

Kumar Vs. State Represented By

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Court : Chennai

Decided On : Dec-01-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Kumar

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

01. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD) No.452 of 2007 Kumar : Appellant/Accused Vs. State represented by The Inspector of Police, C.S.C.I.D., Nagapattinam. (Crime No.276 of 1998) : Respondent/Complainant Prayer : Criminal Appeal is filed under Section 374(3) of the Code of Criminal Procedure, praying to call for the records in S.T.C.No.4 of 2001 on the file of the learned Additional District and Sessions Judge -cum- Special Court for E.C. Act Cases, Thanjavur, dated 14.08.2007 and set aside the same. For Appellant :: Mr.R.Sivasubramanian For Respondent :: Mrs.S.Prabha, Government Advocate (Crl. Side) :

JUDGMENT

This Criminal Appeal is directed against the judgment dated 14.08.2007 passed in S.T.C.No.4 of 2001 on the file of the learned Additional District and Sessions Judge -cum- Special Court for E.C. Act Cases, Thanjavur. 2.The case of

prosecution, in brief, is as follows: (i) P.W.2 Subramanian and Taluk Supply Officer made an inspection on 25.10.1997 at 54.Nemmeli Village Fair Price Shop. At that time, it was found locked. They called the accused to open the shop and verified the stock. During inspection, it was found that there was a shortage to the tune of Rs.5,469.66 and on verifying the records upto 07.03.1998, there was a shortage in stock worth about Rs.22,164.13 and on 05.03.1998 he created a manipulated bill. The report, in this regard, was marked as Ex.P.6, which was sent to P.W.1. Ex.P.5 is the stock register. To prove the shortage in stock, he marked the document viz., Ex.P.7 the note mentioned in page No.7 of the stock register. Ex.P.4 is the sale chitta. Ex.P.8 is the note mentioned in Page No.68 of Ex.P.4. Ex.P.9 is the note mentioned in Page No.25 of the stock register. Ex.P.10 is the note mentioned in page No.19 of Ex.P.5. Ex.P.11 is the note mentioned in page No.38 of Ex.P.5. Ex.P.12 is the note mentioned in Page No.147 of Ex.P.5. Ex.P.13 is the note mentioned in Page No.142 of Ex.P.5. During inspection, one Kesavan was present. There was no maintenance of records till 08.03.1998. On enquiry, it came to know that the fair price shop was locked for the said month. The accused Kumar was the Salesman on 07.03.1998 and he handed over the charge to one Mathialagan, the document, in respect of which, was marked as Ex.P.14. Ex.P.15 is the document relating to handing over of charge to Kesavan by the President. He prepared a report regarding the misuse of commodities and shortage in stock and sent the report (Ex.P.1) to P.W.1 (ii) On 09.03.1998 while making another inspection, he prepared Ex.P.16 and Ex.P.17 and also recorded the statement of the accused Ex.P.18. After receiving the report, P.W.1 Natarajan, referred the case to the Investigating Officer with necessary documents. P.W.3 Govindan, Sub-Inspector of Police, on the basis of the complaint given by P.W.2, registered an F.I.R. in Crime No.276 of 1998 for the offences under Section 6(2) of TNSC (RD/CS) Order, 1982 r/w 7(i)(a)(ii) of E.C. Act, 1955, which was marked as Ex.P.19. After recording the statements of the witnesses, he entrusted the case to P.W.4 for further investigation, who in turn, after completing the investigation, laid the charge sheet. (iii) Before the Trial Court, on behalf of the prosecution, P.Ws.1 to 4 were examined and Exs.P.1 to P.19 were marked. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found

in the evidence of the prosecution witnesses and he denied the same as false. On behalf of the defence, no witness was examined and no document was marked.

(iv) On consideration of evidence available on record, the learned Additional District and Sessions Judge -cum- Special Court for E.C. Act Cases, Thanjavur, convicted the accused for the offences punishable under Section 6(2)(3) of TNSC (RD/CS) Order, 1982 r/w 7(i)(a)(ii) of E.C. Act, 1955 and sentenced him to undergo 3 months rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo 5 weeks simple imprisonment.

