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The State of Mysore Vs. the Manager, Brooke Bond India Private Ltd.

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Court : Karnataka

Decided On : Nov-25-1966

Reported in : AIR1967Mys191; 1967CriLJ1531; (1968)IILLJ309Kant

Judge : H. Hombe Gowda, C.J. and ;M. Santosh, J.

Acts : Mysore Shops and Establishments Act, 1948 - Sections 2, 4, 4(1) and 30;
[Bombay Shops and Establishments Act, 1948](#) - Sections 2(27); ;[Factories Act, 1948](#)

Appeal No. : Criminal Appeal No. 84 of 1966

Appellant : The State of Mysore

Respondent : The Manager, Brooke Bond India Private Ltd.

Advocate for Def. : H.B. Datar, Adv.

Advocate for Pet/Ap. : G. Dayanand, Adv. for ;State Public Prosecutor

Judgement :

H. Hombe Gowda, C.J.

1. This is an appeal filed by the State under Section 417 of the Code of Criminal Procedure against the order of acquittal passed by the Judicial Magistrate, First Class, Dharwar, in C.C. No. 1552 of 1965 on his file.

2. The Labour Inspector, Hubli IV Circle Dharwar, filed a complaint against the Respondent, who is the Salesman of the Brooke Bond India P. Ltd., Sales Depot, Dharwar, for an offence punishable under Section 4(1) read with Section 30 of the Mysore Shops and Establishments Act in the Court of the Judicial Magistrate, First Class, Dharwar. The accusation against the Respondent was that when the Labour Inspector visited the godown of the Respondent for enquiry about the registration under Section 4 of the Act on 20-11-1964, he found that no action had been taken for registration of the said establishment under the Act in pursuance of the instructions issued to the accused by his head office at Belgaum, and therefore, was liable to answer the charge referred to in the complaint petition.

3. The Respondent who appeared before the Magistrate in response to the notice issued to him, contended that he had not committed any offence as it was not necessary for him to obtain exemption or to get any such registration as suggested by the Labour Inspector. He pleaded not guilty to the accusation that was read over and explained to him. Thereafter the Labour Inspector examined himself and closed his case. The Respondent also examined two witnesses in his defence to establish that he was not carrying on any trade or business, nor rendering any services to any client in the premises; that the premises was used only as 'godown' for storing the goods received from the Head Office and that only stock and issue registers had been maintained in the premises.

4. The learned Magistrate accepted the plea of the Respondent that the godown where in the tea is stocked by the Respondent is neither a 'shop nor a commercial establishment' as contemplated in the Act. He accordingly acquitted the Respondent of the offences under Section 4(1) read with Section 30 of the Mysore Shops and Establishments Act. Hence, this appeal.

5. It is urged by Sri Dayanand, the learned Prosecutor appearing for the State that the learned Magistrate was entirely wrong in his view that the activities of the Respondent did not bring the premises in which he is now stocking the goods viz., tea for distribution within the definition of a 'commercial establishment' of a shop. Sri Dayanand was unable to cite any decision in support of his contention. On the other hand the decision of the Supreme Court in Kalidas Dhanjibhai v. State of

Bombay, : 1955 CriLJ193 cited before the learned Magistrate was relied upon by Sri Dalar the learned counsel for the Respondent in support of the conclusion reached by the Magistrate that the premises wherein tea received by the Respondent from the Head Office was stored is neither a 'commercial establishment nor a shop' as defined in the Act. He also relied upon the Full Bench decision of the Punjab High Court in Ramchander v. State of Punjab, (FB).

6. The fact that the Respondent is a Salesman of the Brooke Bond India (P) Ltd., is undisputed. The said company has depots at various places in the State. The Respondent was the salesman at the relevant time at Dharwar. It is not disputed that the Company takes on rent godowns where tea is stocked either in tins or cases and that the salesman at the various places are not allowed to sell tea at the godown or even book orders at the said godowns. Generally what happens in the godown where tea is so stocked is taken out for delivery to customers in the market. In the godown he maintains a stock register and issue register. Every morning he opens the godown takes out tea after making entries in the book, goes to several merchants in Dharwar and other places within the allotted jurisdiction and sells tea to them. Thereafter he returns to the godown in the evening and makes entries in the register as to the sales that he has effected and re-deposits the stock of tea unsold. Beyond doing this nothing further happens in the godown. The question is whether when only such an activity is carried on in the godown and no sale as such is effected or service rendered to the purchaser at the spot, the place or the premises can be considered to be a commercial establishment or a shop within the definition of Section 2 (e) and (u) of the Mysore Shops and Commercial Establishments Act, 1961. This is the only point for consideration in this case.

7. Whether such a premises can be regarded as a shop or a commercial establishment was considered by the Supreme Court in : 1955 CriLJ193 mentioned above. It is no doubt that in the said case their Lordships were considering the definition of shop under Section 2(27) of the Bombay Shops and Establishments Act of 1948. But there is absolutely no difference between the definition of 'Shop' as found in the Bombay Act and the definition of 'Shop' in the Mysore Act Shop was defined in the Bombay Act in Section 2(27) as under :--

'Shop' means any premises where goods are sold either by retail or wholesale or where services are rendered to customers and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, catering house, theatre or other place of public amusement or entertainment.'

