

Krishna Bhima and ors. Vs. State

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Court : Karnataka

Decided On : Feb-02-1979

Reported in : 1979CriLJ977

Judge : M.S. Nesargi, J.

Appellant : Krishna Bhima and ors.

Respondent : State

Judgement :

ORDER

M.S. Nesargi, J.

1. This petition is directed against the judgment dated 20-7-1978 passed by the II Additional Sessions Judge, Belgaum, in Cr. A. No. 109 of 1977 confirming the order dated 10-10-1977 passed by the Deputy Commissioner, Belgaum in No. SB/COM/SR-35/77 confiscating the seized 40 barrels of groundnut off and the truck bearing registration No. MHL. 2675, which was transporting the same.

2. The necessary facts may be stated as follows:

By the report dated 8-6-1977 the Sub-Inspector of Police, Hukeri, intimated the Deputy Commissioner, Belgaum, that at about 11.30 hours on 6-6-1977 he had seized the truck bearing registration No. MHL-2675 driven by petitioner-1 and in

which petitioner-2 was a cleaner as the same was carrying 7200 K.Gs. of groundnut-oil. The value of the oil v/as Rs. 7,000/-. The oil was being transported from Shri Satyanarayana Oil Mills, Bellary Road, Kampli to M/s. Anant Oil Mills, Nippani. He complained that the transport was being made without giving declaration to the Tahsildar, Kampli, regarding transport etc., and hence, he registered a case in crime No. 45 of 1977 for breach of Sub-clause (2)(a) of Clause 3 of the Edible Oils, Edible Oil Seeds and Oil Cakes (Declaration of Stocks) Order, 1976 (hereinafter referred to as the Order).

3. On receipt of the report the Deputy Commissioner issued notices and cause was shown by the petitioners as to how they had not committed breach of the aforementioned provision. The Deputy Commissioner did not accept the cause shown and directed confiscation of the oil as well as the truck. The petitioner went up in appeal to the Sessions Court, Belgaum, and the Second Additional Sessions Judge dismissed the appeal.

4. In reply to the notice issued by the Deputy Commissioner, M/s Anant Oil Mills, Nippani, represented by petitioner-4, has stated that the transport was made on 5-6-1977, which was a Sunday, and hence, Form-II prescribed by the said provisions, could not be furnished to the Tahsildar at Hospet, and therefore, it was only a technical mistake.

5. The two courts below have held that whether the mistake was technical or not, breach of the said provision had been committed and as such, the goods as well as the truck ought to be confiscated.

6. The Order in question came into force on 26-7-1976. It was amended on 2-8-1976 and once again it was amended on 3-8-1976. As per the amended provision a stock-holder who transports edible oils (it is not disputed that groundnut-oil is edible oil within the meaning of the Order) shall make a declaration in Form II specified in Sub-clause (1) of Clause 3 before the edible oil is transported. Reference to Sub-clause (1) shows that in such a case Form-II will have to be submitted to the Tahsildar having jurisdiction over the area. The Tahsildar having jurisdiction over Kampli is the Tahsildar of Hospet. This shows that the sub-inspector of police was wrong in mentioning in his report that Form-II had not been

furnished to the Tahsildar at Kampli. That indicates that the sub-inspector of police acted in an indifferent manner and seized the truck without ascertaining whether in fact Form-II had or had not been furnished to the Tahsildar as required by the aforementioned provision.

7. In the reply itself petitioner-4 has stated that the transport took place on 5-6-1977, a Sunday, and as such, the provision in Sub-clause (2)(a) of Clause 3 of the Order could not be complied with. The records show that a copy of Form-II has been received in the office of the Tahsildar, Hospet, on 7-6-1977 but that copy does not show whether it was received by post or muddam.

8. Sub-clause (4) of Clause 3 of the Order lays down that a declaration may be made to the Tahsildar either by delivery of such declaration in person or by registered post acknowledgment due. Reading of the aforementioned provisions does not make out that before transporting the edible oil, a stock-holder should wait for the acknowledgment receipt in case he had submitted Form-II to the concerned Tahsildar by registered post acknowledgment due. Hence if he has receipt for having sent form-II by registered post acknowledgment due, he is free to transport edible oil, according to law, on the every day.

9. It is ascertained that 5-6-1977 was in fact a Sunday. That means that it was a general holiday and the office of the Tahsildar could not have been working on that day. Therefore, the submission of Form-II could not have been done even in person. The post-office also could not have been working and as such form-II could not have been sent by registered post acknowledgment due on that day. Then, the question is, whether a stockholder should not at all transport his stock on a Sunday, though the contractual terms of his business of such transaction require that it should be done, as the stock should reach the consignee on a particular date. It is impossible to conceive that law expects any citizen to perform what is impossible to be performed in law. Now the fact that Form-II has been received in the office of the Tahsildar on 7-6-1977, clearly indicates that it must have been either delivered in person on 7-6-1977 or it must have been sent by registered post on 6-6-1977. Anyhow, when once it is seen that it was impossible for the stock-holder (petitioner-4) to submit Form-II on 5-6-1977 before

transporting groundnut-oil in that truck on that day, it cannot at all be said that petitioner-4 has committed any breach of the provisions of the order.

10. One more aspect that the courts below have failed to notice is that amendment to Section 6A of the Essential Commodities Act, 1955 by the Essential Commodities (Amendment) Act, 1976 Act No. 92 of 1976 came into force on 2-9-76. The relevant provision as amended reads as follows:

Section-6A of the Principal Act shall be re-numbered as Sub-section (1) thereof and:

(a)...

(i)...

(ii) after the proviso, the following proviso shall be inserted, namely: Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

Therefore, it was the duty of the two courts below to give such an option to petitioner-4 before directing confiscation of the truck. But, both the courts have failed to do so and that failure has caused irreparable prejudice to petitioner.

11. In that view of the matter, this petition is allowed, the judgment dated 20-7-1978 passed by the II Additional Sessions Judge, Belgaum, in Crl. A. No. 109 of 1977 and the order dated 10-10-1977 passed by the Deputy Commissioner, Belgaum, in No. SB/COM/SR-35/77 are set aside. Consequently, I direct that the goods in question, if available or the Value realised be returned to petitioner-3 and the truck in question, if the same is available or its value realised, be returned to petitioner-4.