

Mehenga Singh Vs. the State

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Court : Orissa

Decided On : May-14-1998

Reported in : 1998CriLJ3234

Judge : S.C. Datta, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7; [Probation of Offenders Act, 1958](#) - Sections 3; Orissa Pulses, Edible Oil seeds and Edible Oils Dealers' (Licensing) Order, 1977; Manipur Food Grains Dealers Licensing Order, 1958

Appeal No. : Criminal Appeal No. 197 of 1986

Appellant : Mehenga Singh

Respondent : The State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : O.N. Mohanty, Adv.

Judgement :

S.C. Datta, J.

1. The appellant calls in question the legality of his conviction for an offence punishable under Section 7 of the [Essential Commodities Act, 1955](#) (for short the 'the Act').

2. The appellant (hereinafter referred to as the 'accused') faced trial before the learned Special Judge, Koraput, Jeypore on the allegations that he had contravened the provisions of clauses 2 and 3 of the Orissa Pulses, Edible Oil seeds and Edible Oils Dealers' (Licensing) Order, 1977 (for short the ' 1977 Licensing Order'), which is punishable under Section 7 of the Act.

3. The prosecution case, in nutshell is that on 9-1-1986 the accused was found purchasing til seeds in front of his residential house near the weekly market of Gotijodi. He was also found to have purchased 62.92 kg. of til seeds on that date. The Marketing Inspector, Malkangiri along with Marketing Intelligence Inspector and Revenue Officer of Malkangiri raided the market and also the premises where the accused was purchasing til seeds. It has been alleged that the til seeds so purchased had been kept partly in some gunny bags and rest was kept in a heap and weighing instrument, were found nearby. The purchased stock being more than the permissible limit of 30 quintals and the appellant having no valid licence and permit it is alleged that he had committed the offence. An F.I.R. was lodged. After due investigation the chargesheet was laid against the accused to stand his trial under Section 7 of the Act, for contravention of clauses 2 and 3 of the 1977 Licensing Order.

4. The plea of the accused was that he is a cultivator and grows til seeds in his land. It was claimed that out of 73 bags of til seeds seized by the supply staff, 18 bags belonged to him being the produce of his land and the remaining bags belonged to five other cultivators of different villages, who kept the same in front of his house as their stock could not be sold in the market on that day. It was asserted that he did not purchase any til seeds on that date and he was never engaged in the business of til seeds.

5. In support of defence plea, as many as five witnesses have been examined, who have claimed that the part of the seized stock belonged to each of them. D.W. 5 has stated that the accused has landed property, where he grows til seeds and harvest 32 to 40 bags of til seeds per annum. The learned Special Judge, Koraput, Jeypore however disbelieved the defence version, but relied upon the evidence of the prosecution witnesses and convicted the accused under Section 7 of the Act

and sentenced him to undergo R.I. for one year and to pay a fine of Rs. 1000/- in default to undergo R.I. for a further period of three months.

6. Learned counsel appearing for the accused assails the impugned judgment contending, inter alia, that the learned Special Judge while appreciating evidence of witnesses of the prosecution ought to have taken note of and considered the defence version of the case to the effect that the accused himself was a cultivator who raises til seeds in his own land. He submits further that the learned Special Judge should have taken note of the further fact that D.Ws. 1 to 4 have claimed that some of the bags containing til seeds belonged to them as they could not sell the same on that date and could not carry them back to their house, because of want of any conveyance. It is further contended that in absence of any cogent and convincing evidence that the accused was carrying on business of the said commodity as a dealer, finding of guilt recorded against him for contravention of Clause 3 of 1977 Licensing Order being contrary to law is unsustainable.

6. Learned counsel for the State however supports the judgment stating that the finding of guilt recorded by the trial Court was based on proper evaluation of the evidence and as such it does not require interference in the present appeal.

7. There is no dispute that til seeds were edible oil seeds and that is one of the items covered under the Order. It is also not in dispute that 62.92 quintals of til seeds were seized in front of the house of the accused. In view of such admitted fact the question that arises for consideration is whether mere possession was sufficient enough to find the accused guilty for contravening Clause 3 of the 1977 Licensing Order. The said Clause 3 provides, inter alia, that no person shall after expiry of a period of fifteen days from the date from which the Order came into force, carry on business as a 'dealer' in pulses or edible oil-seeds or in edible oils except and in accordance with the terms and conditions of a licence granted in that behalf by the Licensing Authority. Admittedly, the accused did not hold any licence. Any way the word 'dealer' defined in Clause 2(b) of the said Order means a person engaged in the business of purchase, sale or storage for sale of any pulses, edible oilseeds or edible oils whether or not in conjunction with any other business and includes his representative or agent. The expressions engaged in

business and carry on business are to be read and interpreted keeping in mind the intent and purpose for which the 1977 Licensing Order has been promulgated. It is apparent that in order to have overall control on purchase, sale or storage for sale of pulses, edible oil-seeds or edible oils, the State Government has promulgated the said order so that there may not be artificial scarcity created by the unscrupulous businessmen dealing in such commodities; It is because of this reason a bar has been created in the 1977 Licensing Order prohibiting a person to deal in these commodities without a valid licence.

8. While dealing with a case for contravention of Clause 3 of the Order, a single Judge of this Court in the case of Laxminarayan Senapati v. State of Orissa, reported in (1998) 14 OCR 519, observed as follows :

To bring a person within the ambit of the definition of 'dealer' it must be shown that his activities of purchase, sale or storage for sale are continuous and not isolated ones and the same occupy his time, attention and labour and are carried on with the intention to earn livelihood. The phrase 'Carrying on business' implies a repetition of series of acts. According to Black's Law Dictionary, Sixth Edition, the phrase 'Carry on Trade or business' means 'to conduct, prosecute or continue a particular avocation or business as a continuous operation or permanent occupation'. The above being the meaning of the phrase 'carry on business', it is to be ascertained from available evidence in the present case as to whether the prosecution has been able to satisfy that the accused was carrying on business in niger seeds as a dealer without having obtained any licence as required in Clause 3 of 1977 Licensing Order so as to make him liable for punishment under Section 7 of the Act.

