

State of Karnataka Vs. Firm 'Hotel Nagarjun' and others

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Court : Karnataka

Decided On : Oct-08-1991

Reported in : 1992CriLJ1697

Judge : K. Ramachandriah, J.

Appeal No. : Criminal Revision Petition Nos. 428 and 452 of 1988

Appellant : State of Karnataka

Respondent : Firm 'Hotel Nagarjun' and others

Advocate for Def. : Jayavittal Kolar and ;M. Mahabaleshwaragoud, Advs.

Advocate for Pet/Ap. : Shri C.H. Jadhav, High Court Govt. Pleader

Judgement :

ORDER

1. The short but interesting and important question which falls for determination in these two connected revision petitions filed by the State Government under Ss. 397 and 401, Cr.P.C. against different but similar orders of the learned Special Judge, Gulbarga in Special Case Numbers 3/88 and 51/87 is :-

Whether the Sessions Judge functioning as Special Court under S. 12A of the Essential Commodities Act, 1955 (for short 'the Act') was justified in discharging the respondents-accused charge-sheeted for the offence of contravention of the

provisions of certain control orders promulgated relating to essential commodities under Section 3 of the Act and made punishable under S. 7 of the Act on the sole ground that the Deputy Commissioner or the Assistant Commissioner had released the seized essential commodity to the accused under S. 6A of the Act by holding that he had not violated any of the provisions of the control order and, therefore, he cannot go behind the order made under S. 6A of the Act so long as it stands

2. Briefly stated, the facts which have given rise to these 2 revision petitions are as under :-

(a) Respondents 1 and 2 in Criminal Revision Petition No. 428/1988 were accused 1 and 2 respectively in Special Case No. 3 of 1988. They were charge-sheeted by the Station Bazar Police, Gulbarga for contravention of Clauses 15 and 16 of the Cement Control Order 1983 (for short 'the Cement Control Order') r/w Sections 3 and 7 of the Act on the allegations that they were found to be in possession of 241 bags of levy cement and failed to give satisfactory explanation for possession of the same when their hotel premises was checked by the police at 4 p.m. on 21-7-1986. When the learned Special Judge, Gulbarga heard arguments on the point of framing charges, accused produced certified copy of the order passed by the competent authority viz., Deputy Commissioner, Gulbarga under S. 6A of the Act on 19-6-1987 holding that the accused had not contravened any of the provisions of the Cement Control Order and consequently ordering that 241 bags of cement seized from the hotel premises of the accused should be released to them or in the alternative to pay them the money value of the seized cement bags if for any reason the seized cement cannot be returned to them. It was submitted on behalf of the accused before the learned Special Judge that in view of the said order of the Deputy Commissioner, there was no basis for prosecuting them for the offence for which they had been charge-sheeted by the police and, therefore, they were entitled to an order of discharge. On the other hand, it was contended on behalf of the prosecution that the learned Special Judge had to go on which the trial and come to an independent conclusion on the question whether or not the accused had committed the offence alleged against them. But the learned Special Judge rejected the said contention of the prosecution by holding that so long as the order

passed by the competent authority under S. 6A of the Act stands, he cannot come to an independent conclusion inasmuch as the authority competent to grant sanction for prosecuting the accused had come to the conclusion while releasing the seized cement bags under S. 6A of the Act that the accused had violated any of the provisions of the Cement Control Order and the Special Court cannot come to a different conclusion in view of the order passed by the competent authority. Therefore, the learned Special Judge discharge both the accused under S. 239, Cr.P.C.

