

Ramesh Chandra Arora and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Aug-16-1996

Reported in : 1997CriLJ1689

Judge : G.P. Mathur and ;L.C. Srivastava, JJ.

Acts : [Essential Commodities Act, 1955](#) - Sections 3, 7, 8 and 10; Indian Penal Code (IPC) - Sections 353; [Constitution of India](#) - Article 226; Uttar Pradesh Scheduled Commodities Dealers, (Licensing and Restriction on Hoarding) Order, 1989

Appeal No. : Cri. Misc. Writ Petition No. 29386 of 1992

Appellant : Ramesh Chandra Arora and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : G.C. Saxena, Adv.

Disposition : Petition dismissed

Judgement :

G.P. Mathur, J.

1. This petition under Article 226 of the [Constitution of India](#) has been filed for quashing the F.I.R. and investigation of case crime No. 168 of 1992 under Section 3/7 Essential Commodities Act and Section 353, IPC of P. S. Sybhara, district Bijnor. A Division Bench of this Court had granted one month time to the learned Standing Counsel on 14-9-92. to file counter-affidavit. However, till today, no counter-affidavit has been filed. In view of the fact, that nearly four years have elapsed, we have not granted any further time to the State to file counter-affidavit.

2. Shri Bagawal, Regional Food Officer, Bijnor lodged a first information report on 30-7-92 at PS Syohara alleging that he along with SDM, Senior Marketing Inspector and three Marketing Inspectors went to the godown of M/s. Ramesh Chandra Krishna Kumar at about 1.30 p.m. on 30-7-72 for the purpose of inspection. The godown was found to be closed and consequently a request was made to Shri Ramesh Chandra Arora, Proprietor of the godown, who was standing nearby to allow inspection of the same. Ramesh Chandra Arora then left for the market on the pretext of calling his Munim and bringing the key. However, he came along with Jogendra Singh, Adhyaksha of Vyapar Mandal and 25-30 other persons and said that as the Munim was not available, he would not be in a position to explain the things and showed his inability to allow inspection. He also gave a written statement to that effect. The SDM, made repeated requests to him to allow inspection of the godown but he did not accede to the same. When he was told that this amounted to an offence under Section 3/7, Essential Commodities Act, Jogendra Singh became agitated and exhorted his companions that they should not allow the inspection of the godown under any circumstance. Thereafter, the F.I.R. was lodged against the petitioners Ramesh Chandra Arora and Joginder Singh.

3. Shri C.C. Saxena, learned Counsel for the petitioner has submitted that the allegations made in the F.I.R. did not disclose commission of a cognizable offence. He has also submitted that Ramesh Kumar son of Bali Ram had executed a power of attorney in favour of his Munim-Hari Om Rastogi for the purpose of maintaining accounts of stock etc. of the Firm and for doing all works in that connection and the said power of attorney had been filed before the Deputy Regional Marketing Officer and in view thereof, the responsibility for allowing inspection was that of the

Munim-Hari Om Rastogi and not of petitioner No. 1. He has further submitted that Section 10 of the L.C. Act provides that if the person contravening an Order made under Section 3 is a company, the person who was Incharge of and was responsible to the company for the conduct of the business of the Company as well as the Company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished and as the Company also includes a Firm in view of Explanation appended to the section, the Munim-Hari Om Rastogi shall be liable to be proceeded with.

4. We have given our careful consideration to the submissions made by learned Counsel and in our opinion there is no substance in the same. It is admitted the Firm M/s. Ramesh Chandra-Krishna Kumar is a wholeseller and had obtained licence under the U.P. Scheduled Commodities Dealers, (Licensing and Restriction on Hoarding) Order, 1989. The licence for a wholeseller under the aforesaid. Control Order, is granted in Form-C. Condition No. 13 of the licence reads as follows:

The licensee shall give all facilities at all reasonable times to the Enforcement Officer or the Licensing Authority or any officer authorised in writing by him or the State Government for the inspection of his stocks and account and for the taking of samples of Scheduled Commodities for examination, at any shop, godown or other place used by him for the storage, sale or purchase or manufacture or production of Scheduled Commodities.

Clause 8(1) of the Control Order reads as follows :

No licensee or his agent or servant or any other person acting on his behalf shall contravene any provision of this Order or any of the terms and conditions of the licence.

A conjoint reading of clause 8 of the Control Order and Condition No. 13 of the licence shows that the contravention of any condition of the licence would amount to contravention of the Control Order. Section 8 of the E.C. Act provides that any person who attempts to contravene or abets contravention of any Order made under Section 3 shall be deemed to have contravened that order. According to the

allegations made in the F.I.R. the licensee namely Ramesh Chandra did not give all facilities to the Enforcement Officer for the inspection of his stock and accounts which amounted to breach of condition No. 13 of the Licence and in view of clause 8, it will amount to contravention of Control Order. The petitioner No. 2 Joginder Singh abetted in Commission of the aforesaid Act by Ramesh Chandra Arora and therefore, he has also committed an offence under Section 7 by virtue of Section 8 of the E.C. Act. Thus on the allegations made in the F.I.R. both the petitioners have committed offence under Section 3/7, E.C. Act.

5. The power of attorney alleged to have been executed by Ramesh Chandra in favour of his Munim-Hari Om Rastogi, reliance on which was placed by learned Counsel for the petitioners, can have no relevance here. The scheme of Essential Commodities Act does not permit appointment of an Attorney or transfer of liability by licence holder. Under various Control Orders which have been framed-either by Central Government or by the State Government in exercise of powers conferred by Section 3 of the E.C. Act, a person carrying on business has to obtain licence and the the liability is that of the licence holder. Section 10 of the E. C. Act makes a provision where the licence is in favour of company or a firm and in such a case, the liability is that of the person who is Incharge or responsible to the Company for the conduct of business of the Company as well as the Company at the time the contravention was committed. This section will have application where some discrepancy is found in the maintenance of accounts or stock etc. However in a case where the allegation of the prosecution is that licensee did not allow inspection of the stock or accounts, any person who by his action or omission puts obstacle in the way of Enforcement Officer from carrying on his duty enjoined under law, would be liable as he would be abetting the breach of condition of the licence. Such a person can be a rank outsider who is wholly unconnected with the business being carried out by the licence holder. Therefore, the contention that the liability would be of a person who was Incharge of and responsible to the Company or Firm for the conduct of the business thereof, is misconceived and cannot be accepted.

6. No other point was urged.

7. In view of the discussions made above, there is no merit in this petition and it is accordingly dismissed. Interim orders are vacated.

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