

Gobindaram Agarwalla Vs. State

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Court : Orissa

Decided On : Apr-17-1972

Reported in : 38(1972)CLT556; 1972CriLJ1690

Judge : B.K. Patra, J.

Appellant : Gobindaram Agarwalla

Respondent : State

Advocate for Pet/Ap. : Mr. S. G. Ghosh

Judgement :

ORDER

B.K. Patra, J.

1. This application in revision is directed against an appellate order of the Additional Sessions Judge, Sambalpur upholding the conviction of the petitioner under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) read with Clause 3 of the Orissas Rice and Paddy Control Order, 1965 (hereinafter referred to as the Control Order), and the sentence of one year's rigorous imprisonment and a fine of rupees one thousand imposed on him. On 6-9-1968, P. W. 3 the Supply Supervisor checked the truck ORS 5197 while it was being driven from Sohela towards Bargarh and found the truck loaded with 67 quintals of rice. Besides the driver and the cleaner of the truck, the petitioner

Gobindaram Agarwalla and four other coolies were found travelling in the said truck. Information was lodged in the Thana and enquiries revealed that the stock of rice had been purchased from M/s. Shibasankar Rice Mill, Shoolia. The truck and the rice were seized and after necessary investigation, a charge sheet was laid and prosecution was launched against the petitioner, the driver, the coolies and also the owners of the rice mill under Section 7 of the Act for violation of Clause 3 of the Control Order.

2. All the accused persons pleaded not guilty. The three labourers took the plea that they merely worked for wages and had loaded the rice in the truck being engaged by Gobindaram Agarwalla and are not guilty. They denied to have purchased any portion of rice themselves. The petitioner claimed that he purchased only ten quintals of the entire stock of 67 quintals and was carrying the same to Cuttack for sale. As regards the rest of the stock, his case was that the driver and the cleaner of the truck and coolies had each purchased ten quintals of rice and were transporting the same along with him to Cuttack for sale. The driver's plea was that he had purchased only ten quintals of rice out of the stock and was taking the same to Cuttack for sale. The three owners of the mill admitted that they sold 67 quintals of rice but their plea was that the sale was to seven persons at the rate of ten quintals each to six persons and the remaining 7 quintals to the other. The common plea of all the accused except the coolies was that as transaction was in respect of not more than ten quintals of rice, no licence was necessary for the purpose.

3. The Magistrate who tried the case accepted the plea of the labourers and acquitted them. His finding is that the entire 67 quintals of rice found in the truck had been purchased only by the petitioner Gobindaram Agarwalla and as admittedly the latter had no licence, he held that the charge was established against, him and convicted and sentenced him to undergo rigorous imprisonment for one year and to Pay a fine of rupees one thousand, and in default, to undergo rigorous imprisonment for six months. For reasons which need not be discussed here, he also convicted the driver and the three owners of the rice Mill. All these five convicted persons appealed before the Sessions Judge. The learned Additional Sessions Judge who heard the appeal upheld the conviction of the

petitioner and the sentence imposed on him and acquitted the driver and the owners of the mill. Being aggrieved by this decision, the petitioner has filed this revision application. The finding which is not disputed is that 67 quintals of rice were found in the truck at the time it was seized.

4. Mr. S. G. Ghosh learned Advocate appearing for the petitioner however assails the finding that it is the petitioner who had purchased the entire stock. Both the Courts below have discussed the evidence on this point and have given good reasons in support of their finding that the entire stock of 67 quintals of rice had been purchased by the petitioner Gobindaram Agarwalla and having perused the evidence myself I am satisfied that the finding cannot be assailed. ,

5. The next contention of Mr. Ghosh is that that assuming that the petitioner had purchased the entire stock of 67 quintals and notwithstanding that, he does not possess any licence as required by Clause 3 of the Control Order, still in the absence of any evidence to show that he is engaged in the business of purchase or sale or storage of rice, his conviction under Section 7 of the Act cannot be maintained. To appreciate this contention it is necessary to refer to the relevant provisions of the Act and the Control Order.

6. In exercise of the powers conferred by Section 3 of the Act. read with the notification of the Government of India, in the Ministry of Food and Agriculture (Department of Food] No. 888-G. S, R., dated the 28th June. 1961. and with the prior concurrence of the Government of India, the Orissa State Government promulgated the Orissa Rice and Paddy Control Order, 1965. Any contravention of this Control Order is made punishable under Section 7 of the Act, Clause 2 (b) of the Control Order defines a 'dealer' as meaning-

A person engaged in the business of purchase or sale or storage in wholesale quantity of rice or paddy or rice and paddy taken together but does not include a cultivator or landlord.

Clause 3 of the Control Order reads thus:

3. (1) No person shall carry on business as a dealer except under and in accordance with a licence issued in that behalf by the licensing authority:

Provided that, the Government may, by a special or general order, exempt subject to such conditions as may be specified in the order, any class of persons from the operation of this Sub-clause.(2) For the purpose of this clause any person who stores rice or paddy or rice and paddy taken together in quantity exceeding ten quintals shall unless the contrary is proved, be deemed to be a dealer.