(b) Respondents 1 and 2 in Criminal Revision Petition No. 452/1988 were accused 1 and 2 respectively in Special Case No. 51 of 1987. They were charge-sheeted by Shahabad Police for contravention of Cls. 7 and 14 of the Karnataka Pulses Dealers Licensing Order, 1977 (for short 'the Pulses Dealers Licensing Order') read with Ss. 3 and 7 of the Act on the allegations that the accused were found to be in possession of 30 quintals of tur without any licence to possess the said essential commodity when their Nandi Dal Mill premises at Shahabad was checked by the police at 4 p.m. on 30-6-1986. When the learned Special Judge, Gulbarga heard the parties on the point of framing charges, accused produced before him certified copy of the order passed by the Assistant Commissioner, Sedam on 18-4-1988 under S. 6A of the Act holding that the accused had not committed any offence and had not contravened the provisions of the Pulses Dealers Licensing Order and consequently ordering return of the entire 30 quintals of tur to the accused. By virtue of the said order it was contended on behalf of the accused that they had not committed any offence for which they had been charge-sheeted and, therefore they are entitled to an order of discharge. On the other hand, it was argued on behalf of the prosecution that the trial has to go on as the Special Court has to come to an independent conclusion regarding the offence alleged against them. But, the learned Special Judge upholding the above mentioned contention of the accused discharged both of them under S. 239, Cr.P.C. by observing 'This Court cannot go behind the order passed by the learned Assistant Commissioner so long his order stands'.

3. It is thus seen that in both the case the learned Special Judge without adverting to the material produced before him by the prosecution along with the charge-

sheets filed in the respective cases has discharged the accused by blindly adopting the order made by the competent authority under S. 6A of the Act. Whether such a bald order does or does not suffer from serious legal infirmity is the crucial question which has to be determined as already pointed out above.

4. Mr. C. H. Jadhav, learned High Court Government Pleader, argued that the learned Special Judge ought to have judiciously considered the material placed by the prosecution in both the cases and then come to an independent conclusion on the question whether or not a prima facie case had been made out against both the accused in both the cases for framing charges against them for the above mentioned offences alleged against them instead of passing cryptic orders of the nature mentioned above by solely relying upon the orders passed by the competent authority under S. 6A of the Act.

5. On the other hand, Mr. Jayavittal Kolar and Mr. Mahabaleshwaragouda, learned counsel for respondents-accused, argued in support of the impugned orders by contending that the competent authorities have ordered return of the seized commodities to the accused under S. 6A of the Act after satisfying themselves that there was no contravention of any of the clauses of the above mentioned orders. According to them, reading of the provisions of Ss. 6A and 7 in juxtaposition would make it clear that same set of circumstance must be established before the order of conviction is passed or confiscation of property is directed by the competent authority and, therefore, the learned Special Judge was perfectly justified in discharging the accused.

6. On consideration of the above mentioned rival contentions urged by the learned counsel on both sides, I find it difficult to uphold the impugned orders of the learned Special Judge who appears to be under the impression that he is bound by the order made by the competent authority under S. 6A of the Act and, therefore, he need not independently examine with reference to the material produced before him by the prosecution whether or not charges have to be framed against the accused and they have to be put on trial if a prima facie case is made out against them. This point is no longer res integra so far as this Court is concerned, in view of the decision in Channabasapa Sangappa v. State of

Karnataka, 1983 (1) Kar LJ 63 : (1983 Cri LJ NOC 184) (Kant) in which M. S. Nesargi, J., has taken the view that 'The proceedings under Ss. 6A and 6C of the Act are quite separate and different from a prosecution under S. 7, Essential Commodities Act. Thus, observations made by the Sessions Judge in the appeal setting aside the confiscation will have no bearing on the action of the Magistrate in deciding whether cognizance of the offence is or is not to be taken'. The facts of that case are that Bagalkot police placed charge-sheet against the petitioners alleging that they had committed the offence punishable under S. 7 of the Act read with R. 3 of the Karnataka Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 by alleging that the petitioners were found to be in possession of grains and goods stored in their business place in contravention of the Rule when their business place was inspected on 1-4-1981. After seizing the said grains and goods, police reported the matter to the Deputy Commissioner, Bijapur, who directed confiscation of the goods under S. 6A of the Act. Petitioners preferred Criminal Appeal No. 70/81 before the Sessions Judge, Bijapur under S. 6C of the Act. The Sessions Judge allowed the appeal and set aside the order of the Deputy Commissioner confiscating the seized goods. Feeling aggrieved by the said order, petitioners filed a revision petition before this Court. It was argued on their behalf that the seizure of the goods was itself illegal and that fact has not been noticed by the learned Magistrate before taking cognizance of the offence alleged against the petitioners in the charge-sheet placed by the Bagalkot police and, therefore, the entire proceedings ought to be quashed. In repelling that argument, this Court has observed as under :

