Ram Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-07-1966

Reported in : 1966CriLJ1104

Judge : M.H. Beg, J.

Appellant : Ram Lal

Respondent : State of U.P.

Judgement :
ORDER

M.H. Beg, J.

1. The applicant has been prosecuted on a charge framed as follows:

That, you on or about the 12th day of November, 1963, at 9-30 a.m. in Kaptanganj town within police circle Maharajganj were found in possession of four bags of sugar for which you had no permit granted by the District Magistrate, Azamgarh, and, thereby, contravened the provisions of Section 6 of the U.P. Sugarcane Control Order, 1963, punishable under Clause 9 of Section 125 of the Defence of India Rules, 1962, within my cognizance.

It is alleged that the applicant was found transporting 203, Kgs. of sugar on the 12th November, 1963, at about 9-30 a.m. in Kaptanganj town in the District of

Azamgarh. The driver of the Ekka, on which the sugar was being transported, and the applicant, who had engaged the Ekka were prosecuted, as the sugar was in excess of one quintal which a person could possess without a permit granted by the District Magistrate. A first class Magistrate of Azamgarh not only convicted the applicant of an offence punishable under Clause (9) of Rule 125 of the Defence of India Rules, 1982, for contravening Section 6 of the U.P. Sugar (Control) Order, 1963, and sentenced him to one year's R.I., but he also ordered the forfeiture of the sugar to the Government and had it sold. The applicant appealed but the learned Sessions Judge of Azamgarh dismissed his appeal. Hence, he has come up with a revision application to this Court.

2. The fact that the amount of sugar was seized from the possession of the applicant is admitted by him. The trial Court held that the applicant 'is a bulk consumer who runs his sweet-meat shop'. The applicant also proved that he had obtained two permits for sugar and he alleged that he had purchased the sugar on those permits. The trial Court held that the applicant 'could not afford to have kept the sugar stock taken on the valid cards idle for such a long time', and, therefore, held that it was not the same sugar. No exhibit number seems to have been put on the applicant's permits by inadvertence. Both the Courts below have, however, referred, to these permits, one of which is for 50 kgs. and stands in the name of the applicant's brother, and the other is for 100 kgs. granted to the applicant. Both these permits show that the applicants for the permits were sweat-meat vendors.

The applicant also produced Nisar Ahmad Zaidi (P.W. 4), the Head Clerk of the Supply Department, Azamgarh, to prove that, on 19.10.1963, the two permits were given to the applicant and his brother, it was also admitted by Nisar Ahmad Zaidi that enhanced quantities of sugar could be drawn for Dasehra, but the actual enhanced amount was not mentioned by him. This was the reason why the applicant filed an application under Section 428, Criminal P.C. before the learned Sessions Judge, at the appellate stage, for recalling Nisar Ahmad Zaidi in order to prove the enhanced quanity which could be drawn on the permits, it was alleged in the application that the defence counsel had forgotten to put an important question to this defence witness. The appellate Court rejected this application.

3. The trying Magistrate as well as the learned Sessions Judge held that the amount of sugar which was being carried and seized was not proved to have been covered by the permits which were shown to have been obtained by the applicant and his brother. Both the courts below proceeded on the assumption that the exact quantity recovered must always be traced to a particular permit or permits before the possession could be deemed to be legal. They seem to have misunderstood the provisions of Section 6 of the U.P. Sugar (Control) Order, 1963, which runs as follows:

6. Possession of sugar stocks - No person, other than a producer, a recognised dealer, an authorised retailer or a bulk consumer shall, except on a permit granted by the District Magistrate, possess more than one quintal of sugar at a time.

4. It is evident, from a perusal of Section 6 of the above mentioned Control Order that possession of sugar without permit exceeding one quintal at a time is an offence for every person 'other than a producer, a recognised dealer, an authorised retailer or a bulk consumer.' The term 'bulk consumer' is defined in the Control Order as follows:

2(b) 'bulk consumer' means a person, other than a recognised dealer or authorised retailer, to whom a recognised dealer sells sugar at whole-sale rate for consumption in his own establishment or undertaking for purpose of processing any food-stuff.

It was proved, on behalf of the applicant, that one bag of sugar was purchased from a recognised dealer, Messrs. Haji Mohd. Abdul Rahman, on 19th of October, 1983, for Rs. 117-28 P., and a receipt (Ex. Kha. 1) was produced to prove this purchase. Hari Prasad (D.W. 3), proprietor of Messrs. Deo Kumar Rai Kumar, another recognised dealer, was produced to prove that another bag of sugar was purchased from his shop for Rs. 117.29 P. on 21st October, 1963, and the receipt given for this purchase was Ex. Kha. 2. As the applicant is a sweetmeat seller, the purpose of the purchase by him could be presumed to be what he asserted it to be, and this was to earn his living by preparing and selling sweets. No other purpose of the applicant for possessing so much sugar was proved by anything on record. The price paid also appears to be at the whole sale rate. The propriety of these purchases was not challenged by the prosecution.

