

Murarilal Garg Vs. State

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SooperKanoon Citation : sooperkanoon.com/526233

Court : Orissa

Decided On : Nov-02-1965

Reported in : AIR1966Ori87; 1966CriLJ565

Judge : G.K. Misra, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7, 7(1) and 7(3); Orissa Foodgrains Dealers' Licensing Order, 1964 - Rule 4

Appeal No. : Criminal Revn. No. 44 of 1965

Appellant : Murarilal Garg

Respondent : State

Advocate for Def. : B.K. Mohapatra for Standing Counsel

Advocate for Pet/Ap. : Ashok Das, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.K. Misra, J.

1. The petitioner is a storing agent at three places, Deogarh, Barkote and Gagua. He had procured food grains licenses. Prosecution case is that though under the

licence the petitioner was to maintain a register of daily accounts for each of the food-grains showing correctly the opening and the closing stock of each day, he failed to do so. Though the petitioner did not plead guilty, in his examination under Section 342, Cr. P. C. he did not deny the fact that he did not maintain the accounts at Barkote in accordance with the license. The petitioner was summarily tried under Section 12A of the Essential Commodities Act, 1955 (hereinafter referred to as the Act), and was convicted under Section 7(1)(a) of the Act and sentenced to pay a fine of Rs. 2,000, in default to undergo Rule I. for one year. The Revision has been filed against the order of conviction and sentence.

2. Mr. Das does not dispute the finding of the fact that the petitioner did not maintain accounts in accordance with the directions given in the license. The only point urged by him is that there is absence of mens rea, and that unless the prosecution establishes the mens rea, the conviction is not well founded. For proper appreciation of this contention the relevant law on the point may be examined.

3. Section 3(1) of the Act prescribes--'If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supply of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

The relevant portions of Section 3(2) prescribes :

'Without prejudice to the generality of the powers conferred by Sub-section (1) an order made thereunder may provide--

X X X X(i) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto. as may be specified in the order.'

The relevant portions of Section 7(1)(a) prescribes :

'If any person contravenes any order made under Section 3--

(a) He shall be punishable,

(i) in the case of an order made with reference to Clause (h) or Clause (i) of Sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine.

and

X X X X Provided that if the Court is of opinion that a sentence of fine only will meet the ends of justice, it may for reasons to be recorded, refrain from imposing a sentence of imprisonment.'

In exercise of the powers conferred by Section 3 of the Act read with the notification of the Government of India and with prior concurrence of the Central Government, the State Government made the Orissa Foodgrains Dealers' Licencing Order, 1964 (hereinafter referred to as the Order). Rule 4(2) of the Order prescribes that every licence issued or renewed under this Order shall be in Form B Para 3 of the License, as is relevant for the purpose of this case, is as follows :

'Paragraph 3 (i) The licensee shall, except when specially exempted by the State Government or by the licensing authority in this behalf, maintain a register of daily accounts for each of the foodgrains mentioned in paragraph 1, showing correctly--

(a) the opening stock on each day,

X X X X (d) the closing stock on each day,

(ii) The licensee shall complete his accounts for each day on the day on which they relate, unless prevented by reasonable cause the burden of proving which, shall be upon him.

It would thus appear that the licensee for purchase, sale or storage for sale of foodgrains is to maintain a register of daily accounts for each of the foodgrains showing correctly the opening and the closing stock in each day. The licensee shall complete his accounts for each day on the day on which they relate, unless prevented by reasonable cause the burden of proving which, shall be upon him. There is no complaint that the petitioner failed to enter transactions for sale or

purchase in the account books. Whenever there was a transaction, he accurately noted the same in his account books. He did not, however, bring forward the accounts of the previous day to the following day even if there were no transaction at all. To illustrate, on 9th February 1964 the opening balance at Barakote was 66.75 quintals. The entire amount was sold on that very day. The closing stock on that day was nil. There were no further transactions in between 9th February 1964 and 5th April 1964. During this entire period there has been no entry in the accounts books. The charge against the petitioner is that he should have made entry on each of the day subsequent to 9th February 1964 that the opening stock was nil and so also the closing stock. The petitioner clearly contravened paragraph 3, Clause (i) (a) and (d) and Clause (ii) of the license.

4. Mr. Das contends that the contravention was not intentional. The very account books were inspected by the Supply Inspector from time to time who never raised any objection that the account books were not being maintained in accordance with law and the license. It is accordingly urged that just as the Supply Inspector did not know that there was a violation of law and the conditions of the license, similarly the omission on the part of the petitioner to make regular entries from day to day was non-intentional.

5. It has been authoritatively pronounced by a series of decisions of the Supreme Court that a person commits an offence under Section 7 of the Act if he intentionally contravenes any order made under Section 3 of the Act. Mens rea constitutes an integral part of an offence under Section 7 of the Act (see 1965 S. C. D. 870 : (AIR 1966 SC 43), Nathulal v. State of Madhya Pradesh).

The question, however, is whether in the facts and circumstances of this case, it can be said that the petitioner intentionally contravened the conditions prescribed in the license issued under the Order. The language in paragraph 3 is plain and clear. No licensee can have any doubt that there must be entry in the register every day for the opening and the closing stock. It may be the contravention was due to negligence. Negligence must, however, be construed as intentional in face of the clear mandatory provision of law. Negligence on the part of the inspecting officer cannot exonerate the licensee from the charge that his contravention was

intentional. Under paragraph 3 (ii) of the license, the burden is on the licensee to establish reasonable cause which prevented him from completing his accounts for each day on the day to which they relate. No cause has at all been assigned, much less the cause being shown to be reasonable. In the facts and circumstances, I am of opinion that the contravention was intentional and the conviction is well founded.

6. The proviso to Section 7(1)(a) of the Act makes it clear that if the Court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment. In this case, the contravention is clearly technical. It is not the prosecution case that the petitioner was out to violate the law by omitting to make entries of certain transactions which actually took place. The petitioner appears to be of the view that when there was no transaction on any particular day, it was sheer wastage of time and energy to carry forward the accounts of the previous day. Doubtless the view is contrary to law and the terms of the license. But the omission has not resulted in any fraud or injury to any person. In the circumstances, ends of justice should be met by imposing a fine of Rs. 50 (fifty rupees). The petitioner is accordingly sentenced to pay a fine of Rs. 50, in default, to undergo Rule I. for two (2) weeks, subject to the aforesaid modification on the question of sentence, the revision is dismissed.