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Court : Orissa

Decided On : Aug-09-1982

Reported in : 54(1982)CLT345; 1983CriLJ122

Judge : R.C. Patnaik, J.

Appellant : Ramabatar Agarwalla

Respondent : The State

Judgement :
ORDER

R.C. Patnaik, J.

1. This revision is directed against an order taking cognizance of an offence of abetment of offence under Section 7 of the Essential Commodities Act, 1955 read with Clause (3) of the Orissa Petroleum Products (Sale by Dealers) Order, 1979.

2. The gist of the prosecution case is that one B. Bhaskar Patra has a fuelling station at Muniguda who carries on business of sale or storage for purpose of sale of petroleum products to consumers. On 29-3-79, the Inspector of Supplies along with others suddenly inspected the business premises of the dealer around noon and found stationed one truck bearing number ORR 767 loaded with 14 barrels of diesel oil containing 2800 litres and one jeep bearing number MRB 403 loaded with two barrels containing 400 litres of high-speed diesel oil. It is said that the

petitioner who was in the jeep could produce cash-memos in support of purchase of 2800 litres of diesel oil, but he could not produce any cash-memo in support of the 400 Hires of oil loaded in two barrels in the jeep. The dealer admitted to have sold 3200 litres of oil.

3. According to the prosecution case, on inspection of the accounts and verification of the stock of the dealer, it was found that there was a reserve of 80 litres of high-speed diesel. As per notice dated 12-3-79 issued by the Sub-Divisional Officer, Gunupur, the dealer was to maintain a minimum reserved of 1200 litres of high-speed diesel. By not maintaining the said reserve, the dealer contravened Clause (3) of the Order. It is further alleged against the dealer that he was in the habit of maintaining false and fictitious accounts and had failed to furnish information regarding receipt of stock by him at various times to the competent authorities as required by Clause (4) of the Order.

4. It would be evident from the aforesaid narration that the only allegation against the petitioner is that he had purchased 3200 litres of diesel oil and was carrying the same in barrels loaded on two vehicles. At one place, he has been described as an abettor. Otherwise, there is no specific allegation.

5. Clauses 3 and 4 of the Order read as follows;

3. Reservation of stock-(1) The Collector or any officer not below the rank of a Sub-Divisional Officer authorised by him may, for equitable distribution by notice issued from time to time in writing, require the dealers of any place within his jurisdiction to keep such quantity or percentage of stocks of any or all items of petroleum products received by them in their retail outlets as specified in the notice, reserved for sale under and in accordance with a permit issued by the Collector or by any officer not below the rank of Assistant Civil Supplies Officer authorised by him in this behalf in the form specified in the Schedule.

(2) The notice issued under Sub-clause (1) shall specify the period not exceeding thirty days at a time for which it shall remain in force.

(3) The notice shall cease to have effect on the expiry of the period specified therein as per Sub-clause (2) or from the date of issue of a subsequent notice, whichever is earlier.

(4) Supply of information - Every dealer shall on receipt of the petroleum products in his depot or godown furnish On the same date information of the same to the Collector or/to such officer not below the rank of a Sub-Divisional Officer as authorised by the Collector for the purpose.

6. The notice as contemplated in Sub-clause (1) of Clause (3) is issued to the dealer requiring him to keep such quantity or percentage of stock received by him as specified in the notice, reserved for sale under and in accordance with the permit issued by the authority specified in the aid sub-clause. The notice, as per Sub-clause (2), remains in force for a period riot exceeding thirty days and ceases to have effect on the expiry of the period stated in the notice or from the date of issue of a subsequent notice, whichever is earlier.

7. The notice is given to the dealer by the specified authority. The notice is not notified . for . general information, there being no such requirement. So, it is a matter between the specified authority and the dealer. Consumers may not have any knowledge about any such notice. A consumer, when he in good faith approaches the dealer for purchase of petroleum products, may not have any knowledge about the notice, nor would he know about the stock position. The law casts no obligation on the consumer to enquire and ascertain. Compliance with the notice is solely a duty imposed on the dealer.

However, the petitioner has been accused of abetment of the offence, Section 107 of the Penal Code defines abetment:

107. A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

8. An act of abetment takes place in one of three ways : (a) Instigation; (b) Conspiracy and (c) Intentional aid.

A person is said to 'instigate' another to do an act, which he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word 'instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act. A mere intention or preparation to instigate is neither instigation nor abetment. The offence is complete as soon as the abettor has incited another to commit a crime, whether the latter consents or not, or whether, having consented he commits the crime or not. It depends upon the intention of the person who abets, and not upon the act, which is actually done by the person whom he abets.' (See Ratanlal - Law of Crimes).

Conspiracy' consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means. 'So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means. And so far as proof goes; conspiracy, as Grose, J. said in King v. Brisse (1803) 4 East 164 is generally a 'matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them. The number and the compact give weight and cause danger' (Willes, J., in Mulcahy

(1868) LR 3 HL 306 (317),

A person is said to intentionally aid when by any act done either prior to, or at the time of. the commission of an act, he intends to facilitate, and does in fact facilitate, the commission thereof. 'The intention should be to aid the commission of a crime. Mere giving of an aid will not make the act an abetment of an offence, if the person who gave the aid did not know that an offence was being committed or contemplated. 'The intention should be to aid an offence or to facilitate the commission of an offence. But if the person who lends his support does not know or has no reason to believe that the act which he was aiding or supporting was in itself a criminal act, it cannot be said that he intentionally aids or facilities the doing of the offence' (see Ram Nath v. Emperor AIR 1925 All 230 : 1925-26 Cri LJ 362).

Intentional aid by an illegal omission is said to be given when the aid is by way of non-interference and the omission is ,a breach of a legal obligation, 'Intention to aid the commission of the crime, is the gist of the offence of abetment by Bid' (see Trilok Chand v. State of Delhi : AIR 1977 SC666). 'A mere fact that the person accused of substantive offence could not have acted in the way he did without the approval and connivance of the person accused of abetment is not sufficient to prove abetment, under Section 107 I.P.C.' (see Ramnarayan v. King Emperor AIR 1921 Pat 304). 'Mere acquiescence or connivance does not amount to abetment' (see Shyam Bahadur v State AIR 1967 Pat 312 : (1967 Cri LJ 1360)).

Mere presence at the commission of a crime even with the awareness that a crime was being committed is not in itself an intentional aid' (see Malan v. State of Bombay AIR 1960 Bom 393 : 1960 Cri LJ 1189).

Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107....It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third para of Section 107' (see Sri Ram v. State of U.P. : [1975]2SCR622).

9. In the complaint the only allegation in so far as the petitioner is concerned is that he had purchased 3200 litres of diesel oil which had been loaded in barrels in a truck and a jeep. There is no allegation that the petitioner was aware of the notice alleged to have been issued to the dealer by the specified authority under cl, (3). There is no allegation as to instigation, conspiracy or intentional aid.

10. Taking cognizance of an offence under Section 190(1) and issue of process under Section 204 of the Criminal P. C. are judicial functions and require a judicious and not a routine approach.

Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; (in such cases) no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not' (see R. P. Kapur v. State of Punjab : 1960 CriLJ1239).

This proposition is not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process (see in this connection State of West Bengal v. Swapan Kumar : 1982 CriLJ819 , the observation of Sen J., in the context of quashing of investigation by the police).

11. On the analysis made above, I consider it legitimate to hold that it would be manifestly unjust to allow the process of criminal Code to be issued against the petitioner. So, I quash the order directing issue of process against the petitioner. The revision is accordingly allowed.

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