

Balasubramani Vs. State Represented By

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Court : Chennai

Decided On : Dec-01-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Balasubramani

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) Nos.409 of 2007 and 453 of 2007 Balasubramanian : Appellant in Crl.A.(MD)No.409/2007/A-2 Kumar : Appellant in Crl.A.(MD)No.453/2007/A-1 Vs. State represented by The Inspector of Police, C.S.C.I.D., Nagapattinam. (Crime No.275 of 1998) : Respondent in both Crl.Appeals Common Prayer : Criminal Appeals are filed under Section 374(3) of the Code of Criminal Procedure, praying to call for the records in S.T.C.No.3 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 Appellants :: Mr.R.Sivasubramanian For Respondent :: Mrs.S.Prabha, Government Advocate (Crl. Side) :COMMON

JUDGMENT

The Criminal Appeals are directed against the judgment dated 14.08.2007 passed in S.T.C.No.3 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.1 Subramanian and Taluk Supply Officer made an inspection on 12.09.1997 at 3rd Chetthi Fair Price Shop, which is under the control of Cherankulam Primary Agricultural Co-operative Bank. At that time, it was found that the ration provisions were misused and sold to the tune of Rs.9,982.84. The first accused was responsible for the same. P.W.1 sent the report with regard to the same, which was marked as Ex.P.1. (ii) On enquiry, it came to know that the first accused was temporarily suspended from service on 22.03.1997. P.W.1 recorded the statements of Baskaran, Panneerselvam, Secretary (second accused) and the Salesman and that were marked as Exs.P.2 to 5. He also prepared the list regarding stock. The Secretary, President, Salesman Kumar and Baskaran were responsible for the shortage in stock worth about Rs.37,739.54. He prepared stock list Ex.P.6 and the list regarding shortage in stock-Ex.P.7. The complaint given by P.W.1 was marked as Ex.P.8. Stock Register was marked as Ex.P.9. Ex.P.10 is the supply Register. Ex.P.11 is the Daily Chitta Register. Ex.P.12 is the bill book. (iii) P.W.2 Govindan, Sub-Inspector of Police, took the up the case for investigation, on the complaint given by P.W.1, and registered a case in Crime No.275 of 1998 for the offences under Sections 6(2) of TNSC (RD/CS) Order, 1982 and 7(i)(a)(ii) of E.C. Act, 1955. He prepared an F.I.R. Ex.P.13. After examining P.W.1, he entrusted the case to P.W.3 for further investigation. P.W.3-Jegannathan, Inspector of Police, after completing the investigation, laid the final report. (iv) Before the Trial Court, on behalf of the prosecution, P.Ws.1 to 3 were examined and Exs.P.1 to P.13 were marked. On completion of the examination of the witnesses on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and they denied the same as false. On behalf of the defence, no witness was examined and no document was marked. (v) 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 each of the accused 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 appellants/A-2 and A-1, the present appeal has been filed.

4. Heard both sides.

5. Assailing the judgment of conviction and sentence, the learned counsel for the appellants 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 them, since P.W.1, Subramanian, Sub-Registrar, who made an inspection on 12.09.1997, 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, a complaint has been given by P.W.1. P.W.2 Govindan, Sub-Inspector of Police received the complaint and registered an F.I.R. (Ex.P.13). P.W.3, Jegannathan, Inspector of Police, after investigation, has laid the charge sheet. The evidence of P.W.1 has not proved the ingredients of Section 6(2)(3) of TNSC (RD/CS) Order, 1982. 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 12.09.1997, it was found that the first accused misused the ration provisions and created loss to the tune of Rs.9,982.34 and there was a shortage in stock worth about Rs.37,739.54. On the basis of the complaint, on enquiry from the second accused on 09.03.1998, it was found that the first accused was temporarily suspended from 22.03.1997 and on verification of the records, it was found that there was a shortage to the tune of Rs.37,739.54. The second accused also accompanied the first accused for the commission of offences. To prove the same, bill book, daily chitta register and stock register were marked as Ex.P.12, Ex.P.11 and Ex.P.9 respectively. 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 and on perusal of the typed-set of papers, it is seen that admittedly the first accused by name Kumar is a Salesman of 3rd Chetthi Fair Price Shop and the second accused is the Secretary of Cherankulam Primary Agricultural Co-operative Bank. As per the evidence of P.W.1 Subramanian, Sub-Registrar, when he made an inspection on 12.09.1997, he came to know that there was a shortage in stock. In his chief, he had stated that there was a sale to the tune of Rs.9,982.84 by not making mark in the ration card. In this regard, it is appropriate to consider his cross-examination. In his cross, he had stated that there is no document to show that on 12.09.1997, himself and Taluk Supply Officer made a surprise inspection. He had further stated that in his report, he has not mentioned as to how many ration cards were verified by him. He had fairly conceded that the fair price commodities have been given to the card holders, only after verifying the ration cards. But, admittedly, he has not verified the same. In such circumstances, there is no evidence produced before this Court to show that the accused have sold the ration provisions to the persons, who are not having any ration card. Except the oral evidence of P.W.1, no other evidence is available. He recorded the statement of the President of the Bank, which was marked as Ex.P.3. P.W.1, in his cross-examination, fairly conceded that both Kumar and Baskaran were responsible for the shortage in stock. However, the said Baskaran was not prosecuted. Furthermore, offence is entirely different from not following the procedures. P.W.1 has every right to initiate disciplinary proceedings against the erred staff. However, except Ipse dixit of P.W.1, no supporting evidence is available. In such circumstances, I am of the view that the evidence of P.W.1 is not sufficient to fascinate conviction against the first accused for the offences under Section 6(2)(3) of TNSC (RD/CS) Order, 1982 r/w 7(i)(a)(ii) of E.C. Act, 1955.

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. 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 first accused. Hence, the conviction and sentence imposed against him is liable to be set aside.

10. Insofar as the second accused (Balasubramanian), who is the Secretary, is concerned, only on the basis of the confession given by the first accused, the second accused has been roped in the case on hand. However, P.W.1, in his chief-examination, had stated that the statement of the second accused Balasubramanian has been marked as E.xP.4. Therefore, I am of the view that the ingredients of the provision of law have not been proved by the prosecution and the conviction and sentence imposed on the second accused is also liable to be interfered with.

11. In the light of the circumstances narrated above, by giving the benefit of doubt in favour of the appellants, the appeal is allowed and the appellants are acquitted from the charges levelled against them. Hence, the conviction and sentence passed against them is ordered to be set aside and accordingly, set aside. The fine amount, if any, paid by the appellants shall be refunded to them. The bail bond, if any, executed by the appellants 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 Common Judgment made in Criminal Appeal (MD) Nos.409 and 453 of 2007
Dated:- 01.12.2014

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