singh, N. Chaudhury and B. Chakraborty, Advs.

Judgement :

P.G. Agarwal, J.

1. The above mentioned criminal appeals have arisen out of the judgment and order dated 24.7.1995 passed by the learned Special Judge, Cachar, Silchar in Special Case No. 14/90, whereby vide order dated 24.7.1995 the accused appellants were convicted of the offence under Section 7(a)(ii) of the Essential

Commodities Act and sentenced to R.I. for 3 years with fine of Rs. 1000, in default to suffer simple imprisonment for another 2 months. The three convicted accused appellants have filed three different appeals and they are now being disposed of by this common judgment.

2. Accused Gitesh Ranjan Deb, appellant in Criminal Appeal No. 136/ 95, was the Chairman of the Borjalinga G.P. Level Co-operative Society. Shri Kanan Kumar Bardhan, appellant in Criminal Appeal No. 140/95 was the Secretary of the said Society and the other appellant Sri Fula Singh has been arrayed as the in-charge Secretary, who served the Society for some time. The prosecution allegation is that during the month of March and April, 1990 a complaint was received from the retailers that although the society had lifted rice from the STATEFED it has not been distributed to the retailers and the articles have been misappropriated by the officials of the said Society in violation of the provision of the Assam Public Distribution of Articles Order, 1982. Thereafter the matter was enquired into and physical verification was done, which discloses certain anomalies. The accused persons were tried for commission of the offence punishable under Section 7(a)(ii) of the Essential Commodities Act for violation of Clause (3)(5), (11) and (14) of the Assam Public Distribution of Articles Order, 1980, for short 'the Order'.

3. During trial, the prosecution examined, as many as, 16 witnesses and there were, as many as, 46 documents, which were proved and exhibited. On conclusion of the trial, the learned trial Court recorded the order of conviction and sentence.

4. In the present case, there is no dispute at the Bar that at the relevant time, Gitesh Ranjan Deb, appellant in Criminal Appeal No. 136/95 was the Chairman of the Society and the other appellant, Kanan Kumar Bardhan, was the Secretary of the said Society. The prosecution witnesses have deposed that on receipt of the complaint from the various retailers a team of officials inspected the office and go-down premises of the said society, examined, verified and cross-examined the documents, physical stock, etc., of the society and the retailers. Prosecution also produced the license, Ext. 40 to show that the Society was the sub-wholeseller in respect of the PDS articles. The above facts have not been disputed. Large

number of witnesses have deposed about the inspection of the premises by the officials.

5. Rajani Mohan Das, PW 4 was the Superintendent of Food & Civil Supplies Department and he has deposed that the inspection was made on 26.5.1990 and it reveals that in the month of March, 1990, there was a shortage of 200 quintals of rice. Likewise, in the month of April, 1990 the Society lifted 790 quintals of rice, which they allegedly sold or distributed to 29 retailers during the period from 6.4.1990 to 13.4.1990. The retailers who have also been examined have produced their stock books but it was found that no such rice was lifted by them or given to them by the society. The record also transpire that although the rice was lifted by the Society on 7.4.1990 only it had shown distribution to the retailers on 6.4.1990, even one day prior to the receipt of the materials by them. Further, whenever rice is lifted by the retailers from the Society, entry is required to be made in the Log Book, maintained by the retailers. These books were produced before the witnesses and its record show that no such goods were lifted by the retailers from the Society. Moreover, in the month of March, 1990, 200 quintals of rice was lifted by the Society but the said rice was not shown in the opening stock of April, 1990. Further on physical verification also the said rice was found missing from the stock in the go-down. Besides the officials, who conducted the search and seizure, the retailers have also deposed in the Court about the non-receipt of the rice. The records also reveal that rice is not a notified article under the said 'Order' and the oral testimony regarding non-distribution of rice stands corroborated by the documentary evidence on record. The evidence of the prosecution witnesses have been thoroughly discussed by the trial Court. We have also perused the same and find that the evidence has been appreciated in a proper manner. As a matter of fact, the factual part of the prosecution allegation has not been seriously challenged before us also.

6. Clause 2(b) provides for notified article and from the Notification dated 3rd August, 1982 we find that rice is a notified article. The appellant before us was a sub-wholeseller and was required to sale the rice received by it to the retailers attached to its Society. Order 11 reads as follows :

'No appointed dealer who has been appointed as sub-wholeseller shall issue or sell any quantity of notified articles to any customer excepting to the retailers appointed and attached to his shop by the Licensing Authority.'

7. In the present case, we find from the oral and documentary evidence on record that the Society had violated/contravened the conditions of the license and the provisions of the Order by selling the notified articles of rice to outsiders for gain and did not distribute the PDS articles to the retailers as required. Clause 15(1) of the Order provides as follows :

'If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken under the Essential Commodities Act, 1955 (Central Act 10 of 1955) his licence may be cancelled or suspended by any Order in writing of the Licensing Authority and on entry will be made in his licence relating to such suspension or cancellation.'

