

Vasundara Traders Vs. State of Karnataka

Vasundara Traders Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/376298

Court : Karnataka

Decided On : Feb-14-1977

Reported in : 1977CriLJ1539

Judge : C. Honniah and ;M.K. Srinivasa Iyengar, JJ.

Appellant : Vasundara Traders

Respondent : State of Karnataka

Judgement :

C. Honniah, J.

1. The petitioners were merchants and commission agents at Bangalore, They had obtained licences from competent authority to deal in rice under the Karnataka Foodgrains Wholesale Dealers Licensing Order 1964. They purchased 100 bags of rice and were transporting the same in lorries from Sira to Bangalore on 25-3-1975. The Food Inspector seized the rice near Tumkur and reported the matter to the Deputy Commissioner. The Deputy Commissioner issued show-cause notices Under Section 6-B of the Essential Commodities Act 1955 to the drivers who were transporting the rice and the owner of the lorries. The drivers and the owner, in response to the show-cause notices, stated that the lorries were hired by the petitioners and they were transporting the rice for and on behalf of the petitioners. The petitioners appeared before the Deputy Commissioner and claimed that the rice belonged to them and they were transporting the same to their shops at

Bangalore. The Deputy Commissioner, after going through the relevant material placed before him, passed an order confiscating the rice as well as the lorries.

2. Aggrieved by that decision, the petitioners filed four appeals before the Sessions Judge at Tumkur, who by his order dated 30-7-1975 partly allowed the appeals. He set aside the order of the Deputy Commissioner so far as it related to confiscation of the lorries, but confirmed the order in regard to confiscation of rice.

3. As against this decision, the petitioners, filed these four revision petitions. The revision petitions came up before Bhimiah, J. for hearing. A preliminary point was raised on behalf of the respondent contending that the revision petitions were not maintainable Under Section 401 Cr. P. C. in view of the decision of this Court in *State of Mysore v. Pandurang Parusappa Naik* 1971 (1) Mys LJ 401 : 1971 Cri LJ 1355, In that case, Nesargi, J. has held that the Judicial authority (District and Sessions Judge) appointed by the State Government by a notification for the purpose of Section 6-C of the Essential Commodities Act is not an inferior criminal court subject to the revisional powers of the High Court. In *Kalidas Traders v. State of Karnataka* 1974 (2) Kant LJ 439. and in *The Deputy Commr, Chitradurga v. Gangaiah* 1975 (2) Kant LJ 143 and in *Jayalakshmi Trading Co. v. State of Karnataka* 1975 (2) Kant LJ 192 this Court entertained revision petitions against the orders passed by the District and Sessions Judges in appeal against the orders of the Deputy Commissioners passed Under Section 6-C of the Essential Commodities Act and disposed of the same on merit. In view of that Bhimiah, J. felt that the opinion expressed by Nesargi, J. required reconsideration by a Bench of this Court and that is how these revision petitions have come up before us.

4. The question, therefore, for consideration is whether the District and Sessions Judge appointed as the Judicial authority Under Section 6-C of the Essential Commodities Act is a *persona designata* or whether he constitutes an inferior criminal court amenable to the jurisdiction of this Court. If it is held that the District and Sessions Judge is only a *persona designata*, then the revision petitions are not maintainable. But if it is held that the District and Sessions Judge acting Under Section 6-C of the Essential Commodities Act is an inferior criminal court then, the revision petitions are maintainable.

5. In these petitions we are concerned with the meaning to be given to the expressions 'Judicial Authority' mentioned in Section 6-C of the Essential Commodities Act as the appellate authority to be appointed by the State Government to hear appeals against the orders of confiscation made by the Deputy Commissioner Under Section 6-A and 'The District and Sessions Judge of each District' appointed by the State of Karnataka as the 'Judicial Authority'.

6. The expression 'persona designata' is defined by P. G. Osborn in his Law Dictionary as

a person pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character.