I respectfully agree with the above observation made by Hon'ble Mr. R. K. Dash J, in the aforesaid case.

9. The Apex Court while dealing with a case of Manipur Administration v. M. Sila Chandra Singh, reported in AIR 1964 SC 1533 : (1964 (2) Cri LJ 465) under Manipur Food Grains Dealers Licensing Order (1958) had occasion to examine the definition of the word 'dealer' occurring in Clause 2 of the said Order The definition of the word 'dealer' in Clause 2 of the said order is almost identical with

that of Clause 2(a) of the present Order The Supreme Court held as follows (para 7) :

The definition in Clause 2(e) shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedules and that the sale must be in quantity of 100 mds, or more at any one time. The requirement is not that the person should merely sell, purchase or store the food grains in question but that he must be carrying on the business of such purchase, sale or storage and the concept of business in the context must necessarily postulate continuity of transaction. It is not a single casual or solitary transaction of sale, purchase or storage that would make a person a dealer. If this element of continuity is ignored it would be rendering the use of the word 'business' redundant and meaningless.

Secondly, the requirement that the transaction must be of. 100 mds, or more at any one time governs all classes of dealings with the commodities specified in the definition. Whether it is a purchase or sale or storage at any one time it must be of 100 mds or more. In other words, it is clear that retail transaction of less than 100 md of the prescribed commodities are outside the purview of the definition of a dealer.

10. Keeping in view the legal position in this respect, it is to be examined how far then prosecution has succeeded in establishing that the accused was carrying on business of purchase, sale or storage of til seeds from his premises in the weekly market at Gotijodi.

11. P.Ws. 1 and 2 are the Marketing Inspector and Marketing Intelligence Inspector of Malkhangiri respectively. In their evidence they have stated fully supporting the prosecution case. They have also stated that the accused had purchased, stored til seeds on the date of incident. They further stated that the accused was engaged in the business of purchase and several people were seen selling til seeds to him and there was a beam scale with different weights and further that when they reached the spot, they found some til seeds being packed in gunny bags and some quantity of til seeds was kept in heaps. These witnesses could not however name the persons, who had sold the til seeds to the accused on that date and the

quantity which was sold by each of such persons and price thereof. These witnesses are officials of Supply Department. Therefore, it is not natural to expect from them that they will know the names of the vendors of the til seeds to the accused persons. We gather from the evidence that as soon as they reached the spot by a jeep and on seeing them arriving the persons who were selling til seeds fled. It is of course true that P.Ws. 1 and 2 are official witnesses and simply because they are official witnesses, their evidence should not be discarded. The learned Special Judge could not find any material to disbelieve their testimony. The evidence has been closely scrutinised by me and I find that their evidence is quite clear, cogent and trustworthy. P.W. 3 is a resident of village. Gotijodi. He states that accused usually purchases til seeds in front of his house. On the date of incident he had seen that the accused purchased til seeds from different persons at the rate of Rs. 5/- and Rs. 5.25 paise respectively for white til seeds and black til seeds. P.W. 4 is also a resident of the said village. He says that accused is engaged in selling and purchasing of til seeds. He claims to have sold 12 kgs. of til seeds to the accused at the rate of Rs. 5.75 paise per kg.

12. From the evidence of the prosecution witnesses the conclusion becomes irresistible that the accused was engaged in the business of selling and purchasing of til seeds.

13. The learned special Judge however could not persuade himself to believe the defence version of the case. As noticed earlier, the plea of the defence is that out of 70 bags of til seeds, 18 bags of til seeds were the produce of his land whereas the balance belonged to other persons, who had kept it in his house, because they could not dispose of the same on that date. The learned Special Judge noticed improbability and discrepancy in regard to their version of the case. It seems that the plea advanced by the accused is preposterous. The evidence of the prosecution witnesses clearly establishes the fact that the accused was engaged in selling and purchasing of til seeds without a valid licence therefor. Therefore, on assessment of the evidence on the parties, it is noticed that the learned special Judge has come to a correct conclusion with regard to the guilt of the accused. So it is held that accused was rightly convicted for the offence under Section 7 of the Act.

14. Learned counsel appearing for the appellant submits that the accused has no criminal antecedent. It is the first offender and this is merely a technical violation of the order requiring taking of licence for dealing in edible oil seeds etc. Accordingly, he submits that the learned special Judge instead of sentencing the accused to undergo R.I. for one year and imposing a fine of Rs. 1000/- ought to have extended the benefit of Probation of Offenders Act. He has drawn my attention to the further fact that the incident happened on 9-1-1986 and the order of conviction and sentence was recorded by the learned special Judge on 31-10-86. The accused carried on appeal to this Court in the same year and this appeal is pending before this Court so long. He, therefore, submits that having considered this circumstance as well, this Court should extend the benefit of Probation of Offenders Act to the accused. Having considered the submissions made by the learned counsel for the accused and in consideration of the fact that the appeal by accused remained undisposed of so far, I think that ends of justice could be met if instead of sending the accused to jail after lapse of so many years, he is released after due admonition under Section 3 of the Probation of Offenders Act.

15. In view of what goes before while upholding the order of conviction, the accused is released after due admonition under Section 3 of the Probation of Offenders Act.

The appeal is disposed of accordingly.