

M. Subba Rao Vs. State

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Court : Orissa

Decided On : Apr-22-1965

Reported in : AIR1966Ori27; 1966CriLJ48

Judge : R.K. Das, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7; Orissa Food Grains Dealers Licensing Order, 1959

Appeal No. : Criminal Revn. No. 430 of 1964

Appellant : M. Subba Rao

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : N.V. Ramdas, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.K. Das, J.

1. The petitioner has been convicted under Section 7 of the Essential Commodities Act and sentenced to pay a fine of Rs. 300 in default to undergo R. I.

for three months.

2. It is the case of the prosecution that on 26-6-1962 a motor lorry ORK No. 204 when being checked at the Police Station Korapul, was found carrying 36 bags of rice weighing 108 maunds. On enquiry it was learnt that sixty maunds out of the same belonged to the petitioner and the rest forty-eight mauads to one Basudeb Misra. Thereafter the petitioner was prosecuted for having purchased and transported more than fifty maunds of rice in a single calendar day in contravention of Clause 3 of the Orissa Food Grains Dealers Licensing Order, 1959, thus committing an offence under Section 7 of the Essential Commodities Act.

3. The plea of the petitioner was that only 16 bags weighing 48 maunds belonged to him and the balance four bags weighing 12 maunds belonged to one Bangarayya and though he produced cash-memo in support of the aforesaid purchase. he was unnecessarily being prosecuted while Basudeb Misra, who also owned forty-eight maunds under similar circumstances was let off on production of cash-memo The petitioner examined D. W 1, the manager of Sriram Trading Company in support of his defence, that he purchased only 15 bags and five bags belonged to Bangariva.

4. The learned courts below rejected the plea of the defence on the ground that Bangariya has not been examined and there was a discrepancy in defence version so far as the number of bags claimed by the petitioner is concerned. The discrepancy was that the petitioner in his 342 statement claimed only 16 bags to be his own and the other tour bags as belonging to Bangariya. But D. W. 1 has proved that 15 bags and not 16 bags were purchased by the petitioner and five bags and not four bags were purchased by Bangariya from the said Sriram Trading Company. In view of this discrepancy in the defence case and in view of the admitted seizure of 20 bags (60 maunds) of rice from the truck in question occupied by the petitioner, the courts below found that the petitioner was in possession of more than 50 maunds on 26-6-1962 in contravention of Clause (3) of the Orissa Foodgrains Dealers Licensing Order, 1959, (hereinafter referred to as 'the order'). Accordingly the trial court convicted and sentenced the petitioner

and the appellate court maintained the said conviction and sentence as hereinbefore stated Hence this Revision by the petitioner

5. In view of the concurrent findings of the Court below, it may be taken as established that the petitioner was found in possession of twenty bags weighing 60 maunds of rice on 26-6-1962. The question, however, is whether such possession by itself would amount to contravention of Clause 8 of the said Order so as to make the petitioner liable under Section 7 of the aforesaid Act.

6. Mr. Ramdas, learned counsel for the petitioner, contended that even if it is found that the petitioner was in possession of 60 maunds of rice, it is further to be established by the prosecution that the said possession was for the purpose of sale in course of carrying on business as a dealer as contemplated under the provisions of the said Order. It is necessary therefore to refer here to the provisions of the order:

Clause 2(a) of the Order defines 'dealer' as follows:

'2(a)--'Dealer' means any person who is engaged in the business of:

(i) purchase and/or sale of any one or more of the foodgrains in quantities of 50 Standard maunds or more in a single calendar day;

and/or

(ii) storage for sale in quantities exceeding 200 standard maunds of any one or more of the foodgrains for purpose of sale:

'xx xx xx xx' Clause (3) of the Order provides for licencing of dealers. Sub-clause (1) thereof says that no person shall carry on business as a dealer in foodgrains except under and in accordance with the terms and conditions of a licence issued in this behalf of the licensing authority. Sub-clause (2) of Clause (3) is as follows:

'For the purpose of this clause, any person who stores any foodgrains in quantity of 200 standard maunds or more shall, unless the contrary is proved be deemed to store the food-grains for the purpose of sale.'