3. Challenging the conviction and sentence passed against the appellant/Accused, the present appeal has been filed.

4. Heard both sides.

5. Assailing the judgment of conviction and sentence, the learned counsel for the appellant would submit that the Trial Court, without considering the fact that the ingredients of Section 6(2)(3) of TNSC (RD/CS) Order, 1982 have not been made out, convicted him, since P.W.2, Subramanian, Sub-Registrar, who made an inspection on 25.10.1997, has fairly conceded in his cross-examination that he has not examined the card holders and verified the ration cards. Merely because there was a shortage of stock, a complaint has been given by P.W.2. P.W.3 Govindan, Sub-Inspector of Police received the complaint and registered an F.I.R. (Ex.P.19). P.W.4, Jegannathan, Inspector of Police, after investigation, has laid the charge sheet. The evidence of P.Ws.1 and 2 has not proved the ingredients of Section 6(2)(3) of TNSC (RD/CS) Order, 1982. He would further state that the amount in respect of shortage of stock has been deposited by the appellant. Hence, the learned counsel prayed for setting aside the same.

6. Resisting the same, the learned Government Advocate (Criminal side) would submit that on the date of inspection on 25.10.1997, it was found that there was a shortage to the tune of Rs.5,469.66 and on verifying the records upto 07.03.1998, there was a shortage in stock worth about Rs.22,164.13 and on 05.03.1998 he created a manipulated bill. To prove the same, bill book, daily chitta and stock register were marked as Exs.P.3 to 5 respectively and other documents. Therefore, contending that the Trial Court, after considering the documents on file,

came to the correct conclusion, she prayed for dismissal of appeal.

7. Considering the rival submissions made by both sides, on perusal of the typed-set of papers, it is seen that admittedly the appellant is a Salesman. As per the evidence of P.W.2 Subramanian, Sub-Registrar, when he made an inspection on 25.10.1997, he came to know that there was a shortage in stock. Furthermore, it was stated that there was no maintenance of records till 08.03.1998. On enquiry, it came to know that the fair price shop was locked for the said month.

8. At this juncture, it is appropriate to incorporate Section 6(2) of TNSC (RD/CS) Order, 1982, which reads thus; "The authorised dealer with whom the family card is registered shall on production of such card by the holder, make necessary entries in the card and supply the scheduled commodities not exceeding the quantities for which he is eligible."

9. Therefore, either not maintaining the records or failure to attend the shop is not an offence as prescribed under the said provision. Hence, the appointing authority has every right to initiate disciplinary proceedings against the erred official.

10. Further, a bare reading of the said provision viz., non-examination of ration card holder and non-verification of the ration card would go to show that the ingredients of the said provision have not been proved by the prosecution beyond all reasonable doubts. Hence, I am of the view that the Trial Court, without considering those aspects, has convicted the appellant/accused. Hence, the conviction and sentence imposed against him is liable to be set aside.

11. In the light of the circumstances narrated above, by giving the benefit of doubt in favour of the appellant, the appeal is allowed and the appellant is acquitted from the charges levelled against him. Hence, the conviction and sentence passed against him is ordered to be set aside and accordingly, set aside. The fine amount, if any, paid by the appellant shall be refunded to him. The bail bond, if any, executed by the appellant shall stand cancelled. 01.12.2014 Index:Yes/No Internet:Yes/No SML To 1.The Additional District and Sessions Judge -cum-Special Court for E.C. Act Cases, Thanjavur. 2.The Inspector of Police, C.S.C.I.D., Nagapattinam. 3.The Public Prosecutor, Madurai Bench of Madras High Court,

Madurai. R.MALA, J.

SML Judgment made in Criminal Appeal (MD) No.452 of 2007 Dated:- 01.12.2014

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