The substantial contention of Mr. Ghosh is that the element of business is essential to attract the provisions of Clause (3)(1) of the Control Order and consequently a single transaction of purchase or sale or storage will not constitute business within the meaning of Sub-clause (1) of Clause 3 so as to bring the petitioner within the mischief of Section 7 of the Act. In support of this contention, he relies on a decision of the Supreme Court in : 1964 CriLJ465 (Manipur Administration v. M. Nila Chandra Singh) and two decisions of this Court in 32 Cut. L. T 1045 : 1967 Cri. LJ 235 (Ramji Prasad Gupta v. The State) and 33 Cut L, T. 936 : 1968 Cri. LJ 528 (Gour Chandar Gouda. v. The State). All these decisions are clearly distinguishable In : 1964 CriLJ465 their Lordships were dealing with the Manipur Foodgrains Dealers Licensing Order. 1958 (hereinafter referred to as the Manipur Licensing Order). The respondent was charged with having committed an offence punishable under Section 7 of the Act read with Clause 3 of the Manipur Licensing Order. Clause 3 of that Order reads thus:

3. (1) No. person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority:

(2) For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale.

7. The respondent was admittedly found to be in possession of more than one hundred maunds of paddy which is one of the foodgrains specified in Schedule 1 of the Manipur Licensing Order. It was pointed out that the deeming provision in

Clause 3 (2) of the Order merely raises a presumption that the foodgrains had been stored for the purpose of sale and not that he is a dealer in the foodgrains and that what is required under Sub-clause (1) of Clause 3 of the Order is not a single instance of sale but that the accused must be carrying on the business of such sale or storage. It was pointed out. that the concept of business in the context must necessarily postulate continuity of transactions and that a single, casual or solitary transaction of sale, purchase or storage would not make a person a dealer.

8. In the two Orissa decisions referred to above, their Lordships were dealing with the Orissa Foodgrains Dealer's Licensing Order. 1964. In that Order, a 'dealer' is defined to mean-

A person engaged in the business of purchase sale or storage for sale of any one of the foodgrains in quantity of ten quintals or more at any one time or in quantity of twenty five quintals or more of all foodgrains taken together, but does not include....

Clause 3 of that order at the relevant period ran thus:

3.(1) No person shall carry on business as a dealer except under and in accordance with the terms and conditions of licence issued in this behalf by the licensing authority.

(2) For the purpose of this clause, any person who stores in quantity of ten quintals or more of any one of the foodgrains or twentyfive quintals or more of all the foodgrains taken together, at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for purpose of sale. It may be noticed that this presumption is on terms similar to the one occurring in Sub-clause (2) of Clause 3 of the Manipur Licensing Order with which the Supreme Court was dealing in : 1964 CriLJ465 . In both the Orissa cases, excepting the single instance of storage which formed the subject matter of prosecution, there was no other evidence to establish that the concerned accused persons in those cases were engaged in the business of sale or storage. Following : 1964 CriLJ465 , it was held in those cases that the prosecution of the accused persons under Section 7 of the Act must fail.

But the Control Order with which I am concerned in this case, provides a presumption in Sub-clause (2) of Clause 3 which is materially different from the presumption provided either in the Manipur Licensing Order or the Orissa Foodgrains Dealer's Licensing Order, 1964. The deeming provision in Sub-clause 2 of Clause 3 of the Order I am dealing with, is that for the purpose of Clause 3 any person who stores rice or paddy or rice and paddy taken together in quantities exceeding ten quintals shall, unless, the contrary is proved, be deemed to be a dealer. The expression 'dealer' in this Control Order is defined to mean-

a person engaged in the business of purchase, or sale or storage in wholesale quantity of rice, or paddy or rice and paddy taken together but does not include a cultivator or landlord.

The resultant position, therefore, is that whenever any person is found to be in possession of rice of more than ten quintals, it will be presumed that he is a person who is engaged in the business of purchase, sale or storage of rice. Doubtless, it is a rebuttable presumption but if the presumption is not rebutted by the accused, it must follow that he is a person engaged in the business of purchase or sale or storage of rice. In this case, as the petitioner has not rebutted the presumption arising against him, he must be deemed to be a person engaged in the business of purchase or storage of rice.

9. Mr. Ghosh then argued that the deeming provision in Sub-clause (2) of Clause 3 of the Control Order only shows that the petitioner is a dealer but that is not sufficient to bring him within the purview of Sub-clause (1) of Clause 3 which requires that the person concerned should carry on business as a dealer. If such a construction, as is canvassed by Mr. Ghosh is accepted, it would, in my opinion, lead to an absurdity because in that case Clause 3 (1) would read somewhat like this:

No person shall carry on business as a dealer, that is. a person engaged in the business of purchase or sale or storage in wholesale quantity of rice or paddy or rice and paddy taken together, except and in accordance with a licence issued in that behalf by the licensing authority.

A person cannot be deemed to be a dealer unless he is engaged in the business of purchase or sale or storage of rice and it makes no meaning to insist that such a person should further carry on business as dealer. Such an absurd construction cannot be put on Sub-clause (1) of Clause 3 which should reasonably be construed to read that 'no person shall act as a dealer except and in accordance with a licence issued in that behalf by the licensing authority.' It may be incidentally mentioned that Sub-clause (1) of Clause 3 of the Control Order has since been amended by substituting the word 'act' for the words 'carry on business.'

10. In view of what has been stated above, it must; follow that the petitioner who was found to have stored 67 quintals of rice was engaged in the business of storage thereof and as admittedly he had no licence for it, he is guilty under Section 7 of the Act and has rightly been convicted.

11. Accordingly I find no merit in this revision application which is hereby dismissed.