

Narayandas Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-29-1986

Reported in : 1987CriLJ434

Judge : K.L. Shrivastava, J.

Appellant : Narayandas

Respondent : The State of M.P.

Judgement :

ORDER

K.L. Shrivastava, J.

1. This revision petition is directed against the appellate judgment and order dt. 21-1-1983 passed by the Sessions . Judge, Shajapur, in Criminal Appeal No. 37 of 1982 convicting the petitioner Under Sections 3/7 of the Essential Commodities Act 1955 (for short 'the Act') for contravention of the M.P. Foodstuffs (Distribution Control) Order 1960 (for Short 'the Order') made Under Section 3 of the Act.

2. The circumstances giving rise to this petition are these. The petitioner is an appointed retailer in foodstuffs at village Padhana at some distance from Sarangpur. District Shajapur. On 27-4-81 a quota of 17 quintals of sugar in 17 bags was handed over to him by the Food Corporation of India, Sarangpur. Out of the quota 16 bags of sugar were being transported in a tractor-trolley and the

remaining one bag was sent in a bullock-cart. At 16 K.Ms. from Sarangpur, the police checked the trolley the same day and found that the bags contained only 15 quintals and 84 K.gms. of sugar. On the ground that the remaining sugar (1 quintal and 16 kgs). was sold in blackmarket, the petitioner was prosecuted.

3. The learned trial Court disbelieving the defence evidence that one quintal of sugar sent in the bullock-cart was duly entered on 27-4-81 in the stock-register of the petitioner's shop when the same was checked by the Food Inspector on 28-4-81 and holding that the prosecution case is proved entered conviction.

4. In appeal, the learned Additional Sessions Judge held that the petitioner could not be held guilty in respect of the 16 kgs. found less as no question touching the same was put to him in his examination Under Section 313, Cr. P.C. 1973, but he was certainly liable in respect of 1 quintal of sugar not transported by 'fine tractor-trolley. . .

5. learned Counsel for the petitioner contends that the suspicion created due to the manner in which the bags of sugar were transported cannot be made the foundation for conviction when in fact, as found by the Food Inspector, receipt of one quintal of sugar finds mention in the petitioner's account books.

6. The point for consideration is whether the revision petition deserves to be allowed.

7. In the instant case, the testimony of Laxmichand (P.W. 1) Depot-in-charge of the Food Corporation of India is that on 27-4-81 he had given 17 quintals of sugar to the petitioner. The witness has not been cross-examined at all.

8. The petitioner in his examination Under Section 313, Cr. P.C. 1973 clearly admits receipt of sugar in that quantity.

9. The prosecution witnesses have stated that out of the 17 quintals of sugar given to the petitioner on 27-4-81 one quintal of sugar was loaded in a bullock-cart and 16 quintals in 16 bags were loaded in a tractor-trolley. In his examination Under Section 313, Cr. P.C. the petitioner has admitted having so taken the quota of sugar.

10. The examination of the petitioner Under Section 313 of the Code is defective as mentioned in appellate judgment. The question put to him is that in the trolley only 16 quintals (less by one quintal) of sugar was found, when the case set up is that only 15.84 qnts. of sugar was there in the trolley. It is not clear from the evidence whether 16 Kgs. of sugar were found short in a single bag or each bag weighed only 99 kgs.

11. In a criminal trial, the accused is presumed to be innocent and it is for the prosecution to prove its case against him beyond reasonable doubt.

12. In the instant case, the investigating agency did not seize the petitioner's stock-register on 27-4-81 and the evidence is that one bag was transported in a bullock-cart and in the petitioner's stock register this one quintal of sugar was found by the Food Inspector Hamidkhan (D.W. 1) duly entered.

13. The investigating agency did not seize the stock register on ,27-4-81 and for this it has to blame itself.

14. It may be stated that testimony of the Food Inspector Hamidkhan (D.W. 1) is that it is the general complaint of the dealers that in each bag the quantity of sugar is generally less by 1 kg. It may be that practical wisdom points to the dealers that they do not make an issue of the same.

15. The petitioner as retail shop-keeper was required to take the sugar to his shop, make an entry of the same in his stock register and distribute it in conformity with the Order. He was not bound to transport the sugar to his shop in any particular manner and was not accountable on the road for the quantity of sugar given to him. It is true that the petitioner had unusually got one bag loaded in a bullock-cart. This does give rise to some suspicion that it may be that this he did with the intention of disposing it of in contravention-of the Order. At any rate the material on record does not take the act of the petitioner beyond the stage of preparation for the crime which certainly is not made punishable. It must be remembered that till the prosecution makes out a case against the accused, he need not open his mouth and his silence does not rebut his presumptive innocence under law and make him an offender.

16. In a criminal trial the prosecution has to prove the case it sets up and conviction can only be based on legal evidence and not on conjectures and surmises. For entering conviction the material on record must be such as to enable the Court to conclude that the prosecution case 'must be true' as distinguished 'may be true'. In the instant case, the evidence as it is, does not place the ' Court in a position to conclude that the prosecution case against the petitioner of sale of sugar in contravention of the Order must be true. It has, therefore, to be held that the learned Addl. Sessions Judge rred in entering conviction and the same and the sentence thereunder have to be set aside.

17. In the result, the revision petition is allowed. The petitioner's conviction and sentence Under Sections 3/7 of the Act are set aside. He is acquitted of the said offence. His bail bonds shall stand discharged. Fine if paid, be refunded to him. The seized sugar shall be handed over to the petitioner and in case it has been sold, the sale proceeds thereof, shall be refunded to him. The order regarding ; disposal of other items of case property is maintained.