

Shamaladevi and Vs. State of Karnataka

Shamaladevi and Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/378299

Court : Karnataka

Decided On : Oct-27-1989

Reported in : ILR1990KAR376; 1990(3)KarLJ499

Judge : Ramachandriah, J.

Acts : [Code of Criminal Procedure , 1973](#) - Sections 451 and 457; Explosives Act, 1978

Appeal No. : Crl. R.P. 417 and 418 of 1989

Appellant : Shamaladevi and ; Sukanya

Respondent : State of Karnataka

Advocate for Def. : K.H.N. Karanga, Adv.

Advocate for Pet/Ap. : S.P. Shankar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ramachandraiah, J.

1. These two criminal revision petitions filed under Sections 397 and 401 of the Code of Criminal Procedure, are disposed of by a common order at the Admission

stage itself as agreed by the learned Counsel for the petitioners and the learned State Public Prosecutor as they involve same facts and points of law for consideration.

2. The Deputy Superintendent of Police, Kolar Gold Fields (K.G.F) seized from the residential house of one Sri V, Ramaswamy, who is the husband of petitioner Smt. Shamaladevi in Criminal Revision Petition No. 417/1989 and from the premises of Kamadenu Stores, Vijayanagar, K.G.F. which was in the occupation of one Sri D. Soundararajalu, who is the husband of petitioner Smt. S. Sukanya, also called as Suganya & Suguna in Criminal Revision Petition No. 418/1989 sufficiently huge quantity of fire works and sparklers estimated to be of the value of Rs. 1,06,851/- and Rs. 74,738/- respectively on the ground that the said two persons had no licence or any other authority to possess and store the said fire works and sparklers in the respective premises and registered Crime No. 71/89 against Sri V. Ramaswamy and Crime No. 72/89 against Sri D. Soundararajalu for offences punishable under Section 5(3)(b) of the Explosives Act, 1884 (for short 'the Act') and took up investigation of the said cases. In the meanwhile B.E.M.L. Nagar Police reported the seizure of the said fire works and sparklers to the jurisdictional Magistrate. Immediately Smt. Shamaladevi and Sukanya have filed separate applications under Section 457 of the Code of Criminal Procedure in the Court of the Additional Judicial Magistrate First Class, at K.G.F. (for short 'the Magistrate') praying that the seized fire works and sparklers (hereinafter referred to as 'the articles' for the sake of brevity) on the ground that the seized articles belong to them as they had purchased them for selling the same in the ensuing Deepavali festival which is to commence from tomorrow (28-10-1989) and they were holding valid licences issued in Form 24 under Rule 24 read with Rule 155 of the Explosive Rules, 1983 (for short 'the Rules') and they would be put to great loss if the articles, which are of perishable nature, according to them, were not disposed of in the ensuing Deepavali festival. The said request of the petitioners was strongly opposed by the prosecution. By separate but similar orders dated 23-10-1989 passed in Crime Nos. 71 and 72 of 1989 respectively the learned Magistrate rejected the said applications.

3. Feeling aggrieved by the said orders, the petitioners have filed these revision petitions, with I.A.1 in each case praying for a direction to B.E.M.L. Nagar Police, to release the articles to the custody of the petitioner in each case forthwith.

4. Sri S.P. Shankar, learned Counsel for the petitioner urged the following points:-

i) that Section 5(3)(b) of the Explosives Act, 1984 is no longer on the statute as it is repealed by Act 32 of 1978; ii) that the petitioners are owners of the goods seized from the house/shop called Kamadhenu Stores which were in their occupation along with their husbands; iii) that no further investigation in respect of the articles is necessary at this stage; iv) that accused are the husband of the petitioners and they are residing together under one roof and the articles are seized from the house/shop in their joint possession; v) that enough safeguard is provided for the forfeiture of the articles; and vi) that the articles in question are perishable in nature and as such their utility and value will be lost if they are not disposed of during the ensuing Deepavali festival.

