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Court : Madhya Pradesh

Decided On : Jan-19-1974

Reported in : 1974CriLJ1113; 1974MPLJ312

Judge : Shiv Dayal and ;Surajbhan, JJ.

Appellant : The State of Madhya Pradesh

Respondent : Abdul Khalil

Judgement :

Shiv Dayal, J.

1. This appeal is from an order of acquittal.

2. The respondent was tried for contravention of the M. P. Commodities Price Display Order, 1971 issued under Rule 114 (2) of the Defence of India Rules, 1971 for having not displayed the price-list and stock of soap which he was selling, punishable under Rule 114 (ii) of the Rules. He was further tried for the same act being in contravention of the M. P. Essential Articles (Exhibition of Price and Distribution) Order, 1966 issued under Section 3 of the Essential Commodities Act, 1955, punishable under Section 7 of that Act.

3. The case for the prosecution was that on December 14, 1971, during the course of checking it was found that the accused had not displayed price-list as was

required under the said Orders. The accused pleaded not guilty. The trial Court after recording evidence of prosecution witnesses found the facts as alleged by the prosecution proved and convicted the accused under Rule 114 (2) of the Defence of India Rules, 1971, and under Section 7 of the Essential Commodities Act, 1955 and sentenced him to suffer imprisonment till rising of the Court and to pay a fine of Rs. 500/- or in default to suffer simple imprisonment for one month.

4. The accused appealed. In the appellate Court, however, the findings of facts were not challenged. Only the legality of the judgment was attacked. It was first contended that the M. P. Commodities Price Display Order, 1971, was not in force as no date had been fixed in it for its commencement. Reliance was placed on State v. Banshi-dhar : AIR1969 All184 . The contention found favour with the appellate Court. Accordingly he set aside the conviction.

5. The M. P. Commodities Price Display Order. 1971, was issued under Notification No. 436-765-XXXI-71, dated December 9, 1971. It was published in the M. P. Rajpatra, Part I, dated December 9, 1971, at page 1728. However, this Order does not specify the date of its commencement. Section 5 of the General Clauses Act reads as follows:

5. Coming into operation of enactments.

(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent--

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General; and

(b) in the case of an Act of Parliament, of the President.

(2) * * *(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

This section speaks of Central Act but not of 'notification.' Likewise, Section 5 of the M. P. General Clauses Act, which is in the same terms, speaks of Madhya

Pradesh Acts. It is true that in neither of these sections there is a mention of 'notification' or 'order' but the principle is abundantly clear. The principle is that a law comes into force when it is published in the Government gazette unless another date is specified or its commencement is specifically postponed to a date to be subsequently specified. In Rex v. Smith (1910) 1 KB 17 Lord Alverstone, C. J. observed thus:

At the present time there are two well-known dates in many Acts of Parliament, the date of the Act passing, and the date of its coming into operation. If therefore an Act is silent as to the date of its corning into operation, it comes into operation at the date of its passing.

This principle was accepted by a Division Bench in Onkar Tukaram v. Municipal Committee, Nandura AIR 1940 Nag 293 and it was laid down that 'On this principle the order sanctioning the proposal to impose the tax and the rules relating to its assessment and collection would be deemed to come into force on the day on which they were notified in the Gazette, that is on 2nd February, 1934.' This was approved by a Full Bench of this Court in Ramjilal v. Municipal Committee. Piparia : AIR 1959 MP82 where it was held:

Therefore, where no date is specified, it shall be presumed that the imposition of the tax has not been postponed. As a consequence, the tax shall take effect from the date on which the notification directing its imposition has been published.

6. There is a Full Bench decision of the Punjab High Court in Pritpal Singh Rattan Singh v. The Chief Commr. of Delhi AIR 1966 Punj 4 (FB) where also a notification has been held to have come into force on the date of its own publication 'as nothing else was said in it.

7. We are clearly of the view that where a piece of subordinate legislation, e. g. an order or notification, is published in the official gazette and the date of its commencement is not specified in it, nor is it specifically provided that the date of its commencement has to be notified by some specified authority, it comes into force on the date of such publication in the official gazette. We, therefore, hold that the M. P. Commodities Price Display Order, 1971, came into force on December

9, 1971.

8. Another contention before the appellate Court was that under Clause 3 (2) of the M. P. Essential Articles (Exhibition of Prices and Distribution) Order, 1966, it was not obligatory on the shop-keeper to display the price-list in his shop. That objection was rejected by the appellate Court. It was, however, again raised before us. The argument is that 'soap' is not an essential commodity and since the said Order of 1966 was issued under the Essential Commodities Act, 1955, soap is not within the purview of the Order. We are unable to accept this contention. The M. P. Essential Articles (Exhibition of Prices and Distribution) Order, 1966, defines 'essential article' as to mean 'any article specified from time to time in the Schedule.' In the Schedule, Item No. 3 is 'soap.' This contention must also, therefore, be rejected.

9. The appellate Court, while maintaining the conviction of the accused under Section 7 of the Essential Commodities Act, 1955, reduced the sentence of fine to Rupees 300/-, in default to suffer simple imprisonment for one month. The accused did not prefer a revision from the order of the appellate Court.

10. We have found that the trial Court was right in holding the accused guilty under Rule 114 (2) of the Defence of India Rules, 1971, and the acquittal on that count by the learned Additional Sessions Judge was erroneous. We sentence the accused to pay a fine of Rs. 300/- under Rule 114 (ii) of the Defence of India Rules.

11. Since the act of the accused is punishable under two enactments, we direct that he shall suffer single punishment, that is, a fine of Rs. 300/- only and not separately under both the enactments.

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