

Basdeo Vs. State

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Court : Allahabad

Decided On : Nov-12-1964

Reported in : 1967CriLJ1104

Judge : H.C.P. Tripathi, J.

Appellant : Basdeo

Respondent : State

Judgement :

ORDER

H.C.P. Tripathi, J.

1. This revision is directed against an order of the learned Sessions Judge of Allahabad, upholding on appeal the applicant's conviction under Clause (3) read with Clause (9) of the U. P. Cement Control Order, 1955, and sentencing him to pay a fine of Rs. 2000/-.

2. The applicant was tried before a Magistrate, First Class for having sold one bag of cement at a price higher than the controlled price to one Bam Naresh and for having been found in possession of 160 bags of cement which he was alleged to have imported in the district of Allahabad from outside in contravention of Clause (3) of the Uttar Pradesh Cement Control Order, 1955.

3. On an assessment of the evidence the learned Magistrate held both these allegations established against the applicant and convicted him 'under Section 7 of the Essential Commodities Act, 1955, read with Clauses (3) and (9) of the U. P. Cement Control Order, 1935' and sentenced him to under-go six months' rigorous imprisonment. On appeal, the learned Sessions Judge held that Essential Commodities Act did not come into play, but affirmed the conviction of the applicant as indicated earlier under Clause (3) read with Clause (9) of the U. P. Cement Control Order, 1955 and substituted his sentence of imprisonment to a fine of Rs. 2000/-.

4. The learned Sessions Judge has held that 'there is no evidence to prove that the applicant sold any bag as suggested by the prosecution.' He was, however, of the opinion that the case for the prosecution that the applicant had imported cement without having any licence for the same from some place outside Allahabad has been established on the basis of a statement which he had made at the time of the recovery, although 'there was no other evidence on behalf of the prosecution to show that these cement bags had been imported from other district.'

5. Admittedly the applicant was found in possession of 160 bags of cement. It has also come in evidence that his house was under construction. In his statement before the trial Court the applicant asserted that he had no licence and that he had purchased the cement in the district of Allahabad.

Clause (3) of the U. P. Cement Control Order reads:

No person shall import any cement in any district unless he holds a licence in the prescribed form....

6. Therefore, what is prohibited is importing of cement in a district from outside and not its possession as such. For upholding the conviction of the applicant for a breach of this clause, it is necessary to prove that he had brought the cement from outside the district.

7. Learned Counsel for the applicant has strenuously contended that the statement on which the lower Courts have relied for upholding that the cement found with the applicant had been brought from outside the district is in-admissible in evidence. His contention is that from the statement of Shri J.N. Misra (P. W. 1) it is apparent that the statement (Ex. Ka.1) was recorded by Tahsildar, who was a Tahsildar. Magistrate Second Class, and he had signed the same. Learned Counsel contends that it being a sort of confessional statement and there being no evidence that the Tahsildar Magistrate had been specially empowered by the State Government to record the same, the aforesaid statement could not be relied upon. There is force in this contention.

8. It is settled law that if the law provides for a thing to be done in a particular manner then it must be done in that manner and not other-wise. In the case of State of Uttar Pradesh v. Singhara Singh : [1964]4SCR485 , it was held that where a second class Magistrate not specially empowered by the State Government to record a statement or confession under Section 164, Criminal P. C., has purported to record a confession of the accused under Section 164 his oral evidence to prove the confession will be inadmissible.

9. The learned Sessions Judge has, however, treated this confession as not one recorded under Section 164, Criminal P. C., but as an extra judicial confession, because in his opinion there was no evidence to show as to who had recorded the same. This finding of the learned Sessions Judge does not appear to be correct. Sri J. N. Misra (P. W. 1) has stated that in his presence he and the Tahsildar took the statement of Basdeo. It matters very little whether the statement was taken by the Tahsildar by his own hand or be got it recorded by some other person. The principle of law enunciated in the decision referred to above that a person who is not authorised to record a confessional statement cannot prove that statement on oral evidence will apply to the facts of the present case.

10. In this view of the matter, I am of the opinion that the alleged confessional statement of the applicant cannot be relied upon for recording his conviction.

11. There being no other evidence in support of the prosecution case, this revision must be allowed. The revision is allowed. The conviction and sentence of the

applicant are set aside. Fines, if realised, shall be refunded to him. Learned Counsel for the applicant states that the stock of cement which was seized from the applicant's possession has already been sold. If it is so, the sale proceeds shall be refunded to the applicant. The order of forfeiture of the stock is set aside.

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