

Yusuff Vs. State of Karnataka

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Court : Karnataka

Decided On : May-29-1985

Reported in : ILR1985KAR2804

Judge : Kudoor, J.

Acts : Karnataka Foodgrainits (Retail Dealers) Licensing Order, 1964

Appeal No. : Crl. R.P. No. 48 of 1984

Appellant : Yusuff

Respondent : State of Karnataka

Advocate for Def. : S.S. Koti, H.C.G.P.

Advocate for Pet/Ap. : C.N. Kamath, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Kudoor, J.

1. This Criminal Revision by the accused in C.C. No. 45 of 1983 on the file of the Special Judge (Principal City Civil and Sessions Judge) Bangalore is directed against this conviction and sentence passed by the Special Judge for contravention

of Condition 3 of the licence granted to one Siddique under the provisions of the Karnataka Foodgrains (Retail Dealers) Licensing Order, 1964 as per the Judgment and Order dated 24th December, 1983.

2. Certain Siddique who was the proprietor of Burma Stores, situate at No. 123, Dr. Babasaheb Ambedkar Road, Frazer Town, Bangalore holds a licence under the Karnataka Foodgrains (Retail Dealers) Licensing Order, 1964 (for short the Order). The order was passed by the Government of Karnataka under Section 3 of the Essential Commodities Act, 1955 (for short the Act). The accused was a Salesman-cum Clerk-under Siddique in his Burma Stores. On 21-3-1983 when Mritunjaya Shastry(P.W.1) Sub-Inspector of Food Cell, visited the Burma Stores run by Siddique, the accused was found not maintaining correct accounts in respect of rice, wheat and wheat products and the accused, thus contravened the provisions of the Order and also Condition 3 of the licence granted to Siddique. Hence he rendered himself liable for punishment under Section 7 of the Essential Commodities Act.

3. The Trial Court after conducting a trial and appreciating the evidence adduced in the case came to the conclusion that the accused had violated condition 3 of the licence issued of Siddique and thereby contravened the provisions of the Order, rendering himself liable for punishment under Section 7 of the Act and accordingly convicted and sentenced him to suffer imprisonment for a period of three months and to pay a fine of Rs. 100/-, in default of payment of the fine, to suffer further imprisonment for 15 days, giving the benefit of the provisions contained in Section 428Cr. PC., if available to him. The accused being aggrieved by this conviction and sentence passed against him, has filed this revision challenging the correctness and legality of the same.

4. Sri C.N.Kamath, learned Advocate appearing for the accused advanced two fold contentions. They are : (1) there was no contravention of Condition 3 of the licence issued to Siddique and (2) accused cannot be held liable even if there was such contravention.

5. I shall proceed to consider these two points in the order in which they were formulated.

6. Point No. 1 :- To better appreciate the rival contentions urged on this point, it is necessary to refer to the relevant provisions of the Order.

Clause 3 - Licensing of Retail Dealers :-

'No person shall carry on business as a retail dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the Licensing Authority.'

Clause 4 - Issue of licence :-

(1) Every application for licence or renewal thereof shall be made to the Licensing Authority in form 'A'.

(2) Every licence issued or renewed under this order shall be in form 'B' '

Retail Dealer defined under clause 2 (d) reads :

'Retail dealer' means a person engaged in the business of sale of foodgrains to consumers only and who keeps for such sale, at any one time five quintals or more of wheat or wheat products or twenty quintals or more of any other foodgrains or fifty quintals or more of all foodgrains taken together.'

Foodgrains is defined under Clause 2 (aa) thus :

Food grains means any one or more of the foodgrains specified in Schedule 1 to this order including products of such foodgrains other than husk and bran.

Paddy (Rice in husk), rice (husked), jowar and wheat and wheat products are the foodgrains specified in Schedule I.

7. We find under Clause 4(2) that every licence issued or renewed under the Order shall be in Form B. Form B consists of number of conditions. So the licence issued under Clause 4(2) will be subject to those conditions. Among them, condition 3 is relevant for our purpose, which reads :

'3(1) The licensee shall, except when specially exempted by the State Government or by the Licensing Authority in this behalf, maintain a register of monthly account

for each of the foodgrains mentioned in paragraph I, showing correctly-

(a) the opening stock on each day ;

(b) the quantities received on each day showing the place from where and the source from which received ;

(c) the quantities delivered or otherwise removed on each day showing the places of destination ; and

(d) the closing stock on each day.

