

Masud Baig Vs. State of Orissa

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Court : Orissa

Decided On : Oct-06-2005

Reported in : 100(2005)CLT675; 2005(II)OLR775

Judge : I.M. Quddusi, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7 and 7(1)

Appeal No. : Criminal Appeal No. 26 of 1989

Appellant : Masud Baig

Respondent : State of Orissa

Advocate for Def. : Additional Standing Counsel

Advocate for Pet/Ap. : Manoj Mishra, Adv.

Disposition : Appeal allowed

Judgement :

I.M. Quddusi, J.

1. This Criminal Appeal has been filed against the judgment and order dated 3.1.1989 passed by the Special Judge, Koraput, Jeypore convicting the appellant under Section 7(1) of the [Essential Commodities Act, 1955](#) (for short 'the Act') and sentencing him to undergo rigorous imprisonment of three months and to pay fine

of Rs. 1,000/- in default to suffer simple imprisonment for three months in T.R. Case No. 19 of 1987.

2. The prosecution case in brief is that on 29.10.1986 the appellant was travelling in a truck bearing registration number OSK 691 to Maidalpur weekly Shandy. Other persons were also travelling with him. The Marketing Inspector checked the truck on the main road of Papadahandi Town and found that one Voona Ravanya was having 200 litres of kerosene in his possession and it is found that the appellant was carrying 110 litres of kerosene in a barrel. But he had no explanation to the valid possession of kerosene and as such, FIR was lodged and he was challaned and thereafter he was prosecuted along with the accused Voona Ravanya. Accused Ravanya denied that he was having a certificate to be a retail dealer and the stock of 200 litres of kerosene was issued to him by the Sub-wholesale Dealer on the basis of the order issued by the Inspector but the appellant could not explain about the valid possession of 110 litres of kerosene.

3. Charge-sheet was filed against both the above persons including the appellant.

4. The prosecution examined five witnesses. P.W. 1, Sri Bihari Das was the Marketing Inspector who checked the above mentioned truck and found the alleged illegal possession of kerosene in the custody of the appellant. He has also stated in his statement that the appellant could not produce any licence or permit in support of his possession and transportation of such quantity of kerosene, P.W. 2, Sri G. Durga Prasad Rao has stated in his statement that when P.W. 1 stopped the truck bearing registration number OSK 691 and conducted the checking, he was present there. The appellant claimed the kerosene in the other barrel which on measurement came to 110 litres. He had further stated that P.W. 1 repeatedly asked as to who was the owner of that kerosene. Accused Baig might have taken about ten minutes for coming forward to claim the kerosene. P.W. 3, Sri Shiba Prasad Patnaik was working as Accountant with the Dealer P. Ganga Rao & Sons, Nowrangpur, District Koraput. He has stated that the firm was a Sub-wholesale Dealer of Kerosene and sells kerosene to Certificate Holders (Retail Sellers) on the basis of issue order in Tally Register and therefore, sold 200 litres of kerosene to accused V. Ravanya. However, the same has no concern with the present

appellant. P.W. 4, Sri Nrusimha Prasad Panigrahi had stated that on the date of checking by P.W. 1 on 29.10.1986 while he was casually standing on the Main Road of Papadahandi, the truck bearing registration number OSK 691 carrying passengers and articles in its Dalla was going towards Maidalpur Market. The Marketing Inspector of Papadahandi stopped the truck. Both the accused including appellant were travelling in the truck. Kerosene in two barrels were unloaded in the truck and in one barrel there was 200 litres of kerosene which was claimed by accused V. Ravanya and in the other barrel 110 litres of kerosene were there and the appellant claimed the same. The Marketing Inspector seized the same. P.W. 5, Sri Bijaya Kumar Patnaik was the OIC, Papadahandi Police Station who had stated that he received a written complaint lodged by P.W. 1. He made the endorsement with signatures, drew up the formal FIR registered as P.S. Case No. 74 of 1986 under Section 7 of the Act and took up investigation. On 1.11.1986 he seized the Exts. and the statements enclosed with the FIR seizure list and also seized 310 litres of kerosene in two barrels. During the course of investigation he examined the accused persons. The present appellant could not produce any paper in proof of valid possession or transportation of kerosene. On completion of investigation since a prima facie case of contravention of provision of the Orissa Kerosene Control Order, 1962 (for short 'Control Order') was made out against the appellant. P.W. 5 filed charge-sheet against him.

