

Dilip Kumar Vs. the State

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Court : Andhra Pradesh

Decided On : Jan-30-2004

Reported in : 2004(1)ALD(Cri)360; 2004CriLJ2202

Judge : Dalava Subrahmanyam, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3 and 6A; Andhra Pradesh Scheduled Commodities Dealers (License and Distribution) Order, 1982

Appeal No. : Criminal Revn. Case No. 503 of 2001

Appellant : Dilip Kumar

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : V.H.V.R.R. Swamy, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Dalava Subrahmanyam, J.

1. This revision is directed against the judgment in CrI. Appeal No. 223 of 2000 on the file of the Metropolitan Sessions Judge dated 13-4-2001 against the order of

the Chief Rationing Officer in confirming the confiscation of 30% of the value of the seized stock of rice but setting aside the confiscation of 30% of the seized stocks relating to Basmathi and broken rice in favour of the Government.

2. The brief facts of the case are as follows :

The Inspector of Police, Vigilance Cell surprised M/s. Adarsh Rice Depot located at 10-1-622 Entrenchment Road, East Secunderabad on 21-5-1998 at 2 p.m. and at the time of inspection one D. Dileep Kumar, Proprietor of the said shop was conducting the business and on request he produced the relevant records and the license for verification. The Vigilance staff after verification found that there was variation with regard to essential commodities detailed in the order with the book balance as against the ground balance. The Vigilance Inspector in the presence of mediators, after conducting physical verification and in view of improper maintenance of conducting business in clandestine way, seized the entire stock, arrested the said Dileep Kumar, registered a case and issued FIR. The seized stocks were produced before the Chief Rationing Officer, Hyderabad and a show cause notice was issued to the revision-petitioner and after hearing, the Chief Rationing Officer ordered confiscation of 30% of the value of the seized stock in favour of the Government. Aggrieved against the order of the Chief Rationing Officer, the revision-petitioner filed an appeal before the Metropolitan Sessions Judge in Crl. A. No. 223 of 2000 and the learned Sessions Judge after hearing partly allowed the appeal setting aside the confiscation of 30% of the seized stocks relating to Basmathi rice and broken rice, but confirmed the confiscation of 30% of the value of the seized stock relating to rice in favour of the Government.

3. Aggrieved against the judgment in Crl. A. No. 223 of 2000 the revision-petitioner filed the revision contending that the order of the learned Sessions Judge in confiscating 30% of the value of the seized stocks is illegal and opposed to law. The learned Sessions Judge ought to have seen that there was no violation of provisions of the Essential Commodities Act or Control Orders and there was no contravention of Section 7 of the Essential Commodities Act. The learned Judge ought to have seen that the variation in the stocks may be violation of license conditions but they would not attract the penal provisions for confiscation of the

stocks.

4. Now the following questions of law would arise in this revision.

1. Whether the Chief Rationing Officer, Hyderabad committed error in ordering confiscation of 30% of the value of the seized stocks when the dealer was not shown to have indulged in clandestine business?

2. Whether the variation in stocks in the absence of any material that the dealer was dealing in clandestine business would attract the penal provisions so as to order confiscation of the entire stocks of the dealer and if so whether the revision is liable to be allowed ?

5. Points 1 and 2 : The Inspector of Police, Vigilance Cell surprised the shop of the revision-petitioner on 21-5-1998 at 2.00 p.m. along with his staff and mediators and the revision-petitioner produced his Account Books and also his licence and in the presence of mediators, the Inspector of Police conducted physical verification of the available ground stocks with that of the book balance and found that there was variation. The said variations were not within the permissible limits and hence came to the conclusion that the dealer was indulging in clandestine business of rice and other scheduled commodities by not maintaining true and correct records and thereby contravened condition 3 of the licence issued under the provisions of A.P. Scheduled Commodities Dealers (Licence and Distribution) Order 1982 punishable under Section 7 of the Essential Commodities Act. The Inspector of Police arrested the revision-petitioner and registered a case and he was produced before the Magistrate and he was remanded to judicial custody. Subsequently, when the stocks were produced before the Chief Rationing Officer, Hyderabad, a show cause notice was issued to the revision-petitioner and after giving him an opportunity order of confiscation was passed by the Chief Rationing Officer which was challenged in Crl. A. No. 223 of 2000. The Chief Rationing Officer framed the following charges.