5. Sri K.H.N. Kuranga, learned State Public Prosecutor orally opposed the prayer of the petitioners after taking necessary instructions from the Deputy Superintendent of Police, K.G.F. who was present in Court, both in the main petition and also in I.A.I and submitted that investigation in Crime Nos. 71 and 72/1989 is not yet completed as the seized articles are yet to be examined by an Expert in Explosives and the vital factor whether they are explosives or not will have to be determined after examining every packet as otherwise the prosecution cannot establish at the trial that the whole of the articles seized are explosives in the light of the observations made by this Court in STATE OF MYSORE v. MOHAMED JAFFAR AND ORS., 1966(2) KLJ 91 and again in MAHAPURSHA DURGA JOGLEKAR v. STATE OF KARNATAKA, 1977(2) KLJ 463 that even as per the terms and conditions of the licences held by the petitioners, they are entitled to store in the premises mentioned in their respective licences fire works not exceeding 50 Kgs and sparklers not exceeding 400 Kgs and since the articles seized in the instant cases are more than the said quantity and from the places not specified in their licences, the petitioners are not entitled to claim possession of the seized articles at this stage; that the total weight of the articles seized is yet to

be determined and eventually the articles are liable to be forfeited and confiscated to the Government under Section 10 of the Act. In this connection, he placed reliance on a decision of this Court in THE STATE OF MYSORE v. ANTHONY, 1971 CrL.L.J. 1638 and in particular the following observations made in para 8 at page 1639 of the said decision:

'It is a well recognised principle that in regard to material objects in criminal cases they should be ordinarily available before the Court till the trial closes and the final order of disposal is passed by the Court under Section 517 of the Criminal Procedure Code. If the material objects are of a perishable nature, then it is open to the Court to deal with the material objects according to rules and in case they are sold credit the sale proceeds of the material objects to the criminal Court deposit of the Court. If the material objects are of the type of animals and vehicles, the ordinary course to be adopted by the Courts is to order return of such articles to persons appearing to be entitled to such return on condition of their executing proper bonds and furnishing security for the safe custody of the articles and for production of the said articles whenever called upon by the Court or on every day of the hearing of the criminal case.'

and also on the observations made by the Supreme Court in RAM PRAKASH SHARMA v. STATE OF HARYANA, : 1978 CrLJ1120 to which reference is made by the learned Magistrate in the impugned orders. However, Sri S.P. Shankar, laid stress on the observations made in : 1978 CrLJ1120 to the effect that 'if the Judge is of the opinion that the property seized is required to be retained with the police or in the Court for future use at the time of the inquiry or trial the property shall not be released, if, on the other hand, the property is not needed in any manner in the later stages of the inquiry or trial, it will be proper for the Court to release the property on the claimant furnishing adequate security' and submitted that the petitioners are prepared to furnish adequate security and even to deposit twenty-five per cent of the estimated value of the articles seized in each case and furnish adequate security for the balance of the amount rendering themselves liable to forfeit not only the deposited twentyfive per cent, but also the balance of seventy-five per cent of the value of the articles seized.

6. As regards the above mentioned two decisions of this Court, Sri Shankar submitted that the ratio in the said decisions is not strictly applicable to the facts of the case on hand as the said decisions are decided without noticing the earlier decision of the Supreme Court in *THE STATE OF GUJARAT v. CHINUBHAI GOPALDAS*, : 1968 CriLJ1478 wherein it is observed in para 6 as under:-

'Be that as it may, there are the other bottles intact. There is some evidence to show that they were in the original packing and were a proprietary product. The manufacturer came as a witness and deposed that the liquids were bottled by him as a proprietary manufacture. In these circumstances, it would be fair to assume that all of them were of the same kind as the ones which were sent for chemical examination. However, an examination of random samples can be made and if they satisfy the Court that the bottles contain contraband stuff the bottles can be confiscated. The order of the High Court is thus set aside, but instead of restoring the order of confiscation we order that a few bottles at random should be analysed and if contraband stuff against -the Prohibition Act is found the whole stock shall be confiscated.'