5. In his cross-examination P.W. 5 had stated that he had examined and recorded the statement of P.Ws. 1, 2, & 4. In their respective statements P.Ws. 1, 2 & 4 had not stated that the accused Masud Baig claimed the barrel containing 110 litres of kerosene.

6. I have heard Mr. Manoj Mishra, Learned Counsel for the appellant and the learned Additional Standing Counsel for the State.

7. Mr. Mishra, learned Counsel for the appellant has submitted that from the statement of witnesses, it is revealed that they have nowhere stated that the appellant was doing business in kerosene and as such he should be deemed to be a consumer in the absence of any proof or otherwise and, therefore, the Control Order would not be applicable to the appellant being a consumer and, therefore,

he is liable to be acquitted.

8. In support of his submissions, Mr. Mishra has placed reliance on a decision of this Court in the case of *Puspa Ranjan Patel v. State of Orissa* reported in 1994 OLR 301. In that case the question was referred to the larger Bench by the learned Single Judge to the effect whether the Control Order applies to a consumer or not. The Division Bench has answered to the question that the Control Order on its own applies to a consumer. The operative portion of the said judgment is quoted as under :

'We, therefore, answer the question by stating that the Orissa Kerosene Control Order, 1962 does not apply to a consumer. We, however, make it clear that a person who poses to be a consumer but is really found to be doing business in kerosene would be covered by the Control Order, and that would depend upon the facts of each case. The matter will now go back to the learned Single Judge for disposal of the revision application on its own merits.'

9. Shri Mishra has also relied upon other similar cases. In the latest case, i.e., the case of *Bairagi Sahu v. State of Orissa* reported in (2003) 24 OCR 351 it has been held by the learned Single Judge of this Court referring to the decision in the case of *Puspa Ranjan Patel* (supra) and also the case of *Govind Prasad Jaiswal v. State of Orissa* reported in 62 (1986) CLT 656 that to establish an offence in the Act, the prosecution is bound to establish that the accused was a dealer in essential commodities. In the case of *Bairagi Sahu* (supra), the facts of the case were that on 24.5.1985 at 2.00 p.m. Bairagi Sahu was found carrying 68 litres of kerosene in his bicycle in four tins each containing 17 litres. The Supply Supervisor seized the kerosene tins and the bicycle. The Trial Court came to a finding that the accused was, in fact possessing 68 litres of kerosene though he had no licence for possessing the same. It also came to a finding that there is no material evidence to arrive at a conclusion that the accused was a dealer. He was convicted by the Trial Court under Section 7 of the Act and sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs. 500/-. This Court held that there was no material evidence to arrive at a conclusion that the accused was a dealer and his conviction was set aside on that ground.

10. In the instant case, on perusal of the statement of witnesses and other materials, it is clear that none of the witnesses has stated that the appellant has posed himself to be a consumer but was found to be doing business in kerosene. Therefore, in the absence of any proof that the appellant was found to be doing business in kerosene, he can be said to be a consumer only and not beyond that and, therefore, in view of the decision of the Division Bench in the case of Pusp Ranjan Patel (supra), it cannot be said that the appellant had violated the provisions of the Control Order and, therefore, he was not liable to be held guilty. In view of the above mentioned facts and circumstances, the impugned judgment and the order of the Court below convicting and sentencing the appellant is liable to be set aside.

In the result, the appeal is allowed. The impugned judgment and the order dated 3.1.1989 passed by the Special judge, Koraput, Jeypore convicting and sentencing the appellant is set aside. The appellant is acquitted of the charges. His bail bonds are discharged.

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