

State Government Vs. Bhagwan

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Court : Mumbai

Decided On : Oct-18-1950

Reported in : 1952CriLJ105

Judge : Hemeon and ;Hidayatullah, JJ.

Appellant : State Government

Respondent : Bhagwan

Judgement :

1. The respondent Bhagwan of Chand a was convicted and sentenced to undergo 3 months' rigorous imprisonment and to pay a fine of Rs. 300 under Section 7(1), Essential Supplies (Temporary Powers) Act, 1946 by the First Class Magistrate, Chanda, for contravention of Clause 3 (1), Central Provinces and Berar Food grains Control Order, 1945; but in appeal he was acquitted by the Additional Sessions Judge, Chanda. The State Government, Madhya Pradesh, have now filed an appeal against the acquittal.

2. The prosecution case was, briefly stated, as follows. G.R. Dawe (P.W. 1), food supply inspector, had on 27th September 1919 come to know that the respondent had purchased 3 bags of bagad from Rao Saheb Fadnavis of Mul through his agent Murlidhar (D.W. 1); and on the following day, when G.E. Dawe inspected the respondent's shop in the Chanda Bazar, he found there 6 bags of bagad which weighed 15 maunds and 22 sesra, although he did not possess a licence for

wholesale business. Thereafter, on 29th October 1949, G.R. Dawe submitted the report Exhibit P-2 to the Food Officer and the respondent was in due course prosecuted.

3. In examination, he asserted that he had retained 3 bag of bagad in his shop for sale and that the 3 other bags which he purchased from Murlidhar (D.W. 1) were intended for consumption in his house, On 27th September 1949, how fiver, G.R. Dawe's peon directed him to transport to the shop the three bags purchased by him on that day from Murlidhar. The latter referred to the fact that the respondent had when purchasing the 3 bags from him told him that they were for his own consumption. These bags were carried in Mahadeo D.W.2's thela to the respondent's shop, although his residential house is not connected with his shop in the bazar. Mahadeo added that the respondent told him that the bags were for his use, but when ho was proceeding with them in the thela, a peon halted it. The witness accordingly apprised the respondent of what had happened and when the respondent arrived and told the peon that the bags were for his own use the peon went away without having directed the bags to be placed in the shop.

4. This incident took place, according to Vyankaty (D.W. 3), in front of his shop and he had heard the respondent pointing out to Mahadeo that the baga wore for his homo consumption. He added, however, that the peon had told Mahadeo to place the bags in the respondent shop and that the respondent had told Mahadeo that they should be taken to his house. This version is on the face of it materially divergent from that of Mahadeo; and Sadashiwa (D.W. 4) merely declared that when 3 bags were seized from the respondent's shop, the respondent had claimed that they were for his home use.

5. We are unable to accept the finding of the appellate Court that G.R. Dawe bad directed the respondent to keep the 3 bags in his shop; and we would point out at the outset that this was not the respondent's case. His case was specifically to the effect that G.R. Dawe's peon had ordered the bags purchased on 27th September 1949 to be carried to his shop; and his witness Vyankaty supported this version. Murlidhar was, however, certain that the peon had not given any direction of that kind and it would also appear from his evidence that he was not asked by the

respondent to take the bags to his house, The respondent had also not told G.R. Dawe that the bags were in his shop because his peon had adjured him to keep them there.

6. There was thus no truth in the allegation regarding the peon's part in the case; and it was plain that the only direction was that given by G.R. Dawe himself at about 6 p. m. on 27.9.1949 to the effect that the stock of 6 bags of bagad was not to be disposed of. Dawe's evidence thereto was borne out by the report Ex. P-2 and, as indicated, it was not the respondent's case that G.R. Dawe had ordered him to keep the three bags in his shop. We are in the circumstances unable to comprehend the reason for the appellate Judge's observation that the report Ex. P-3 established that Dawe himself was responsible for the keeping of the bags in the shop. That report was not substantive evidence and scrutiny of it as a whole showed that it was not materially or substantially divergent from Dawe's evidence as P.W. 1. In fact, Mahadeo (D.W. 2) who was the carter of the three bags, made no reference to Dawe and stated that he had placed them in the respondent's shop after the peon had stopped his thela and gone away on the respondent's assertion that they were for his own use. In short, the respondent had had the bags delivered at his shop of his own volition.

7. The reasoning of the appellate Judge was, therefore, erroneous and cannot be accepted. This does not, however, conclude the case, because the respondent's learned Counsel raised the point that even if the prosecution case were factually true the respondent was not liable. His contention was, briefly stated, that to render a person liable under Clause 3(1) of the Central Provinces and Berar Foodgrains Control Order, 1945, he must be one who engages in the business of sale or storage for sale of foodgrains in quantities exceeding 10 maunds of any one foodgrain in one transaction. Reference was made to the view of Mudholkar, J. in criminal Eevn. No. 191 of 1950, D/- 9.6.1950, that the fact that a retail dealer in foodgrains on one occasion sold more than 10 maunds of grain did not justify the conclusion that he usually dealt in such quantities.

8. The word 'usually' must have referred to the words 'engage in the business of sale' in the Order; and the effect of Mudholkar J.'s view would be that before an

offender could be convicted it would have to be established that he had so frequently sold more than the prescribed amount of foodgrains that he could be said to have done so usually. This would be against the scheme of the Order; and the words 'engage in the business of sale or storage for Bale', which appear in Clause 2(a), are not qualified by any expression which would limit their application to frequency in the trade of selling or storing for sale foodgrains. A person deals in foodgrains as soon as he begins as to deal and a person is a whole sale dealer as soon as he deals in foodgrains in quantities exceeding ten maunds of any one foodgrain or twenty maunds in the aggregate or a number of foodgrains in one transaction. We must therefore, disagree, and we do so respectfully, with Mudholkar J.'s view.

9. The words 'in one transaction' must, we consider, signify 'at one time' or 'at a time'. It is open to a dealer to buy, seller store for Sale a quantity of any one foodgrain up to and including ten maunds in separate transactions or in a single transaction, hah if he buys, sells or stores for sale more than that weight of the foodgrain in a single transaction, he is hit by Clause 2(e) and becomes a wholesale dealer for the purposes of the Order. A dealer could thus buy, sell or store for sale in separate transactions a particular type of foodgrain which would in all be greatly in excess of ten maunds, but the amount in each case would have to be ten maunds, or less for him to escape the mischief of Clauses 2(e) and 3(1) of the Order. The object is clear enough, namely a regular flow of distribution in respect of a foodgrain; and the storage, whether for sale or otherwise, of such foodgrain is limited by Clause 3(a) of the Order even in respect of a person who is not a dealer. When, therefore, the respondent increased the stock of bagsd in his shop to a quantity appreciably in excess of ton maunds, he had engaged in the business of its storage for Bale and had become thereby a wholesale dealer for the purpose of the Order. This too was the view of the appellate Judge who, as indicated, acquitted him for other reasons.

10. The acquittal is accordingly sea: aside and the respondent is convicted for contravention of Clause 3(1) of the Order. We do not think that imprisonment is called for, as a substantial fine would with the forfeiture of the foodgrain be adequate. The respondent is sentenced to pay a fine of Rs. 500 and, in default of

payment, he shall undergo 3 months' rigorous imprisonment. The 6 bags of bagad shall be forfeited to the State.

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