It is not disputed that rice is one of the foodgrains specified in Schedule 1 of the said order. The definition of dealer in Clause (2) makes it clear that a person must be engaged in the business of purchase or sale or storage for sale of the specified foodgrains in excess of the prescribed quantities, before he could be called a 'dealer' for purposes of this order. The licensed has been prosecuted for having purchased and transported more than 50 maunds of rice in a single calendar day. Mere purchase, of more than 50 maunds of rice will not necessarily make him a dealer within the meaning of Clause 2 of the said Order. It must further be shown that the said purchase was being done in course of a regular business. In other words, the element of business must be present in the transaction. A single or solitary transaction of purchase or sale will not make a person a dealer. Some element of repetition or continuity must be there to make it a case of regular business. The prosecution must lend some evidence to justify a conclusion that the accused was in fact carrying on business in rice. In his 342 statement the accused has stated his occupation to be 'business'. The learned courts below thought that that statement of the accused was sufficient to make out a case that he was carrying on business of rice so as to be a 'dealer' within the definition of Clause (2) of the order. The accused has nowhere admitted that he was carrying on regular business in rice. Undoubtedly under Clause 3(2) a statutory presumption can be drawn against a person who stores any foodgrains in excess of the prescribed quantity of 200 maunds that such storage was for sale unless the contrary is proved. In the present case the accused has been prosecuted for having purchased and transported more than 50 maunds of rice on a single calendar day and not for being in possession for sale of the quantities of rice of 200 maunds or more contemplated under Clause 3 of the Order. Therefore the presumption available under Clause 3(2) of the Order will not be available as no such presumption can arise in such a case. The accused has been prosecuted for not having a licence under Clause 3(1) of the Order. For the purpose of Sub-clause (1) of Clause (3) the prosecution has to prove that the person was carrying on business as a 'dealer in food-grains without necessary licence. In this case the prosecution has not proved by any evidence that the petitioner was running business as a dealer in foodgrains so as to be hit by Sub-clause (1) of Clause (3).

Moreover this case is clearly governed by a decision of the Supreme Court reported in *Manipur Administration v. M. Nilo Chandra Singh*, AIR 1964 SC 1533. There the accused was found storing 179 maunds of paddy in his godown without any licence in violation of Clause 3 of Manipur Foodgrains Dealers Licensing Order, 1958. The provisions of Clause 3(i) and (ii) of Orissa Order are almost identical with Clause 3(1) and (2) of Manipur Foodgrains Dealers Licensing Order. The definition of 'dealer' in both the orders is the same. In that case their Lordships held that the statutory presumption raised by Clause 3(2) is a rebuttable presumption and only amounts to this and nothing more, that the stock found with a given individual of 100 or more maunds of the specified foodgrains had been stored by him for the purpose of sale. Having reached this conclusion on the strength of presumption, the prosecution will still have to show that the store of the foodgrains for the purpose of sale thus presumed was made by him for the purpose of carrying on the business of store (sale?) of the said foodgrains. The element of business which is essential to attract the provisions of Clause 3(1) is thus not covered by the presumption raised under Clause 3(2). That part of the case would still have to be, proved by the prosecution by other independent evidence. It may be that this part of the case can be proved by the prosecution by showing that store of 100 mds. or more of the foodgrains was found with the said person more than once. How many times it should be necessary to prove the discovery of such store with the said person is a matter which their Lordships did not decide in that case. But their Lordships further observed that all that is necessary to be said in connection with the presumption under Clause 3(2) in that case is that after the presumption is raised under it, some evidence must be led which would justify the conclusion that the store which was made for the purpose of sale was made by the person for the purpose of carrying on the business. Their Lordships were of the opinion that Clause 3(2) may have been deliberately worded so as to raise the presumption in order to exclude the cases of cultivators who may on occasions be in possession of more than the permissible limits of foodgrains.

7. As we have already seen the petitioner in this case was in possession of less than the prohibited quantity of rice prescribed in Clause 3(2) and the prosecution has also not proved that the petitioner was carrying on business as a dealer of

specified foodgrains so as to attract Clause 3(1) of the Order. It is clear from the decision of the Supreme Court that Clause 3(2) by itself would not sustain the prosecution case that the petitioner is a dealer within the meaning of Clause 3(1). Assuming that a presumption under Clause 3(2) could be drawn against the petitioner that the stock found in his possession was for the purpose of carrying on business as dealer, the accused has given some evidence by way of rebuttal of that presumption. In the absence of any material placed by the prosecution the said presumption which is rebuttable one may be taken to have been sufficiently rebutted by such evidence.

In the result, the conviction and sentence of the petitioner must be set aside and the revision allowed. The bags of rice claimed by the petitioner may be returned to him.

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