'The proceedings under Ss. 6A and 6C of the Act are quite separate from the prosecution. One has no connection with the other. That is clear from the plain reading of the provisions of S. 6A of the Act. It is provided therein that the Deputy Commissioner has power to direct the essential commodities so seized to be produced for inspection before him if he thinks that it is expedient so to do and whether or not a prosecution is instituted for the contravention of such Order, he may order confiscation of the goods so seized on being satisfied that there has been a contravention of the Order concerned. The procedure that the Deputy Commissioner has to follow has been prescribed in S. 6B of the Act. No evidence as such is to be recorded by the Deputy Commissioner. It is only his satisfaction

on the material available that controls the action to be taken by him in respect of confiscation of the goods seized. The same principle applies to the proceedings before the Sessions Court i.e., in an appeal under S. 6C of the Act. Therefore, it is crystal clear that the proceedings before the two authorities are quite different from a prosecution, wherein evidence will be led and the same will be assessed, analysed, appreciated and weighed and then a finding is recorded whether it has been proved that there has been contravention of the concerned Order or Rule. Therefore, the observations of the Sessions Judge referred to by Sri Hadimani will have no bearing on the action of the Magistrate in deciding whether cognizance of the offence or offences alleged is or is not to be taken.'

But, Sri Mahabaleshwaragouda, learned counsel for the respondents accused in Criminal Revision Petition No. 452/1988 and whose argument was adopted by Sri Jayavittal Kolar with supplemental submissions submitted that the above mentioned decision of this Court cannot be regarded as having laid down the law properly in view of the observations made by the Supreme Court in the case of Century Spinning and Manufacturing Company Limited v. State of Maharashtra, : 1972 CriLJ329 .

7. On the other hand, Mr. C. H. Jadhav submitted that the view taken by this Court in Channabasapa Sangappa's case holds the field even now. He placed reliance on a decision of the Supreme Court in Thakur Das v. State of Madhya Pradesh, 1978 Cri LJ 1 (SC) : (AIR 1978 SC). The learned counsel for the petitioners submitted that the observations made in paragraph 12 of the decision in Thakur Das's case lend support to their contention.

8. In my view, there is nothing helpful to the respondents accused in the case of Century Spinning and Manufacturing Company Limited v. State of Maharashtra. In the said case, the Textile Commissioner had cautioned the Century Spinning Mills against committing irregularities by violating the provisions of the notification issued under the Essential Commodities Act, but, he had felt fully satisfied that there was no cogent ground for prosecuting the mills for an alleged violation of the notification issued. Nevertheless prosecution was launched against the management of the mills and its officers under S. 7 of the Act for the offence of