(2) The licensee shall complete his accounts for each day on the day to which they relate, unless prevented by reasonable cause the burden of proving which, shall be upon him.'

8. Condition 3 consists of two parts. The first part deals with the maintaining of a register of monthly account for each of the foodgrains for which licence is issued. It postulates that in respect of each of the foodgrains there shall be daily entry in the register showing correctly, the opening stock, the quantities received showing the places from where and the source from which received, the quantities delivered or otherwise removed showing the places of destination and the closing stock. These are the particulars relating to each of the foodgrains to be written daily in the, register of monthly accounts.

9. The second part of Condition 3 relates to the completion of the accounts for each day. It lays down that the licensee shall complete his accounts for each day on the day to which they relate, unless prevented by reasonable cause, the burden of proving which, shall be upon him. In other words, in the normal course a duty is enjoined upon the licensee to complete his accounts for each day on the day to which the accounts relate, However, the right of this mandate has been relaxed to some extent and the licensee is permitted to show that he was prevented by reasonable cause to complete the accounts as stipulated in Condition 3 (2).

10. The requirements of Condition 3 as analysed above show that it is mandatory for a licensee to maintain a register of monthly account for each of the foodgrains

showing the details stipulated in sub-clauses (a) to (d) of clause (l) of Condition 3 on each day and the accounts for the day shall be completed on the day to which they relate unless prevented by reasonable cause to be shown by him. However this Condition does not lay down that the particulars mentioned in sub-clauses (a) to (d) should be entered in the register at what point of time in the course of the day. All that Condition 3 lays down is that all these particulars should be written and found in the accounts of each day by the time the accounts for the day are completed.

11. Keeping these elements in view, I shall now proceed to consider whether there was any contravention of Clause 3 of the licence issued to Siddique. Admittedly PW.I the Sub-Inspector of Food Cell visited Burma Stores, the shop of Siddique at about 11-30 A.M. on 21-3-1983. The accused was present in the Stores. On being asked to produce the account books, the accused produced the Stock Book MO.I and the Bill Book MO. 2. PW.I verified the stock of foodgrains in the shop with reference to the account books On verification he found that as per the entries made in the stock Book, the opening stock was 9810 kgs. of raw rice, 1660 kgs. of boiled rice, 2073 kgs. of broken rice, 144 kgs. of Atta, 445 kgs. of maida, 103 kgs. of Rawa, 646 kgs. of Ragi, 78 kgs. of wheat, 50 kgs. of Bansirawa, 846 kgs. of jaggery and 118 kgs. of sugar; as per the Bill Book, the essential commodities sold on that day were 55 kgs. of raw rice, 5 kgs of boiled rice and 25 kgs. of broken rice and the actual stock of the essential commodities found was 7550 kgs. of raw rice, 1300 kgs. of boiled rice, 2023 kgs. of broken rice, 630 kgs. of Atta, 450 kgs. of Maida, 90 kgs. of Rawa and 200 kgs. of wheat. There was no stock of sugar.P.W.1 did not ascertain the stock of jaggery and Bansirawa. From this evidence of P.W.1 what can be gathered is that there was discrepancy in the actual stock of food articles found in the shop, when compared with the opening stock for the day and the sales effected as disclosed from the Bill Book. According to the prosecution, more quantities of food articles had been sold than shown in the Bill Book. In other words, account was not maintained in respect of the entire sales effected till then. As regards this the case of the accused was that there were credit sales and the credit bills were not seen and verified by PW.1. Without going into the truth or otherwise of the case of the accused that PW.1 did not see and verify the credit bills and assuming what PW.1 had stated was the correct

