Srinivasa Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-25-1985

Reported in : ILR1986KAR77; 1986(1)KarLJ299

Judge : Kudoor, J.

Acts : Edible Oil Seeds and Edible Oils (Storage control) Order, 1977

Appeal No. : Cr. P. No. 888 of 1983

Appellant : Srinivasa

Respondent : State of Karnataka

Advocate for Def. : S.S. Koti, HCGP

Advocate for Pet/Ap. : V.C. Narasimha, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Kudoor, J.

1. The facts that gave rise to this Criminal Petition one under Section 482 of the Code of Criminal Procedure are these :

Venkatachalapathy & Co., is a partnership firm doing wholesale business in edible oils. In addition to a wholesale licence for edible oils, they also possessed a producer-dealer licence and a commission agency licence for edible oil. In the course of the commission agency business, the firm received 9495 Kgs. of cotton seed refined oil on 22-8-1981 which was dealt by them in their business up to 22-11-1981 and another consignment of 550 tins of solvent extracted groundnut refined oil (vikas brand) on 27-8-1981 which was similarly dealt by them upto 28-10-1981. On 27-11-1981, Hanumanthe Gowda, Circle Inspector Police, Food Cell, Bangalore, inspected the firm and verified the account books of the firm relating to the dealings in edible oils. While verifying the account books, he found that the firm, in respect of 9495 Kgs. of cotton seed refined oil received on 22-8-1981 and 550 tins of solvent extracted groundnut refined oil (vikas brand) received on 27-8-1981, had violated the provisions, of the pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 (for short the 'Order'). Thereupon he seized the relevant account books and other documents under a Mahazar in the presence of panch witnesses for taking further action. Then he gave a report in this regard to the Sub-Inspector of Police, Law and Order, New Tharagupet, Bangalore, requesting him to register a case and take necessary action in the matter. On receipt of the report, the Sub-Inspector of Police, New Tharagupet Police Station, registered a case in Cr. No. 176/81 for violation of the provisions of the Order read with Sections 3 and 7 of the Essential Commodities Act, 1955(for short the 'Act') and submitted the F.I.R. to the Court of the jurisdictional Magistrate and took up investigation. After completing the investigation, he placed a charge sheet against the petitioner who was said to be the Accountant in the firm Venkatachalapathy & Co., under Clause 4 Sub-Clause 5(b) of the Order read with Sections 3 and 7 of the Act.

2. On receipt of the charge-sheet a case was registered against the petitioner (who will be hereinafter referred to as the 'Accused') in C.C.No. 161/1982 in the Court of the II Additional Chief Metropolitan Magistrate, Bangalore City. The Learned Magistrate after hearing the prosecution and the accused, framed a charge against the accused for contravention of Clause 4 of the Order read with Sections 3 and 7 of the Act on 26-8-1983 and set down the case for trial. The accused, being aggrieved by the initiation of the criminal prosecution by framing

the charge against him has filed this Criminal Petition to quash the entire criminal proceedings including the charge framed against him in C.C. No. 161/1982.

3. Heard the advocates appearing for both the parties. Perused the records.

4. Sri V.G. Narasimha, Learned Advocate appearing for the accused contended that the accused was only a clerk working in the firm Venkatachalapathy & Co., that he was not a 'dealer' as defined in the Order, that if there was any contravention of any of the provisions of the Order or the Act in carrying on the business of the firm, such violation would be only by the owner or his representative or agent and in that view, the accused cannot be said to be either the owner or the representative or agent of the owner in carrying on the business and that the accused being the Clerk employed in the firm was present in the shop when the shop was searched by the police. On these grounds, he maintained that the criminal prosecution initiated and the charge framed against the accused are totally illegal and constitute abuse of the process of the Court, liable to be quashed.

5. Sri S. S. Koti, Learned High Court Government Pleader appearing for the respondent State, argued in support of the action taken against the accused.

6. In the light of the arguments advanced, two points arise for consideration :

(1) Whether the accused, being an Accountant in the firm Venkatachalapathy & Co., was a 'dealer' as defined in Clause (2f) of the Order and

(2) Whether there was any contravention of the provisions of law as alleged by the prosecution ?

7. Before adverting to the points arise for decision in the case, it is relevant and useful to refer to the material provisions of the Order.

8. The object of the Order as adumbrated in the preamble reads :

'Whereas the Central Government is of the opinion that it is necessary and expedient so to do for maintaining supplies and for securing equitable distribution and availability at fair price, all pulses, edible oil seeds and edible oils.'

Clause 2 defines the expressions used in the Order.

'Dealer' is defined in Sub-clause (f) of Clause 2, means a person engaged in the business of purchase, sale or storage for sale, any pulses, edible oil seeds or edible oils whether or not in conjunction with any other business and includes his representative or agent.

'Retailor' is defined in Sub-clause (1) means a dealer in pulses or edible oil seeds or in edible oils who is not a wholesaler.

'Wholesaler' is defined in Sub clause (m) means a dealer in pulses or in edible oil seeds or in edible oils who sells such commodities to other dealers or to bulk consumers.