criminal conspiracy under S. 120B, I.P.C. read with S. 7 of the Act and also for the substantive offence under S. 7 of the Act. It was contended on behalf of the accused that since the Textile Commissioner had condoned the offence, if any, committed by the accused as per Deviation Order dated 26-6-1965 in which only a warning was given to the mills and there was no mens rea on the part of the accused, the trial Magistrate took the view that the Deviation Orders issued in favour of the mills clearly stated that it was exempted from compliance with the directions contained in paragraph 8-A with the directions contained in paragraph-8A read with Schedule II-A of the notification, dated 22-9-1949, with the result that it must be held that as far as the mill is concerned those directions had not at all been issued with respect to Param Sukh dhotis of 140 cms., and having constructional particulars in question were concerned and, therefore, the mill could not be said to have contravened the 3 notifications imposing the statutory control, by manufacturing the disputed varieties of Param Sukh dhotis. Consequently, the trial Magistrate held that none of the accused could be held to have committed the offence complained of and discharged them. The trial Magistrate took into consideration the decisions of the Supreme Court in *Nathulal v. The State of Madhya Pradesh*, : 1966 CriLJ71 and in case of *Deokaran Das v. The State of Bihar* (unreported) Criminal Appeal No. 38/68 (unreported) decided on 26-11-1968 held that 'the mill must be deemed not to have committed any offence for any part of the relevant period, if the operation of the Deviation Orders is taken to relate back to the date of imposition of the statutory control, while it should be taken to have committed no offence from the date of his application, if the Deviation Orders are not deemed to be retrospective in their operation'. Consequently, the trial Magistrate discharged all the 4 accused of both the offences alleged against them. On revision by the State of Maharashtra against the said order of discharge, the High Court of Bombay set aside that order and directed the Magistrate to frame charges against the accused under S. 120B, IPC, as well as under S. 7 of the Act. The said order of the High Court was challenged by the Century Spinning Mills and others by filing Criminal Appeals before the Supreme Court. Their Lordships of the Supreme Court have observed towards the end of paragraph 17 that 'the responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertng to the material on the

record, it must not blindly adopt the decision of the prosecution'. If I may say so, the said observations apply with equal force to the impugned orders is as much as the learned Special Judge has without fully adverting to the material produced by the prosecution along with the charge-sheets has blindly adopted the orders of the Deputy Commissioner in one case and the Assistant Commissioner in the other case made under S. 6A of the Act and has discharged the accused by observing that the Special Court cannot come to a different conclusion in view of the order passed by the competent authority as if the Special Court is a Court inferior to the competent authority and, therefore, it is bound to follow the view of the competent authority. Reverting back to the observations of the Supreme Court in the case of Century Spinning and Manufacturing Company Limited v. State of Maharashtra referred to above, their Lordships have observed in paragraph 2 as under at page 337 :

'We agree that the police authorities are not bound by the decision of the Textile Commissioner not to take steps to prosecute the appellant-company and even after the expiry of more than two years the police could technically initiate the present proceedings, there being no legal bar. We are, however, inclined to think that the Textile Commissioner having felt within the notification of November 2, 1964, as is clear from the deviation Order actually issued by his office, the appellant must be held not to have violated any provisions of the notification, dated October 13, 1964, with any guilty mind assuming there was technical violation thereof. We are unable to hold that there was any mens rea on the part of the appellant mill with the result that the prosecution for the offence charged must be considered to be groundless. In other words, there was no ground for presuming the appellant-company to be guilty of the criminal offence charged. The learned Chief Presidency Magistrate, in our opinion, rightly came to this conclusion on the material on the record and he did not exceed his jurisdiction in doing so. That, for an offence violating the Essential Commodities Act, mens rea is necessary, has been decided by this Court in Nathulal's case (supra), and no argument to the contrary was addressed at the bar. It may be borne in mind that in this case there is no question of any further evidence being led for bringing home the charge to the appellants. If on the existing material there is no ground for presuming them to be guilty then there can hardly be any point in framing charges and going through

the formality of a trial and then acquitting them. Such a course would merely result in unnecessary harassment to the appellants without serving the cause of justice.'

It is thus seen that the Supreme Court has reversed the order of the High Court and has affirmed the discharge order of the trial Magistrate as he had passed a considered order after taking all aspects into consideration and not by simply relying on the order of the Textile Commissioner whereas in the instant case, the learned Special Judge without considering the material produced before him by the prosecution has simply made reference to the release orders passed by the competent authorities under S. 6A of the Act and has discharged the accused by observing that he cannot go behind the said orders so long as they stand.