account of the stock of foodgrains found in the shop at the time of his visit, could it be said that there was contravention of Condition 3 of the licence. The answer to this question should be in the negative for the simple reason, that it was not the case of the prosecution that P.W.1 found any incorrect entries in the register of monthly accounts respecting the daily accounts written up to 20-3-1983, which were the completed accounts till then. It is not his evidence that the opening stock mentioned in the Stock Book for the day 21-3-1983 which was the closing stock for 20-3-1983 was incorrectly written or that there was any discrepancy in the accounts written in the register of monthly accounts up to the end of 20th March, 1983. The prosecution only attempted to show that there was discrepancy in the stock of food articles found in the shop on 21-3-1983 when P.W.1 visited the shop on the basis of the sales effected till then as disclosed from the Bill Book out of the opening stock of the foodgrains shown in the register of monthly accounts. As noticed earlier, the licensee is obliged to maintain the register of monthly accounts showing the particulars mentioned in clause (1) of Condition 3 correctly for each day and the accounts for each day shall be completed on the day to which they relate. Accounts for 21-3-1983 were yet to be completed by the time P.W.1 visited the shop. The mere fact that the sales effected up to 11-30 A.M., on 21-3-1983 were not entered in the register of monthly accounts by the time P.W.1 visited the shop would not, in my opinion, lead to the inference that there was contravention of Condition 3 of the licence. If no accounts in respect of those sales were maintained by the time P.W.1 visited the Stores, there might be breach of other Conditions of the licence, but it is difficult to hold that there was contravention of Condition 3 of the licence. From the above discussion, it follows that there was no contravention of Condition 3 of the licence.

12. Point No. 2 :- The next question is whether the accused could be held liable even if there was contravention of Condition 3 of the licence. It was contended by Sri Kamath that even if there was contravention of Condition 3 of the licence, the accused could not be held liable for the same as the obligations to maintain the register of monthly accounts were solely and exclusively upon the holder of the licence. He further contended that Clause 8 of the order if properly read and understood, also does not extend the liability arising out of contravention of the terms and conditions of the licence on other persons other than the licensee. In

this regard his submission was that the Trial Judge has misread and misapplied the provisions of Clause 8 and fastened the liability erroneously upon the accused for contravention of Condition 3 of the licence. It seems to me there is much force in this argument.

13. Undoubtedly, the accused was an employee under Siddique in his Burma Stores working as a salesman-cum-Clerk. However, the terms and conditions solely and exclusively enjoin upon him to carry on the business as a retail dealer in obedience to them strictly and not upon others including his employees and servants In this back-ground, Clause 8 of the Order under which the learned Trial Judge fastened the liability upon the accused requires close examination. It reads :

'Cl. 8- Contravention of conditions of Licence-

No holder of a licence issued under this Order or his agent or servant or any other person acting on his behalf shall contravene any of the terms or conditions of the licence and if any such holder or his agent or servant or any other person acting on his behalf contravenes any of the terms or conditions, then, without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by order in writing of the Licensing Authority.

Provided that no order shall be made under this Clause unless the licensee has been given a reasonable opportunity of being heard.'

(emphasis is supplied)

14. A careful reading of this provision would show that there is a mandate, not only to the holder of the licence issued under the Order but also on his agent or servant or any other, person acting on his behalf not to contravene any of the terms or conditions of the licence. It further provides as to what would follow if any of these persons, besides the holder of the licence, contravene any of the terms and conditions of the licence. It is specifically stipulated that if the holder of the licence or his agent or servant or any other person acting on his behalf contravene any of the terms or conditions, then without prejudice to any other action that may be taken against him, that is the licensee, his licence may be cancelled or

suspended by order in writing by the licensing authority. The second part of the clause makes it very clear that for the acts and omissions of the agent, servant or any other person acting on behalf of the licensee causing breach of any of the terms and conditions of the licence, the liability is upon the licensee and the licence issued to him is liable to be cancelled or suspended without prejudice to other actions to be taken against him (the licensee). The proviso to this clause stipulates that no action could be taken under Clause 8 without issuing notice to the licensee. The learned Trial Judge appears to have misread and misapplied this provision to the facts of the case in holding the accused liable for the contravention, if any, of Condition 3 of the licence issued to Siddique. For the reasons stated above, I hold that the accused cannot be held liable assuming that there was contravention of Condition 3 of the licence issued to Siddique.

15. In view of the conclusions reached on both the points, I hold that this revision deserves to be allowed. Accordingly it is allowed. The conviction and sentence passed against the accused are set aside. The fine amount if paid, is ordered to be refunded to the accused.

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