Clause 3 provides for licensing of dealers. It stipulates that notwithstanding anything contained in the Order, after the expiration of a period of 15 days from the coming into force of Clause 3, no person shall carry on as a dealer in pulses, in edible oil seeds or in edible oils, except under and in accordance with the terms and conditions of a licence granted under the Order if the stocks of pulses or edible oil seeds or edible oils in his possession exceed the quantities specified in Clause 3.

Clause 4 specifies the maximum quantity of stocks a dealer -- whether retailer or wholesaler -- could store or keep with him at any time. The material portion of Clause 4 reads :

'4(1) : No dealer shall, after a period of 15 days from the coming into force of this Clause, either by himself or by any person on his behalf store or have in his possession at any time any pulses, edible oil seeds or edible oils in excess of the quantities specified below.'

As per the specification, a wholesaler in edible oils including hydrogenated vegetable oils, in category 'A' cities, could store or be in possession of 800 quintals at the maximum at a time.

The only other provision relevant is the last proviso to Clause 4 reads :

'Provided also that nothing in this clause shall apply to a commission agent who does not retain any consignment of pulses or edible oil seeds received by him for a period exceeding 15 days from the date of its receipt.'

9. Bearing in mind these provisions of law, I shall proceed to consider the points formulated for decision in the order in which they were formulated.

POINT NO. 1

10. The charge framed against the accused reads thus :

'That you on 27-11-81 being a dealer as defined in Clause 2(f) of the Pulses, Edible Seeds and Edible Oils (Storage Control) Order, 1977 were found to have contravened Clause 4 of the said order having not sold 550 tins of groundnut refined oil and 9495 Kgs. of Cotton Seed Oil within 15 days from 27-8-81 and 21-8-81 on which dates said oils have been respectively brought to the shop Venkatachalapathy and Co., situated at No. 35-B in 11 Main Road of N.T. Pet at Bangalore City and thereby committed an offence punishable Under Section 3 read with Section 7 of E.C. Act and within my cognizance.'

The gravamen of the charge levelled against the accused as could be gathered from the charge framed against him was that he being a dealer as defined in Clause 2 (f) of the order was found to have contravened Clause 4 of the said order as be failed to sell 550 tins of groundnut refined oil and 9495 Kgs. of cotton seed oil within 15 days from the dates of their respective receipts in the firm. If the accused was not a dealer as defined in Clause 2(f) of the Order, then, as contended by Sri V.C. Narasimha, the criminal prosecution launched against the accused must fail. It is for the prosecution to show on the material produced before the Court that the accused was a 'dealer' as defined in Clause 2(f), on the date of the commission of the alleged offence.

11. It is not in dispute that the owners of the firm Venkatachalapathy and Co., possessed a wholesale licence for edible oils, the licence No. being 78 valid up to 31-12-1981. They also possessed another licence for edible oil commission agency, the licence number being INR EDO (c) 62/80-81 valid up to 31-12-1981.

This is borne out from the mahazar drawn by the Circle Inspector, Food Cell, on 27-11-1981 soon after he visited the firm and checked the account books. It is also not in dispute that the firm Venkatachalapathy and Co., was dealing in edible oils on the strength of these licences. Admittedly the accused was an employee in the said firm. According to the accused, he was only a clerk employed in the firm. However, it is borne out from the records of the prosecution that he was an Accountant in the firm and the firm in question was inspected and the account books of the firm were checked by the Circle Inspector in his presence. The prosecution has not produced any material beyond, showing that the accused was an Accountant in the firm. On these materials, could it be said that the accused was a 'dealer' as defined in Clause 2(f) of the Order?. As could be seen from the definition of the term 'dealer' extracted above, a dealer must be a person engaged in the business of purchase, sale or storage for sale of any pulses, edible oil seeds or edible oils whether or not in conjunction with any other business and includes his representative or agent. Certainly the accused would not come under the first part of the definition as it was not he who had possessed either a wholesale dealer's licence or a commission agent's licence for carrying on business or for dealing in edible oils Under Clause 3, a dealer must possess a licence to carry on the business as a dealer in pulses or in edible oil seeds or in edible oils in excess of the quantities specified therein. The owners of the firm Venkatachalapathy & Co., have been carrying on business in edible oils in accordance with the provisions contained in Clause 3. As stated above, the accused was merely an Accountant in the firm and as such he cannot be said to be a person engaged in the business of purchase, sale or storage for sale of only edible oils. The owners of the firm had obtained the necessary licence required under law and they would be the persons engaged in the business of purchase, sale or storage for sale of edible oils and not the accused.

12. The next point that requires to be considered is whether the accused could be said to be the representative or agent of the owners of the firm in carrying on the business of purchase, sale or storage for sale of the edible oils under the licence obtained by the owners of the firm. The prosecution, as noticed earlier, did not collect any material to show that the accused was discharging the functions in connection with the business that was being carried on by the owners of the firm,

other than the functions of an Accountant in the firm. The mere fact that the accused was appointed as an Accountant in the firm would not lead to the inference that he was a representative or agent of the owners of the firm in conducting the business of purchase, sale or storage for sale of any edible Oils. His duty as an Accountant in the normal course was to write the accounts of the firm. Thus viewing the case from any angle, it is difficult to hold that the accused was a 'dealer' within the meaning of Clause 2(f) of the Order. In that view, the criminal prosecution launched against the accused necessarily must fail.

