

Hasanand Vs. the State

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Court : Madhya Pradesh

Decided On : Jul-24-1951

Reported in : 1951CriLJ1487

Judge : Dixit, J.

Appellant : Hasanand

Respondent : The State

Judgement :

ORDER

Dixit, J.

1. The petitioner Hasanand has been convicted by the City Magistrate, Lashkar under Section 8, Madhya Bharat Essential Supplies Act Samvat 2005 (Act III [8] of 1948) read with Clause 15 (1), Madhya Bharat Cotton Textile (Control) Order, 1948 and sentenced to three months rigorous imprisonment and to a fine of Rs. SO in default rigorous imprisonment for one month The appeal of the accused against the conviction and the sentence was rejected by Sessions Judge Gwalior. He has now filed this petition against the decision of the Sessions Judge, Gwalior.

2. The case against the accused was that on 14-II-1949 he sold to one Earn Chandra a sari manufactured by the Vivekanand Mills and bearing No. 44607 for Rs. 5-14-0 whereas the Control price was Rs. 5-7-0. The prosecution case was

sought to be established by the evidence mainly of Mr. Kalgaonkar, Inspector Civil Supplies and Mr, Mehta, Regional Controller, Civil Supplies who deposed that on 14-11-1949 they went to Jayaji Shoud Market, and found Earn Chandra with a Sari purchased from the applicant's shop. They inquired of Earn Chandra the price which he had paid for the Sari and when he told them that he had paid RS. 5-14-0 for it, the Inspector Civil Supplies went to the applicant's shop, inquired into the matter and passed an order freezing a Sari manufactured by the Vivekanand Mills and bearing No. 14607 on which the ex- mill price was marked as Rs. 4-5-3. It was stated by the prosecution that the Sari which was frozen by the Inspector was of the same class and kind and with the same markings as the one which was sold to Ram Chandra. The Sari which was actually sold to Earn Chandra was never seized by the Inspector. Nor was at any time produced in the Court.

3. The applicant admitted having sold a Sari to Ram Chandra on 14-11-1949 for Re.:514-0. His defence was that the Sari which he sold to Ram Chandra was not of the same kind and type as the one in respect of which the Inspector passed the freezing order and that he had committed no offence in selling the Sari, which he did, to Ram Chandra for Bs. 5-14-0.

4. The main contention raised by Mr, Kak who appeared for the petitioner is that there is no evidence that the applicant sold to Ram Chandra a Sari manufactured by the Vivekanand Mills which bore the No. 44607 on which the ex-mill price was marked as Rs. 4-5-3 and of which after allowing the permissible margin of profit, the control price was Rs. 5-5-3. In my opinion, the contention is well founded and must be accepted. The evidence produced by the prosecution only amounts to this that a Sari was sold by the applicant to Raw Chandra at Rs. 5 14-0 and after seeing that Sari, the Inspector Civil Supplies issued an order against the applicant freezing a Sari manufactured by the Vivekanand Mills bearing the number and markings referred to above. Mr. Kalgaonkar, the Inspector, no doubt, deposed that the Sari in respect of which ho imbued the freezing order and which was subsequently seized and produced by the police in this case, was similar to one which the applicant sold to Ram Chandra. But the Inspector did not seize the Sari which was actually sold by the accused to Ram Chandra. The explanation which he offered for this omission was that he did not wish to deprive the purchaser of

the use of the Sari. He, again, did not prepare a memo and record therein in the presence of the accused the details of the Sari which the petitioner had in fact sold to Ram Chandra, that is, the details on the basis of which he issued the freezing order. The Inspector seems to have recorded a statement of Ram Chandra saying that he had purchased for Rs. 5-14-0 from the shop of the applicant a Sari bearing No. 44607 and on which the ex. mill price was shown as Rs. 4-5 3. But on going through the evidence of Kalgaonkar, I find that this statement recorded by Kalgaonkar was never put to him during the course of his examination in the Court. There is also nothing to indicate that Ram Chandra made this statement to Kalgaonkar in the presence of the petitioner. The cash memo Ex. p./11 was no doubt tendered in evidence. This cash memo is of no value as it simply states the price at which the Sari was sold. It does not contain the particulars of the manufacture price etc., of the Sari. Ram Chandra was not able to state in the Court the price he paid for the Sari or the number it bore. All that he said was that the Sari was similar to the one seized from the shop of the applicant and produced in the Court.