8. Now, coming to the case of the appellant Gitesh Ranjan Deb, his plea is that he was a Chairman of the said Society and, as such, he was not looking after the day to day affairs of the Society which was looked into by the Secretary and he was not responsible in the matter of alleged irregularity in the stock, maintenance of accounts, stock book etc. etc. and as such he is entitled to acquittal.

9. We have perused the evidence on record and the Rules of the Society and find that the Rule provides that the Secretary is a person who is entrusted with the above work. PW 15 has also categorically deposed that the Chairman was not involved in the matter of lifting of the rice and subsequent distribution. Admittedly, the petitioner is an elected person and the evidence of PW 16, Rabindra Ranjan Choudhury, Assistant Registrar of the Co-operative Society is also relevant for the purpose. PW 16 has also deposed that as per the bye-law the Secretary is responsible for receiving the cash and securities on behalf of the Society and to make arrangement for the proper arrangement and custody of properties. The prosecution has not produced any sheet of evidence or oral evidence to show that accused Gitesh Ranjan Deb as Chairman of the Society was involved in any manner with the lifting/ distribution of the notified articles for and on behalf of the

Society. Likewise, so far the accused appellant Fula Singh, appellant in Criminal Appeal No. 141/95 is concerned, there is no evidence whatsoever to show that he was functioning as Secretary in-charge during the relevant period of March and April, 1990 or that he had lifted any notified articles of price etc. etc. or committed any misappropriation, Fula Singh became the Secretary of the Society subsequent to the removal of the appellant Kanan Kr. Bardhan. In the impugned judgment, the learned trial Court has also not stated anything specifically as to how this two appellants Gitesh Ranjan Deb and Kanan Kr. Bardhan and Fula Singh are involved. In view of the above, the Criminal Appeal No. 136/95 and 141/95 are hereby allowed. The conviction and sentence entered against the above two appellants is set aside and they are acquitted and be set at liberty forthwith.

10. So far the accused appellant Kanan Kumar Bardhan is concerned, the oral evidence on record shows that he was functioning as the Secretary of the said Society during the relevant period. PW 15 has also deposed that goods were lifted by the Secretary and he was looking after the distribution of the goods. The bye-laws also provide that the Secretary is in-charge of the commercial transaction of the Society for and behalf of the Society. The bye-laws also provide amongst others the following duties of the Secretary :

'(d) to be responsible for the general conduct, supervision and management of the day to day business and affairs of the society.

(e) to receive all moneys and securities on behalf of society and to make arrangements for the proper maintenance and custody of cash balance and other properties of the society.

(f) to endorse and transfer promissory notes, Govt. and other securities and endorse, sign, negotiate cheques and other negotiable instruments on behalf of the Society;

(g) to sign all deposit receipts and operation the account of the society with the Banks ;

(h) to be the officer of the society to sue or to be sued on behalf of the society and sign all bonds and agreements on behalf of the Society.' In view of the above, we hold that the Secretary of the society was responsible for proper maintenance of the accounts, stock etc. and it was he who is required to lift the rice from the STATEFED and is also required to distribute amongst the retailers.'

11. Learned counsel for the appellant Kanan Kr. Bardhan has challenged the impugned order on the ground that the complaint has not been filed by proper person. We have perused the provision of Clause 31 of the Order and on perusal of the complaint petition we find that it was filed by the Additional Deputy Commissioner, Cachar, Silchar, who is the Licensing Authority. The license was issued by the Deputy Director of Supply and at the relevant time the Additional Deputy Commissioner was serving as Deputy Director of Food & Civil Supplies. This is a case of violation of the provisions of License and, as such, the Licensing Authority was the proper person to initiate the complaint.

12. The next submission of the learned counsel for the appellant Kanan Kumar Bardhan is that there was no sanction for prosecution. This is a case of fabrication of false records and misappropriation of public funds. In the case of Sankha Nath Mishra v. State of U.P., AIR 1997 SC 2120, the Apex Court held that misappropriation of public fund is not an official duty of the public servant and as such no sanction for prosecution is required.' Further, the Assam Public Distribution and Articles Order, 1982 do not provide for any sanction for prosecution, as required under the other Orders, including the Assam Trade Articles Licensing Control Order, 1982, In view of the above, we hold that the prosecution is not bad for want of sanction.

13. In view of the aforesaid discussion we hold that the appellant Kanan Kr. Bardhan being the Secretary of the Society has violated the conditions of License, Ext. 40 and hence, for the contravention of the provisions of Assam Public Distribution and Articles order he has been rightly held guilty for the offence punishable under Section 7 of the Essential Commodities Act. Hence, the conviction of the accused appellant under the above Sections of law is hereby affirmed.

14. The trial Court has sentenced the accused appellant to imprisonment for 3 years with a fine of Rs. 1000, in default to further 2 months imprisonment. On consideration of the materials and considering the fact that the matter is pending since 1990, we reduce the sentence to imprisonment or 1 years and to pay a fine of Rs. 5000, in default to further imprisonment for one month. With the above modification in the sentence the Criminal appeal No. 140/95 stands dismissed. The appellant Kanan Kr. Bardhan is directed to surrender forthwith to serve out the sentence and to pay the fine. Send down the records.

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