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Ram Kishan Agarwal Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-16-1976

Reported in : 1976CriLJ1984

Judge : H.N. Kapoor, J.

Appellant : Ram Kishan Agarwal

Respondent : State of U.P.

Judgement :
ORDER

H.N. Kapoor, J.

1. Ram Kishan Agarwal has been convicted under Section 36 of the U.P. Shops and Commercial Establishments Act, 1962 (Act No. XXVI of 1962) and sentenced to pay a fine of Rs. 100/-.. The conviction was confirmed but the sentence was reduced to fine of Rs. 25/- only by the First Addl. District and Sessions Judge, Bijnor by his order dated August 26, 1975, in Cr. Appeal No. 72 of 1975.

2. The prosecution case is that the shop was inspected on 20-4-1973 by Sri G.P. Bahuguna Labour Inspector, Bijnor. Some irregularities were found. The applicant could not produce the register of employees employed at the shop, the register of fine and its realisation and also the register showing the deductions made from the wages of the employees. It was also discovered that the applicant did not display

notices as required in Forms 'Ga' and 'kha' and thus violated the provisions of Section 32 of the Act. The applicant was, therefore, prosecuted on the basis of the complaint filed by the Labour Inspector. The applicant had denied that he had committed these irregularities. Both the lower courts have found the prosecution case proved and convicted and sentenced the applicant, as stated above.

3. One of the grounds taken is that it has not been proved that Sri G. P. Bahuguna was the Labour Inspector and was authorised to inspect the shop under the Act. The lower appellate court has dealt with this aspect and has referred to a notification issued on 15-3-1973 under which the State Government had appointed certain Labour Inspectors for various areas in the State to perform the duties under Section 29 of the Act No. XXVI of 1962. In this notification, it is clear that he was appointed Inspector under the Act for the district of Bijnorj and as such he could perform the duties under Section 29 of the Act. The lower Appellate Court has rightly distinguished the case of State v. Kailash Chandra Bhargava 1970 All Cr. R. 525.

4. The other ground taken is that the trial after 1-4-1974 by the sub-divisional Magistrate or the Extra Magistrate is illegal. I have already held in the case of Visheshwar Pandey v. State Cr. Misc. No. 2158 of 1975 decided on 18-8-1975) (reported in 1976 Cri LJ 521) (All) that all the cases which were being tried by the Executive Magistrates prior' to 1-4 1974 can be continued by those Magistrates by virtue of Section 484 (2), Crimiminal Procedure Code, Their powers as Magistrate First Class, Second Class or Third Class remained intact for the limited purpose of continuing those old cases.

5. The last ground which has been taken in this case is that the prosecution of the Manager of the firm in the absence of the firm is illegal. In fact, it was admitted on this very ground as it was represented that H. L. Capoor, J., had taken the view in the case of Ramanand Sharma v. State (Cr. Revision No. 547 of 1972) (All) under similar provisions of law that the Company too should be made an accused. That case was decided on 4-12-1975. I had sent for the file of that case. No doubt, the provisions of Section 34 (1) of the Drugs and Cosmetics Act (Act No, XXIII of 1940) are/ similar to the provisions of Section 34 (1) of Act No. XXVI of 1962

inasmuch as in both these sections, it is provided that the Company as well as the person in charge of and responsible to the company at the time of the commission of the offence can be prosecuted. The Company has been described as body corporate and includes firm or other association of in-dividuals. It is true that the person in charge and responsible to the Company as well as the Company can both be pro-secuted but it can certainly not be said that a person in charge cannot be prosecuted in case the Company itself is not prosecuted. NO doubt, if the company is prosecuted it may not be open to the Company to take a defence that it was done without its knowledge because the Company will be responsible for all the acts done on behalf of the Company. But when a person in charge of the Company or responsible to the Company is prose-cuted, it shall be open to him to show that the act was done without his knowledge or that he acted with due diligence to prevent such an offence. Proviso to Section 34 (1) in both the Acts is to this effect. In Cr. Revision No. 547 of 1972 (All) the case was remanded as the complaint itself was not properly proved. While remanding the case, the learned Judge also observed that in the complaint the Company as well as Ganpat Singh were made accused but charges were not made against them. It appeared that the case was not properly handled and it appeared to be proper that charges should be framed against all the three accused persons against whom the complaint had been filed. But certainly it was not laid down that no person, in charge of the Company or responsible to the Company who was responsible for the commission of certain acts, cannot be prosecuted without prosecuting the Company. That case is, therefore, clearly distinguishable.

6. In my opinion, there is no force in this revision. It is accordingly dismissed.

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