

Narasappa Vs. State of Mysore

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Court : Karnataka

Decided On : Nov-15-1968

Reported in : 1970CriLJ293

Judge : Ahmed Ali Khan, J.

Appellant : Narasappa

Respondent : State of Mysore

Advocate for Pet/Ap. : Mr. Hegde

Judgement :

Ahmed Ali Khan, J.

1. The petitioner along with one C. Hanumanthappa was convicted by the First Class Magistrate, Sindhnoor, under Section 7 of the Essential Commodities Act for the contravention of Clause 3 of the Mysore Food Grains (Wholesale) Dealers Licensing Order, 1964, and each of them were sentenced to pay a fine of Rs. 200/- and in default to undergo simple imprisonment for one month.

2. In an appeal, the Sessions Judge, Raichur allowed the appeal of Hanumanthappa and acquitted him, but he dismissed the appeal filed by the petitioner and confirmed the decision of the Magistrate, in this regard by his order dated 31st January 1968, passed in Criminal Appeal No. 49/6 of 1967 on the file of

his court. It is against that order of the Sessions Judge, that the petitioner has preferred this revision petition.

3. The facts of the case, briefly stated, are that on 4th May 1967, the petitioner and one Hanumanthappa were found transporting 75 bags of jawar in lorry No, MYR 3537 and that they had no valid licence with them as required by law. The petitioner was convicted by the trying Magistrate and his conviction was upheld by the Sessions Judge as mentioned above.

4. Mr. Hegde the learned Counsel for the petitioner argued that both the courts below have based the conviction solely on the explanation to clause (e) of Section 2 of Mysore Food Grains (Wholesale) Dealers Licensing Order, 1964. but did not record any finding with regard to the continuity of the transaction as required by law. His grievance was that the courts below were wrong in proceeding mainly on the explanation to clause (e) of Section 2 of the Order, and convicting the petitioner under Section 3 of the said Order.

5. There appears to be substance in the argument. Section 3 of the Mysore Food Grains (Wholesale) Dealers Licensing Order 1964 (which will be referred to as 'the order'), reads:

3. Licensing of wholesale Dealers--No person shall carry on business as wholesale dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

Clause (e) of Section 2 of the Order defines that:

Wholesale dealer' means a person engaged in the business of purchase, sale or storage for sale, of any one of the foodgrains in quantity of ten quintals or more at any one time or in quantity of twenty-five quintals or more, of all foodgrains taken together, but does not include the Food Corporation of India, or a person who-- **

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The remaining portion of clause (e) is not relevant for our purpose.

6. Reading the definition contained in clause (e) it is clear that a wholesale dealer is a person who engages himself in the business of purchase, sale or storage for sale. So the word 'Business' envisages a person who ordinarily trades in that commodity, in other words there should be a continuity in the transactions.

7. The Supreme Court in *Manipur Administration v. Nila Chandra Singh* : 1964 CriLJ465 interpreting the Manipur Foodgrains Dealers Licensing Order (1958), containing substantially similar provision, observed as follows:

The definition in Clause 2 (a) shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 mds. or more at any one time. The requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale or storage, and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single casual or solitary transaction of sale, purchase or storage that would make a person a dealer. If this element of continuity is ignored, it would be rendering the use of the word 'business' redundant and meaningless.

8. Now in the instant case both the trying Magistrate and also the Sessions Judge proceeded on the basis of presumption contained in the explanation to Section 2 clause (e), and this is what the Sessions Judge has stated in the Order:

From the above explanation it is evident that any person who stores food-grains more than, ten quintals will not only be held to be a 'Wholesale Dealer' but also would be presumed to be carrying on business as a Wholesale Dealer. that being the case, according to the Mysore Foodgrains (Wholesale) Dealers' Licensing Order, the presumption is that the said person is carrying on business as a wholesale dealer, and it is for him to rebut that presumption. In the instant case, the accused persons have been found in possession of more than ten quintals of foodgrains. Therefore, it will be presumed that they store the foodgrains for carrying on business as 'Wholesale Dealers' and it is for them to rebut that presumption, and it is not for the prosecution to prove of their being wholesale dealers.

Evidently the learned Sessions Judge misconceived the provision of the relevant law. No conviction can be based unless a finding is recorded to the effect that the petitioner was a wholesale dealer as defined in Clause (e) to Section 2 of the Order, and the Wholesale Dealer as defined in that clause means a person who is engaged in the business of purchase, sale or storage for sale. Before conviction could be ordered, the prosecution will have to establish that the petitioner was engaged in business. In other words unless continuity in transaction is proved by the prosecution, no order of conviction can be made under Section 3 of the Order. that was the principle enunciated in the decision of the Supreme Court in Manipur Administration's case : 1964 CriLJ465 which was followed by this Court in Sri Vallabhai v. State of Mysore 1966 (2) Mys LJ 79. The instant case is fully covered by decisions referred to above.

9. Following the principle laid down in those decisions. I hold that the order passed by the Sessions Judge is liable to be set aside, and the conviction of the petitioner under Section 7 of the Essential Commodities Act for the contravention of Section 3 of the Mysore Food Grains (Wholesale) Dealers Licensing Order. 1564 cannot be sustained.

10. This revision petition is allowed, and the conviction and sentence passed against the petitioner is set aside and the petitioner is acquitted.