5. I do not think that from this sort of evidence the conclusion can be drawn that Hasan and sold to Earn Chandra a Sari on which the ex-mill price was shown as Rs. 4-5-3 and the control price of which after allowing for the margin of profit was Rs. 5 7 8. I think in a prosecution for a contravention of el. IS (1), Cotton Textile Control Order, 1948, it is essential to produce, in the trial, the cloth or yarn sold or offered for sale. Clause 15 (1) of the Control Order prohibits a manufacturer or a dealer from selling or offering to sell any cloth or yarn at a price higher than the maximum price specified in that behalf under Clause 13. Clause 13 deals with the fixation and notification of maximum prices and the persons authorised to fix and notify these prices. Sub-clause (3) of Clause 13 says :

A Court shall presume unless the contrary is proved that the makings made on any cloth or yarn in the manner specified under this clause are made in accordance with this order and that the prices so marked are the maximum prices specified under this clause.

It will be observed from el. 15 (1) and Clause 18 that a dealer can be said to have contravened Clause 15 (0 only when he sells or offers to sell cloth or yarn at a price higher than the maximum price marked on the cloth or yarn in accordance with Clause 13. The Court is required to presume that the price so marked on the cloth or yarn is correct unless the contrary is proved by the accused. Clearly, no such presumption can be drawn under Clause 13 (S) if the cloth or yarn alleged to have been sold is not produced in the Court, Again, how is the abused to prove that the markings on the cloth are not correct unless the cloth or yarn in respect of which the offence is said to have been committed is brought into the Court The presumption under Clause 13 (3) cannot be rebutted by showing that the markings on cloth or yarn similar to one sold or offered to sell are incorrect. Under Clause 13(3) the presumption with regard to the correctness of the markings can be drawn only with respect to the markings on the cloth or the yarn actually sold and it is the presumption with regard to the markings on particular cloth or yarn that the aroused has to rebut. In my view, it was essential for the prosecution to produce the Sari actually sold to Ram Chandra in order to prove the maximum price marked thereon and to enable the Court to draw the presumption as to the correctness of the markings and also to give an opportunity to the accused to rebut the presumption. In fact the defence of the aroused was in effect that the Sari which he sold to Ram Chandra did not bear the maximum price alleged by the prosecution. The prosecution having failed to seize this Sari from Ram Chandra and produce it in the Court, it must be held that there is no proof to show that the petitioner sold to Earn Chandra a Sari at a price higher than the maximum price marked on it after giving due allowance for the margin of profit The applicant is, therefore, entitled to be acquitted of the charge.

6. I must also note that in this case the order passed by the City Magistrate forfeiting to the Government the Sari produced in the Court is not legal. Under Section 8, Essential Supplies Act, an order of forfeiture can only be passed with respect to any property in respect of which the Court is satisfied that an order made or deemed to be made under Section 1 of the Act has been contravened. The Sari which was produced in the case was clearly not the one in respect of which there was a contravention of the order. The contravention of the order was with respect to the Sari which was in fact sold to Ram Chandra.

7. In the result I allow this revision, set aside the conviction and sentence imposed on the petitioner and acquit him of the charge under Section 8, Essential Supplies Act, read with Clause 15 (1), Cotton Textile Control Order, 1948. The Sari forfeited to the Government be returned to the petitioner. If it has been sold and the proceeds of the sale have been credited to the Government, they be refunded to the petitioner. The amount of fine, if paid by the applicant, be also refunded to him

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