5. The learned Sessions' Judge held that these purchases could not relate to the amount which was actually being carried by the applicant. It was pointed by the learned Sessions' Judge that the amount for which the two permits were shown by the applicant was less than the two bags which the applicant himself admitted having purchased. I must point out that the learned Judge overlooked that the applicant was not being prosecuted for purchasing an amount in excess of what he was permitted to purchase. There was force in the argument that, if this was understood to be the charge, additional evidence, which the applicant wanted to produce before the appellate court and was not allowed to put forward, would have been produced in the trial Court.

6. The offence punishable under Section 6 of the Control order is that of being found in possession of more than the permissible quantity of sugar, but the four; categories of persons placed outside the purview of Section 6 of the U.P. Sugar Control Order, 1963, are not required by this section to show any permit at all. If there is any other provision requiring that the possession of sugar by these persons should also be proved to be under permits, that provision was not placed before me, and, in any case, the applicant was not prosecuted for violating any such provision at all. It is enough if the applicant's case falls outside Section 6 of the only Order relied upon by the prosecution.

As Section 6 of the Sugar Control Order, 1963, stands at present, all that is required is that the person in whose possession sugar exceeding one quintal in amount is found must be either a permit-holder for the amount or a person belonging to one of four clashes exempted from the purview of the provision. It is not required by this section that a person belonging to one of the four exempted categories must also be shown to hold a permit. It may be that the section is not so worded as to bring out its real intendment. But, that being the obvious meaning of the sect ion, as it stands, and the applicant having proved himself to be a 'bulk consumer', the conviction of the applicant for the alleged offence of contravening Section 6 of the Control Order cannot stand. The plain meaning of the words used must prevail over any alleged meaning derived from guess work.

7. The order of forfeiture was also quite unjustifiable. In an attempt to justify the forfeiture order reliance was sought to be placed, on behalf of the State, on the. provisions of Section 7(b) of the Essential Commodities Act (X of 1955), which is a Central Act. The particular provision reads as follows:

7(1) If any person contravenes any order made under Section 3-

(a) ....

(b) any property in respect of which the order has been contravened or such part thereof 'as to the Court may deem fit shall be forfeited to the Government;

Provided that if the Court is of opinion, that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property, it may, for reasons to be recorded, refrain from doing so.

(2) ....

It is surprising that this provision should be relied upon at all by any counsel. It is even less justifiable for a State counsel to take up the time of the Court by making such a patently untenable submission. It is obvious that this provision applies only to an order which has been passed under the Essential Commodities' Act, 1955. Moreover, Rule 125(9)(b) of the Defence of India Rules permits a forfeiture order only in cases where any order made under the Rule provides for it specifically. Rule 125(9)(a) and (b) may be quoted:

125 (9)(a) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both;

Provided that if any person contravenes any order made under this rule by restoring to any corrupt practice or other mala fide action or by influencing any person to abuse his authority he shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

(b) If any order made under this rule so provides, I any Court trying a contravention of the order may direct that any property in respect of which the

Court is satisfied that the order has been contravened shall be forfeited to Government.

8. The 'order' referred to in Rule 125(9)(b) is a legislative order such as 'the U.P. Sugar Control Order, 1963,' which contains no provisions for any forfeiture as a punishment. No such order containing any provision authorising forfeiture as a penalty in this case was placed before me.

9. Reliance was, rather desparately, also sought to be placed on Section 7 of the U.P. Sugar (Control) Order, 1963, on behalf of the State. This provision reads as follows:

7. Power of entry, search etc. The District Magistrate or any person authorised by the State Government in writing in this behalf may:

(i) inspect or cause to be inspected or enter and search any premises used or believed to be used for the purchase, sale or storage for sale of sugar; and

(ii) seize or authorize the seizure of any sugar in respect of which he has reason to believe that any provision of this Order has been, is being or is about to be contravened.

It is obvious that the above mentioned provision only authorises seizure of any sugar in respect of which an offence is either anticipated or is reasonably suspected to have been committed, It has nothing to do with an order of forfeiture passed as a penalty or a punishment imposed to which reference is made in Rule 125(9)(b) quoted above. The learned Magistrate who tried the case seems to have completely overstepped the limits of his authority in passing the order of forfeiture of sugar. The validity of this part of the order does not appear to have been questioned before the learned Sessions Judge, The question appears to have been raised for the first time before this Court. It is, however, a pure question of law and could be properly raised.

10. En passant, I may mention that the learned Assistant Government Advocate, who appeared for the State, was observed being assisted, during the arguments in this Court on behalf of the State, by an individual who, on inquiry, turned out to be

the Reader of the learned Magistrate who tried the case The interest displayed, as a pairokar in a case, by the Reader who happens to be a Government Servant, appears unhealthy and objectionable even if the information given in this Court, on inquiry, that this individual happened to be present in Court today in connection with some other duty is correct. The District Magistrate of Azamgarh will be informed of this fact, so that he may look into the question, if necessary, whether the absence of this Government servant from duty in Azamgarh was justified.

11. For the reasons given above, I set aside the conviction and the sentence of one year's imprisonment passed against the applicant as well as the order of forfeiture. As the sugar seized and ordered to be forfeited has been sold, the price realised will be now paid to the applicant.