13. Although the conclusion reached by me under point No. 1 is sufficient to dispose of this Criminal Petition, it was submitted by the Advocates appearing for the parties that the 2nd point formulated for decision may also be considered and a decision rendered as it would obviate the untenable prosecutions being launched on the erroneous understanding of the provisions of the Order as it happened in the case in respect of the alleged contravention of Clause 4. Accepting the submission, I proceed to consider the second point formulated for decision.

POINT NO. 2 :

14. The question requires to be considered under this point is whether there was any contravention of the provisions of Clause 4 on the facts disclosed from the material produced by the prosecution.

15. It is seen from the records produced by the prosecution that the basis for launching the criminal prosecution against the accused for contravention of Clause 4 of the Order was that 9495 Kgs. of cotton seed refined oil received by the firm on 22-8-1981 and 550 tins of solvent extracted groundnut refined oil received by the firm on 27-8-1981 from Alimchand Topandas Oil Mill, Adoni, were not sold within 15 days from the respective dates of their receipt at the firm. In other words, it is the case of the prosecution that failure to sail the edible oil received by the firm within 15 days from the date of receipt amounts to contravention of Clause 4 of the Order. In this background, it is necessary to consider the true scope and ambit of Clause 4.

16. Clause 4 provides for restriction on possession of pulses, edible oil seeds and edible oils. Clause 4(1) proscribes the maximum quantity of any of these kinds of commodities, a dealer could possess at any time, after the period of 15 days from the coming into force of Clause 4. In other words, a dealer is prohibited either to store or to possess more quantities of any of these kinds of commodities at a time, than that has been prescribed in Sub-clause (1). The maximum quantity a wholesale dealer in edible oils including hydrogenated vegetable oils could be stored or possessed at any time in category 'A' cities is 800 quintals. Admittedly Bangalore is placed under category 'A' cities in the schedule to the Order. It is also not in dispute that the firm Venkatachalapathy, & Co., is a wholesale dealer in edible oils as it possessed a wholesale dealer's licence as required under law. In that view, the firm could either store or possess up to 800 quintals of edible oils. It is not the case of the prosecution that the firm Venkatachalapathy & Co., was in possession of more than 800 quintals of edible oil at any time, nor it was alleged in the charge that the contravention of Clause 4 was on account of the firm, either storing or possessing more than 800 quintals of oil at any time. The specific allegations made in the charge based upon the relevant material collected by the prosecution was that the two consignments of edible oils received by the firm, both of which put together would not exceed the limit prescribed under Sub-clause (1) of Clause 4, were not sold within 15 days from the respective dates of their receipt by the firm. Clause 4 does not provide any period before which any quantity of edible oil received by a dealer should be sold or disposed of. All that it contemplates is that a dealer shall not store or have in his possession excess quantities of edible oils than the quantity specified in the said sub-clause. Since the prosecution has not placed any material to show that the firm Venkatachalapathy & Co., was in possession of excess quantities of edible oils than that has been prescribed under Sub-clause (1) of Clause 4 at any time, it is difficult to conclude that they bad contravened Clause 4 of the Order.

17. Sri S. S. Koti, Learned High Court Government Pleader appearing for the State, when asked as to what was the basis upon which it was alleged by the prosecution that there was contravention of Clause 4, he submitted to the Court that the Circle Inspector of Food Cell was under the impression that there was contravention of the last proviso to Sub-clause (1) of Clause 4 and on that basis,

he submitted his report to the concerned Sub-Inspector of Police to take action.

18. A plain reading of the proviso would show that it would not apply to the facts of the case on more than one ground. In the first place, the said proviso only refers to pulses and edible oil seeds and not edible oils. Secondly the restriction stipulated under this proviso is against the commission agent and not against a wholesale dealer in edible oils. It is provided under this proviso that a com mission agent who does not retain any consignment of pulses or edible oil seeds received by him for a period exceeding 15 days from the date of its receipt, the provisions contained in Sub-clause(1) would not apply to him. In the instant case, since the contravention alleged by the prosecution was relating to the stock of edible oils, the last proviso would not coma into the picture. Obviously, the law enforcement authorities in this case have proceeded on the wrong premise and erroneous understanding of the provisions of the law, which has resulted in initiating an untenable criminal prosecution against the accused. In that view, as rightly contended by Sri V.C. Narasimha, Learned Counsel appearing for the accused that the initiation of the criminal proceedings including the framing of the charge against the accused amounts to abuse of the process of the Court.

19. In the result, for the reasons stated above, the petition is allowed. The criminal prosecution initiated against the accused in C. C. No. 161/1982 on the file of the Court of the II Additional Chief Metropolitan Magistrate, Bangalore City, including the charge framed are quashed. The bail bond executed by the accused is cancelled.