Shop is defined in Section 2(u) of the Mysore Act as under :--

'Shop' means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act 1948.'

It is therefore, clear from the above that there is very little difference between the two definitions. As already stated, considering the scope or applicability of the Bombay Shops and Establishments Act to the godown of the type with which we are concerned in this case, their Lordships of the Supreme Court held as follows :--

'The trade or business contemplated by the main portion of the definition of shop in Section 2(27) is not any business of selling wherever and however conducted but only those trades where the selling is conducted on defined premises. The very idea of a shop in that connotation betokens a room or a place or a building where goods are sold. The rest of the definition merely links on the main definition ancillary places such as store-rooms, godowns, work places etc., which 'are mainly used in connection with the business and 'business' means the kind of business defined in the earlier part of the definition viz., that portion of the business of selling which is confined to selling on some defined premises Their Lordships further held as follows: 'There is no justification for ignoring the limitation which the Legislature has placed on the main portion of the definition and holding that 'such' relates to a much wider classification of 'selling' with the main portion of the definition not only does not envisage, but was deliberately excluded'

Their Lordships came to the conclusion solely on the basis that no buying or selling was done on the premises and no services were rendered to the customers in the premises.

8. To the same effect are the observations of their Lordships of the Punjab High Court in the Full Bench decision in (F.B.) mentioned above Mahajan J. who spoke for the Full Bench considered whether a 'godown' of the type before us was a 'commercial establishment' or a 'shop' as defined in the Punjab Shops and Commercial Establishments Act. We may state here that the definition of 'shop' both in the Mysore Act and the Punjab Act is almost the same. Repelling the argument that godown of the type, that is of the type in which the Respondent was stocking the goods of Brooke Bond India P Ltd., is not which was a commercial establishment, their Lordships observed as follows:

'In order to determine this question it is necessary to closely analyse the definition of 'shop' and 'Commercial Establishment', one element is common to both, viz., that there have to be premises wherein in the case of a commercial establishment any business, trade or profession is carried on for profit and in the case of a shop where any trade or business is carried on, or where services are rendered to customers. The carrying on of trade or business or profession necessarily has to have a close and intimate connection with the premises. It cannot be disputed and indeed it was that a trade, profession or business can be carried on without there being premises, but the definition requires the existence of premises and in the case of a shop it includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise used in connection with such trade or business. In other words these offices, etc., must have a necessary connection with the premises which it is a shop. The other requirement is that what should be carried on in these premises or trade or business or rendering of services to customers in the case of a shop and in the case of a commercial establishment a trade or business or profession has to be carried on for profit. So far as the present case is concerned, no services are to be rendered or were in fact rendered to any one or more customers and therefore this requirement is lacking in this case even if it be assumed that the present premises are a shop. Once this element is eliminated the remaining two elements i.e., carrying on the trade or business are common

both to a shop as well as to commercial establishment. But a shop according to the definition does not include a commercial establishment. Therefore the same premises cannot be at the same time a shop as well as a commercial establishment. They can only be one or the other. Hence, the question arises what then is a shop? This phrase as understood by a common man denotes nothing more and nothing less than a premises where goods are bought or sold. Where their price is paid or is to be paid, i.e., the purchase or sale is either on cash or credit basis'

Further Mahajan J. observed as follows:--'It seems to me that the premises in dispute cannot be said to be a shop, I have come to this conclusion on the basis that before the present enactment was brought on the statute book the commercial world as well as a man in the street knew what the phrases 'shop' and 'Commercial Establishments' signified; and the Legislature which was enacting a measure to protect the employees from over work was not endeavouring to put in a new connotation on these phrases, but was merely concerned that the definition being left wide and elastic so that there is no evasion of the Legislative measure. I, therefore, take a 'shop' to mean a premises where trade or business is carried on in the shape of buying and selling of goods at the spot. It is rather axiomatic that in all trades it is the buying or selling which is going on in one form or the other in present or in future or even on speculative basis but in a shop the buying and selling is at the premises or in other words on the spot for cash consideration or may be better or on credit. The significant factor is the availability of the goods there and then and so also of services '

After a careful consideration of the matter his Lordship held that the depot in question could not be considered to be a shop within the meaning of the definition of the Act. His Lordship also rejected the argument to the effect that the premises was a commercial establishment. We are in respectful agreement with the conclusion reached by the Full Bench of the Punjab High Court.

9. It may be said that the facts in the Full Bench decision are on all fours with the facts of the present case and the decision, in our opinion, should be applied and it was rightly applied by the learned Magistrate. We do not see any merit in this

appeal, and it must fail.

10. In the result, therefore, for the reasons stated above, this appeal fails and the same is dismissed.

11. Appeal dismissed.

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