9. In *Thakur Das v. State of Madhya Pradesh* their Lordships have observed in paragraph 12 at pages 6 and 7 as under :

'The Act envisages two independent proceedings against a person charged with contravention or violation of an order made under S. 3 in relation to an essential commodity. Under S. 6A the Collector can confiscate the seized commodity. Under S. 7 such contravention is made punishable. As S. 7 stood at the relevant time, even where a prosecution is launched it was not absolutely obligatory upon the Court to forfeit the property in respect of which the relevant order had been contravened. It was left to the discretion of the Court to direct forfeiture of the whole or part of the commodity brought before the Court in respect of which an offence appeared to have been committed. Since the subsequent amendment in 1974 the discretion of the Court in this behalf is taken away and it is made obligatory upon the Court to forfeit the property in respect of which an offence appears to have been committed under S. 7. Therefore, either the Collector can order the confiscation and yet S. 6D permits infliction of any punishment to which the person convicted thereby is liable under the Act irrespective of the fact that the Collector has ordered confiscation under S. 6A. The dichotomy is that the Collector can proceed to seize the essential commodity and cancel the licence and forfeit the security deposit. A prosecution can be launched and the Court will have to deal both with the question of punishment and forfeiture of the property in respect of which an offence appears to have been committed. Further, even if the

Collector confiscated the property it would be still open to the competent authority to launch prosecution and the Court would have to deal with the person who is charged with the offence but in such a situation the question of forfeiture of the property would not arise because the Collector has already confiscated the same'.

In my opinion, these observations do not in any way support the argument advanced by the learned counsel for the respondents-accused and, on the other hand, they support the contention of the learned High Court Government Pleader.

10. Learned counsel for the respondents-accused also invited my attention to another decision of the Supreme Court in the case of Surendra Nath Jena v. State of Orissa, : 1977 CriLJ1120 . In my opinion the said decision, which is a very short one, does not contain the full facts of the case and it does not throw any light on the contention advanced by the learned counsel for the respondents-accused.

11. Quite recently, the Supreme Court has considered the scope and ambit of the provisions of Ss. 6A and 7 of the Act in the case of Shambhudayal Agarwala v. State of West Bengal, 1990 SCC 549 : 1990 SCC (Cri) 489, Criminal Appeal No. 310/1990, decided on May 3, 1990. In the said decision, their Lordships have after making a re'sume' of the relevant provisions of the Act have observed in paragraph 5 as under :

'Any person who contravenes any order made under S. 3 becomes liable to penal action under S. 7 and the property in respect of which the order has been contravened becomes liable to forfeiture. Notwithstanding anything contained in the Code, the offence punishable under the Act for the contravention of an order under S. 3 is cognizable and non-bailable and may be tried by the Special Court constituted for the area in which the offence was committed. Thus the breach of an order made under S. 3 attracts penal consequences, i.e., imprisonment and fine, and also renders the property seized liable to forfeiture. This is one consequence of the breach of an order made under S. 3 of the Act.

x x x x x x x x x x x x Thus confiscation of the essential commodity, etc., is not in lieu of punishment but can be in addition to the penal consequences. x x x x x x x x x x x x

Again, it is observed in paragraph 7 at page 556 as under :

'x x x x x x x x x x x x As pointed out earlier, in order to deter persons dealing in such essential commodities from contravening any order made under S. 3, the law envisages two independent proceedings, namely, (i) confiscation u/S. 6A and (ii) prosecution leading to punishment provided by S. 7 of the Act'

12. Therefore, I am constrained to hold that the learned Special Judge has committed a grave illegality in discharging the accused in both the cases without making any reference to the material produced by the prosecution and without applying his judicial mind to the question whether or not a prima facie case has been made out against the accused for framing charges against them for the above mentioned offences and by simply making reference to the release orders of the competent authorities and then observing that he cannot go behind the said orders so long as they stand. Therefore, the said orders which are bereft of any judicial reasoning deserve to be interfered with in exercise of the revisional powers under Ss. 397 and 401 Cr.P.C.

13. In the result, both the revision petitions are allowed. The impugned orders are set aside and the matters are remitted back to the learned Special Judge, Gulbarga with a direction to take on file both the cases under their original numbers and pass fresh orders on the point of framing charges in accordance with law and in the light of the observations made above after hearing both parties.

14. Petition allowed.