

Narayan Patra Vs. State

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Court : Orissa

Decided On : Jun-19-1995

Reported in : 1995(II)OLR415

Judge : A. Pasayat, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3 and 3(1); Orissa Baby Food Licensing Order, 1966

Appeal No. : Criminal Appeal No. 133 of 1985

Appellant : Narayan Patra

Respondent : State

Advocate for Def. : N. Prusty, Addl. Government Adv.

Advocate for Pet/Ap. : D. Mohapatra, Adv. and ;S.K. Padhi, S.S. Das and Balabhadra Rath

Disposition : Appeal dismissed

Judgement :

A. Pasayat, J.

1. Recording of conviction for an offence punishable under Section 7 of the [Essential Commodities Act, 1955](#) (in short, the 'Act') and consequential sentence

of six months' simple imprisonment, and fine of Rs. 1,000/- with a default stipulation as awarded by the learned District and Sessions Judge-cum-Special Judge, Sundargarh, is the subject-matter of challenge in this appeal.

2. Prosecution case in a nutshell is as follows :

On 27-2-1984 the Inspector of Supplies, Rourkela along with his colleagues inspected the shop of the appellant (hereinafter referred to as the 'accused'), who is a retail dealer in baby food. It was noticed that the accused had not maintained a register of daily accounts in the requisite Form III relating to transaction of baby food in his possession, thereby violating conditions of licence granted under the Orissa Baby Food Licensing Order, 1966 (in short, the 'Licensing Order'). It was further alleged that there was violation of Clause 10 of the Order as the special board required to be maintained was not so done. In essence the prosecution accusations were that there was violation of the conditions of licence and the licensing order attracting penal consequences under Section 7 of the Act.

3. The accused took the plea that the board and the requisite particulars were available. But the Inspecting Officer did not take note of them and with mala fide intents had instituted the case on false allegations.

4. Three witnesses were examined by the prosecution to further its case, while the accused examined two witnesses. The Inspector of Supplies was examined as PW 2 while his colleagues, the Marketing Inspector and Assistant Civil Supplies Officer were examined as PWs 1 and 3. The accused examined himself as DW 1. The learned Special Judge on consideration of the materials on record held the accused guilty and convicted and sentenced him as aforesaid.

5. In support of the appeal it is submitted by the learned counsel for appellant that the prosecution has failed to establish its case. Evidence of PW 1 clearly established existence of a special board and the requisite register, which negative the plea of prosecution of their absence. Alternatively, it is submitted that the occurrence took place more than a decade back, the accused has become a septuagenarian in the meantime, and a liberal approach on sentence is necessary.

Mr. N. Prusty, learned counsel for State on the other hand submitted that a minimum sentence is prescribed and there is no special reason to depart from the prescribed minimum According to him, the prosecution has clearly established the accusations and the plea of existence of special board or register is an afterthought.

6. The Licensing Order has been made by the State Government in exercise of power conferred by Section 3 of the Act for the purpose of regulating sale of baby food. Clause 3 of the Licensing Order provides that baby food is not to be sold without a valid licence. Such licence is to be granted by the licensing authority under Clause 5 of the Licensing Order. Clause 10 which has relevance for the purpose of this case reads as follows :

'10. Display of the list--Every dealer shall cause to be prominently displayed on a special board to be maintained for this purpose at or near the entrance of the place of sale-

(a) the varieties of baby food held by him from time to time in stock for ready delivery ;

(b) the declared price of each such variety of baby food; and

(c) the price at which he proposes to sell each such variety of baby food.'

Licence issued to a dealer in Form II under Clause 5 of the Order inter alia contains the following conditions :

'4. The licensee shall maintain a register of daily accounts as in Form II showing correctly all transactions of baby food in his possession. It shall show : (a) The opening stock on each day.

(b) The quantities and the brands received on each day showing the names of the suppliers.

(c) The quantities sold, delivered or otherwise disposed of on each day showing the place of destination and the names of consignees.

(d) The closing stock on each day.

7. The licensee shall give all facilities at all reasonable times to any officer authorised by the State Government or the licensing authority for the inspection of the accounts and stocks wheresoever they may be kept for and taking samples of baby foods for examination.'

7. Evidence of prosecution witnesses clearly shows that special board as required to be displayed under Clause 10 of the Licensing Order was not there. The plea that the requisite information was contained in a slate cannot be accepted. A plain reading of the evidence of DW 1 (accused) and DW 2 examined to State about existence of a slate and exercise book containing requisite information, leaves no manner of doubt that a distorted version was given by them. Interestingly DW 1 does not speak about presence of DW 2 at his shop at the time of inspection. He has stated that the Board was hanging on a small wall affixed to the wall although there was no hole in it. Evidence of DW 2 is different as to the place where the slate was hanging. Clause 10 mandates that the special board to be maintained to show (a) the varieties of baby food held by the dealer from time to time in stock ready delivery, (b) the declared price of each such variety of baby food, and (c) the price at which the dealer proposes to sell each such variety of baby food has to be displayed 'at or near the entrance of the place of sale'. The D Ws did not breathe a word that the slate stated to be there, was displayed at or near the entrance of the place of sale. Even if it is accepted that such a slate did exist, in the absence of any evidence that it was displayed at or near the entrance of the place of sale, it can be of no assistance to the accused.

8. The learned Special Judge has made an elaborate analysis of evidence of P Ws and D Ws and has come to a conclusion that the evidence of P Ws is acceptable, and has accordingly, recorded the conviction. No infirmity was pointed out to me to take a view different from that taken by the learned Special Judge.

9. The residual question is the sentence. Section 7 of the Act deals with penalty to be imposed for contravention of any order made under Section 3 of the Act. Sub-section (1) (z) (ii) (proviso) is relevant for the purpose of this case. It reads as follows :

'7. Penalties (1) 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

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine :

Provided that the Court may, if any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.'

In respect of orders made with reference to Clause (h) or Clause (i) of Sub-section (2) no minimum penalty is prescribed but the maximum is prescribed. In case of other orders, minimum sentence is prescribed. However, discretion is conferred on the Court to impose sentence of imprisonment for a period less than three months for adequate and special reasons.

9. Considering the fact that the occurrence took place more than a decade back, and the advanced age of the accused, it would not be proper to send the accused back to custody. The custodial sentence is reduced to the period already undergone. However, the fine of Rs. 1, 000/- is raised to Rs. 2,000/-. In case of default in payment of fine, the accused shall undergo simple imprisonment for three months.

The appeal is dismissed subject to modification in sentence.

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