This definition is accepted by the Supreme Court in *Central Talkies Ltd. v. Dwarka Prasad* : 1961 CriLJ740 and also in the decisions of several High Courts. In *National Telephone Co. Ltd., v. Post Master General* 1913 AC 546 Lord Parker said :

Where by statute matters are referred to the determination of a court of record with no further provision, the necessary implication is that the Court will determine the matters as a Court. Its jurisdiction is enlarged and all the incidents of such jurisdiction including the right of appeal from its decision remain the same.

Therefore, if the expression 'the District and Sessions Judge of each District' which is a judicial authority appointed by the Government of Karnataka as the 'Judicial Authority' as provided Under Section 6-C of the Essential Commodities Act could be referred to as 'Court' there will be no difficulty because, the matter would be determined by the Court as a court and all the incidents including the incident of being liable to revision Under Section 401, Cr. P. C. if the District and Sessions Judge acts as a Court of Session would follow.

In the State of Karnataka, in the Districts the same Judge presides over both the District Court which deals with civil matters, and the Sessions Court which deals with criminal matters. But here, the reference in terms is to the presiding Judge of the court namely 'the District and Sessions Judge and not to the court itself. The

words 'court' and 'Judge' are sometimes used as interchangeable terms. In the case *Chatur Mohan v. Ram Behari* : AIR1964 All562 Desai C. J. said as follows :

I am not enamoured of the distinction made between 'a Munsiff and 'a court of Munsiff and of the argument based upon it to the effect that 'a Munsiff acts as a *persona designata* whereas 'a court of Munsiff acts as a court constituted under the Bengal, Agra and Assam Civil Courts Act or the Oudh Courts Act. When the Legislature speaks of 'a court of Munsiff it certainly means a court and not a *persona designate* but the converse is not always true.

Therefore, when a reference is made to the presiding officer of a court whether it meant to refer to the court or to him personally and refer to the fact of his presiding over a court simply to describe or identify him depends upon the intention to be gathered from the nature of the act he has to perform and other surrounding circumstances. From the mere fact that in the notification of the Government for the appointment of the appellate authority the expression 'the District and Sessions Judge of each District' is used instead of the Court over which such officer presides, it does not necessarily follow that the District and Sessions Judge is mentioned as *persona designata* and not in his capacity of presiding over the District and Sessions Court. This view of ours finds support in the Full Bench decision of the Andhra Pradesh High Court in the *Public Prosecutor (A.P.) v. L. Ramayya* 1975 Cri LJ 144 (Andh Pra) (FB). In the *Kerala State Electricity Board, Trivandrum v. T. P. Kunhaliumma* : [1977]1SCR996 in dealing with the provisions in the Telegraph Act 1885, which contemplated determination by the District Judge of payment of compensation payable Under Section 10 of the said Act, the Supreme Court held :

Where by statutes, matters are referred for determination by a court of Record with no further provision the necessary implication is that the court will determine the matters as a Court.

There is nothing in the Essential Commodities Act to infer that the District land Sessions Judge is to act in any other capacity than as a court over which he presides.

7. On the merits the learned Sessions Judge came to a finding that the petitioners were not the owners of the rice. That finding, in our opinion, is wholly untenable because, the petitioners have produced purchase bills, Form No. 39 under the Sales Tax Act which was given by the Sales Tax Authorities, affidavits of the drivers and the proprietor of Kumar Trading Company from whom the rice was purchased and also the affidavit of one of the partners of the petitioners' firm, to show that the rice belonged to them. On the face of this evidence, the learned Sessions Judge was not justified in holding that the rice did not belong to the petitioners. The provisions of the Karnataka Foodgrains (Declaration of Stocks) Order, 1967 are not applicable to wholesale dealers. Admittedly the petitioners are wholesale dealers and this fact is not controverted by the Deputy Commissioner in his order. Even otherwise, there was no evidence to show that under Clause (iii) of the Karnataka Foodgrains (Declaration of Stocks) Order, 1967 the petitioners were holding foodgrains in stock for more than two days. In this view, we disagree with the findings of the learned Sessions Judge and hold that there was no contravention of the Karnataka Foodgrains (Declaration of Stocks) Order 1967. Accordingly these revision petitions are allowed, the order of confiscation is set aside and (we) direct that the rice seized or the sale proceeds thereof shall be returned to the petitioners.