Sri Shankar also submitted that both in law and equity, the petitioners are entitled to the immediate custody of the articles seized as they are perishable in nature and the petitioners are poor persons and they will be ruined if they are not given possession of the articles to be sold immediately, as Deepavali festival will come to an end within a couple of days.

7. After giving my anxious consideration to the above mentioned submissions made by the learned Counsel appearing on both sides and having regard to the nature of the articles seized, I am of the view that interest of both sides can be safeguarded by ordering return of the seized articles to the extent of the quantity mentioned in their respective licences, if the seized articles in each case are more than the said quantity by weight. I have come to this conclusion in view of the observations made by this Court in 1971 Cri.L.J. 1638 that if the material objects are of a perishable nature, then it is open to the Court to deal with the material objects according to Rules and in case they are sold credit the sale proceeds of the material objects to the criminal Court deposit of the Court. No doubt there is

some force in the submission of the learned State Public Prosecutor that every one of the seized articles will have to be produced before the learned Magistrate at the time of trial and they will have to be identified and marked as material objects and the prosecution will be deprived of that facility if the articles seized are returned to the petitioners. In my opinion, the said fear of the prosecution may be safeguarded by retaining samples from each category of the fire works and sparklers as the case may be for sending them to the expert for test and also for proving the nature of the articles seized. It is also observed in the decision of the Supreme Court relied upon by Sri Shankar that it is not necessary to subject every bottle or piece of incriminating article for test. In my opinion, the contention of the learned State Public Prosecutor that the said observations are inapplicable to the facts of the case on hand as they are made in a case in which the evidence was already recorded after obtaining expert opinion cannot be accepted as the plain language used by their Lordships cannot be interpreted in that manner.

8. Regarding perishable nature of the seized articles, Sri Shankar has produced a Certificate dated 27-10-1989 issued by one Sri A. Gopala Iyengar, who has described himself as Insurance Surveyor/Loss Assessor S.L.A. 7233 to the effect that crackers meant for Deepavali Celebrations are all perishable if they are exposed to sun or dampness; that they are included under Clause 7 of Division II under the Explosives Rules framed by the Chief Controller of Explosives, Government of India; that to preserve the chemical properties crackers and fire works must be securely packed and kept in a dry place; that if they are exposed to excessive sun's heat they will be explosives and that crackers are not explosives by themselves and with the passage of time they become obsolete as they lose their chemical properties. Hence the certificate is tentatively accepted in view of the urgency of the matter without prejudice to the right of the prosecution to prove the contrary. Even taking a common sense point of view crackers meant for Deepavali Celebrations are seasonal articles and they are likely to lose their value and utility in course of time.

9. In the result, taking all the above mentioned aspects into consideration, these petitions are allowed in the following terms:-

(a) Every one of the articles seized in each of these two cases shall be got weighed by the Deputy Superintendent of Police, K.G.F. by an Expert in Explosives in the employment of Bharat Gold Mines Ltd., K.G.F. and if the total quantity of the seized articles is more than 50 Kgs of Fire Works and 400 Kgs of Sparklers in each case, only 50 Kgs of Fire Works and 400 Kgs of Sparklers shall be delivered to the respective petitioners after taking two sample packets from each category so released for sending one packet to the Chemical Analyst and another packet for being produced before the Court provided the petitioner deposits with the Deputy Superintendent of Police, K.G.F., 25 per cent of the value of each category of articles as per the value mentioned on the packet or bundle as the case may be to which they are entitled for being deposited in the Court on the next working day and execute a self bond for the remaining 75 per cent of the total value of each category of goods to be released in favour of the petitioners with one surety for a like sum to the satisfaction of the Deputy Superintendent of Police, K.G.F. before taking delivery of the articles and to the satisfaction of the Judicial Magistrate First Class, K.G.F., on the next working day, and

(b) the remainder of the seized articles shall be detained by the Deputy Superintendent of Police, K.G.F. for being dealt with in accordance with law.