

Maheswar Ram Vs. the State

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Court : Orissa

Decided On : Aug-11-1960

Reported in : AIR1961Ori44; 26(1960)CLT549; 1961CriLJ299

Judge : R.L. Narasimham, C.J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7 and 14; Orissa Food Grains Licensing and Storage (Regulation) Order, 1958

Appeal No. : Criminal Revn. No. 103 of 1960

Appellant : Maheswar Ram

Respondent : The State

Advocate for Def. : A.K. Tripathy, Adv. for ;Standing Counsel

Advocate for Pet/Ap. : G.K. Misra and ;S.K. Misra, Adv.

Judgement :

ORDER

R.L. Narasimham, C.J.

1. The petitioner has been convicted under Section 7 of the Essential Commodities Act read with Clause 3 of the Orissa Food Grains Licensing and Storage (Regulation) Order, 1958, for being in unlawful possession of 263 maunds and 20 seers of paddy and rice and sentenced to pay a fine of Rs. 50/-, The

seized paddy and rice have also been confiscated to Government.

2. The facts which are unchallenged, are as follows. On 8-4-58 a motor truck Order Rule J. 838 carrying 57 maunds of rice was being driven from Keonjhar side to the village of the petitioner and the rice was kept there. The Havildar in charge of the Anti Smuggling Guard attempted to stop the vehicle but the driver did not stop it. The driver was subsequently sent up for trial under Section 113 of the Motor Vehicles Act but was acquitted and it is unnecessary to consider whether his failure to stop the vehicle was intentional or not. On the next day the house of the petitioner was searched and the aforesaid 263 maunds and 20 seers of paddy and rice was recovered from his house. As he had no license to store such large quantity of paddy or rice he was sent up for trial.

3. The petitioner's explanation was that out of the total quantity of paddy and rice seized from his house 150 maunds represented Burma rice which had been issued to him under a permit by the District Magistrate, to be sold 'at Barbil where the petitioner's father had rice business. In support of this plea he produced Ext. 9 the actual order issued by the District Magistrate. This explanation must therefore be accepted.

4. As regards the remaining quantity of rice and paddy recovered from his house the petitioner's explanation was that it was produced from his own lands. It was rightly conceded by the State and also by P. W. 6 examined on behalf of the prosecution that agriculturists can store their own produce upto any quantity, that they are not required to take out a license for the same, and that they are also free to sell their own produce without any permit from the authorities. Under section 14 of the aforesaid Act the burden is undoubtedly heavy on the petitioner to explain that his possession of the rice and paddy was lawful.

This burden can be discharged either by examining independent witnesses on his own behalf or by eliciting favourable answers from prosecution witnesses in cross examination. The petitioner resorted to the latter method and appears to have been very successful. Thus P. W. 4 admitted in cross examination that the petitioner has his own cultivation and that the paddy seized from his house was raised by himself. Similarly P. W. 5 admitted that the petitioner cultivates his lands

and gets paddy produce from them.

He further added that the rice seized from the house of the petitioner was rice produced from his own lands. A patta showing the record of some lands in the name of the petitioner's father jointly with that of another person was also proved by the petitioner before the lower court. But as that patta was of the year 1941-42 the Court thought that it was not clear whether the lands mentioned in the patta were still in the possession of the holders of the same. He seems to have completely overlooked the answers, in cross examination, given by the aforesaid prosecution witnesses.

But as none of those witnesses was declared hostile there was no justification for disbelieving their testimony to the effect that the petitioner had cultivation and that the paddy and rice seized from his house was the produce of his own lands. In this state of the evidence, I must hold that the petitioner has discharged the burden cast on him by Section 14 of the aforesaid Act. The trial court should not have committed the serious mistake of overlooking the answers elicited by the petitioner from the prosecution witnesses in the course of their cross-examination and, in not attaching proper weight to them.

5. For these reasons I would allow this revision petition, set aside the conviction and sentence, and acquit the petitioner. If the confiscated paddy and rice are still in the custody of the Magistrate he may return them to the petitioner. If however they have already been sold the sale proceeds should be refunded to the petitioner.