1. The dealer failed to maintain proper and correct accounts for the stocks of rice and thereby violated the condition 3 (1) of the Licence issued under the A.P. Scheduled Commodities Dealers (Licence and Distribution) Order, 1982.

2. There was huge variation in the stocks of rice which shows that the dealer was indulging in clandestine purchases, sales and storage for sales and not issuing sales bills and thereby contravened the conditions 7 (1), 3 (iii) and 10 of the said Order.

6. The dealer contended that he was out of station and arrived on the day prior to the date of inspection and he had no intention to indulge in speculative business and his assistant failed to account for the said sales. The Chief Rationing Officer without accepting the explanation of the dealer ordered confiscation. However, the learned Judge found that there was no material to show that the appellant was indulging in black-marketing and that he was involved in any violations under the Essential Commodities Act prior to the date of offence. The learned Judge found that the variations with regard to Basmathi rice and broken rice was very negligible and therefore confiscation so far as Basmathi and broken rice were concerned were set aside. However, in view of the fact that the accounts were not maintained properly with regard to the rice, the order of confiscation was sustained and thus he allowed the appeal partly. The learned Metropolitan Sessions Judge has not considered the legal aspects whether the violation of the conditions of the licence would attract the penal provisions of confiscation.

7. The learned Advocate appearing for the revision petitioner relied on a decision in *Samudrala Venkateshwar Rao v. Government of India*, (2002) 6 Andh LD 389 wherein it was held that the confiscation of entire stocks is illegal and unjust where the contraventions of Control Orders are trivial and technical in nature. In the instant case, the Vigilance Inspector noticed that there were variations in the book balance and ground stock for which the revision-petitioner submitted his explanation stating that his assistant could not bring out the up-to-date entries and that he was away and he returned to the station only on the previous date of inspection.

8. The Chief Rationing Officer did not record any reasons and there was no material that the dealer was indulging in purchase, sale or storage of any scheduled commodities in speculative manner so as to attract the penal provisions of confiscation. In fact, the learned Metropolitan Sessions Judge recorded a

finding that there was no material to show or infer that the appellant was indulging in black-marketing or selling of adulterated commodities and in view of the fact that the appellant-revision-petitioner was not indulging in such activities, the confiscation of broken rice and basmathi rice was set aside by the Metropolitan Sessions Judge. In view of the fact that there was no material for the Chief Rationing Officer to come to the conclusion that the revision-petitioner failed to maintain proper and current accounts and that the storage of stocks was with a view to indulge in clandestine purchase or sales and that the Metropolitan Sessions Judge having recorded such a finding committed error in not setting aside the confiscation of seized stocks of rice also. For the abovesaid reasons, the Chief Rationing Officer committed error in ordering confiscation of 30% of value of the stocks seized and absolutely there was no material for the Chief Rationing Officer or for the Metropolitan Sessions Judge to come to the conclusion that the revision-petitioner-dealer was indulging in clandestine business so as to attract the penal provisions of confiscation and for the abovesaid reasons, the order of confiscation of 30% of the stocks seized are liable to be set aside by allowing the revision following the decision reported in (2002) 6 Andh LD 389.

9. In the result, the revision is allowed and the order of the Chief Rationing Officer in ordering confiscation of 30% of the seized stock of rice in favour of the Government and the judgment of the learned Metropolitan Sessions Judge, Hyderabad in Crl. Appeal 223 of 2000 in confirming the said order are set aside and the revision-petitioner-dealer is entitled for the refund of the sale value of 30% of the seized stocks relating to rice.

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