

Cheluvaraj Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-11-1986

Reported in : ILR1986KAR3441; 1987(1)KarLJ247

Judge : Desai, J.

Acts : Karnataka Kerosene Dealers' Licensing Order, 1969

Appeal No. : Crl. R.P. No. 746 of 1984

Appellant : Cheluvaraj

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadhav, SPP

Advocate for Pet/Ap. : P.V. Kittur, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Desai, J.

1. The Petitioner was the accused in C.C.No. 70/1983 on the file of the Special Judge, Bangalore. He was tried for contravention of clause (3) of the Karnataka Kerosene Dealers' Licensing Order, 1969 (for short the 'Order') for carrying on

business in kerosene as a dealer without a licence and for contravention of the Kerosene (Fixation of Ceiling Prices) Order 1970, for selling kerosene at a higher price than the price fixed under the said order punishable under Section 7 of the Essential Commodities Act, 1955. As the accused denied the commission of the said offences, P.Ws. 1 to 3 were examined and Exs.P1 to P8 were produced on behalf of the prosecution. Exs. D1, D1(a) and D1 (b) were got marked on behalf of the accused. No evidence was adduced in his defence by the accused. The learned Special Judge acquitted the accused for contravention of the Kerosene (Fixation of Ceiling Price) Order, 1970. He however, held the accused guilty of contravention of clause (3) of the order and convicted him under Section 7 of the Essential Commodities Act and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs. 100/- or in default to undergo further simple imprisonment for 15 days. Hence, this revision petition by the accused against the said conviction and sentence.

2. According to the prosecution on 11.11.1983 at about 3 P.M. Durga Prasad, P.W.2 who was a P.S.I. attached to Food Cell, C.I.D., Bangalore on credible information that kerosene was being sold in black market near Grand Isakia Hotel on Police Road, Bangalore, went there along with pancha, Ravi Kumar, P.W.1 and found the accused selling kerosene to one Venkatesh. There was a push cart and in it there was a barrel containing about 100 litres of kerosene. He seized the push cart and the kerosene under the Mahazar Ex. P1 and filed a complaint as per Ex.P2, in the Market Police Station, Bangalore, before P.W.3, the P.S.I. After completing the investigation, P.W.3 submitted a chargesheet against the accused.

3. The defence of the accused is one of total denial.

4. P.W.3 has stated that the accused submitted an application to the Assistant Commissioner for return of the push cart and the empty barrel and that the same were ordered to be returned to him and as per that order they were returned to the accused under acknowledgment as per Ex D1. There is no reason to disbelieve P.W.3 on that count. P.W.2. has stated that he found the accused selling kerosene to one Venkatesh along with the push cart and the barrel containing about 100 litres of kerosene and seized it under Ex.P1. The Pancha, P.W.1 has turned

hostile to the prosecution. He has denied the presence of the accused near the push cart containing the barrel of kerosene. No doubt the other pancha has not been examined by the prosecution on the ground that he was not supporting the prosecution. This is not a case where the police were bound to take panchas for the seizure of the push cart and the kerosene. Hence, the fact that the pancha has not supported the P.S.I, is no ground to discard the evidence of P. W.2 if it is otherwise acceptable. The conduct of the accused in taking the return of the push cart and the empty barrel of kerosene amply supports the evidence of P.W.2. regarding the seizure of the push cart and the barrel containing 100 litres of kerosene.

5. Although there is no expert evidence to show that the liquid that was seized was kerosene, from the evidence of P.Ws 1 and 2 it can safely be held that the barrel did contain kerosene as the common man also could make out from the smell itself that it was kerosene.

6. Mr. Kittur, Learned Counsel for the petitioner urged that as there is no material to show that the petitioner was carrying on business of purchase or sale or storage for sale of kerosene he cannot be a dealer within the meaning of Clause 2(b) of the order. In support of his contention he relied upon the decision in *Manipur Administration v. M. Nila Chandra Singh*, : 1964 CriLJ465 .

7. According to Clause 2(b) of the order 'dealer' means a person engaged or intends to engage in the business of purchase, sale or storage for sale of kerosene whether wholesale or retail and whether in conjunction with any other business or not, and includes a commission agent engaged in any such business and a hawker, an agent or a representative of an Oil Company, who has entered into an agreement with the company to obtain and distribute kerosene to whole sale dealers or to retail dealers or to consumers, as the case may be. According to Clause(3) of the order no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in that behalf by the licencing authority. So the question is whether the materials placed before the Court show that the accused was a dealer within the meaning of Clause 2(b) of the order.

8. In *Manipur Administration v. Nila Chandra Singh*, : 1964 CriLJ465 while interpreting the definition of the word dealer as defined in Clause 2(a) of the Manipur Foodgrains Dealers licencing Order, 1958 it was observed thus :

'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 cause 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 word 'business' redundant and meaningless '

The definition of the word dealer in Clause 2(b) of the order is similar to the definition of the said word in Clause 2(a) of Manipur Foodgrains Dealers Licencing Order, 1958 excepting for the inclusion of the words 'or intends to engage' after the word 'engage'. The word 'business' is common to both. Business necessarily means continuity of transaction and not a single transaction. In this case the accused was found in possession of 100 litres of kerosene. The prosecution has not examined Venkatesh who is alleged to have purchased 2 litres of kerosene from the accused. The can in which he had stored the kerosene which he had purchased from the accused is also not seized. There is no other material to show that the accused had purchased the said kerosene for sale. It is significant to note that no funnel or measure was found with the accused. If he was selling as alleged by the prosecution he ought to have possessed the measure and the funnel. This circumstance shows that the allegation of the prosecution that the accused was selling kerosene to Venkatesh must not be true. There is also no material to show that the accused was found purchasing or selling or storing for sale kerosene on any other occasion. Merely because he was found in possession of 100 litres of kerosene if cannot be said that he intended to store it for sale, There is no clause in the order to the effect that a person storing kerosene more than a required quantity is deemed to have purchased it for the purpose of sale. Under the

circumstance no inference could be drawn by mere fact that the accused was found in possession of 100 litres of kerosene and that he had bought it for sale as urged by the Learned Government Pleader. Therefore, the materials placed by the prosecution on record will not make the accused a dealer as defined in Clause 2(b) of the order. If that is so, his conviction under Clause (3) of the order cannot be sustained.

In the result, the revision petition is allowed and the conviction and the sentence passed on the petitioner/accused by the Lower Court are set aside and he is acquitted. Fine if paid shall be refunded.

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