

State of Orissa Vs. Indian Traders, Represented by Hazi Abu Bekar and Two ors.

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Court : Orissa

Decided On : Oct-25-2006

Reported in : 2007(I)OLR80

Judge : P.K. Tripathy, J.

Appellant : State of Orissa

Respondent : Indian Traders, Represented by Hazi Abu Bekar and Two ors.

Judgement :

P.K. Tripathy, J.

1. Heard Mr. Mohapatra, learned Standing Counsel for the Vigilance Department and Mr. Sidharth Mishra, amicus curiae, in as much as even after recess the counsel engaged by the respondents/accused did not appear. Mr. Sidharth Mishra says that he has gone through the lower Court's record, findings of both the Courts below and the provision of law and is ready to place his argument. Hearing is concluded and the judgment is as follows:

2. Vigilance G.R. Case No. 32 of 1981 was initiated against the accused persons in the Court of Addl. C.J.M. (Special), Cuttack, on the allegation that on 17.07.1981 at about 5 p.m. when the officers from Vigilance Central Division,

Cuttack, Addl. Commercial Tax Officers and Inspector, Commercial Tax made a surprise raid in the business premises of the accused persons named and styled as M/s. Indian Traders, situated at Malgodown, Cuttack, they found that the accused persons had not indicated the quantity and price of coconut oil in the stock and also found irregularity in the Books of Account in relation to maintaining the accounts of coconut oil. Under such circumstance, after conducting the raid, search and seizure, charge-sheet was submitted against the accused. Accused persons denied to the allegation of irregularity in the Books of Account or non-mention of stock and price of the coconut oil in stock on 17.01.1981, i.e., the date on which the shop was raided. To substantiate the charge, prosecution examined six witnesses and relied on the documents marked Exts. 1 to 11. In defence, no evidence was adduced from the side of the defence except a cash memo, which was marked 'X' for identification.

On assessment of evidence, learned Addl. C.J.M. (Special Court), Cuttack delivered the judgment on 13.09.1988 finding the accused persons guilty of the offences under Section 7(1)(a)(ii) of the Essential Commodities Act (in short 'E.C. Act') and also under Section 9 of the E.C. Act for contravention of Clause-3 of Orissa Declaration of Stocks and Price of Essential Commodities Order 1973 (in short 'Order 1973') and Clause-12 of Orissa Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977 (in short 'Order 1977'). On such conviction, after hearing the accused persons, trial Court sentenced the accused Haji Abu Bakar and accused Munsii Shamsuddin to undergo rigorous imprisonment for three months each and to pay a fine of Rs. 1,000/- (one thousand) each under Section 7(1)(a)(ii) of the E.C. Act and sentenced to pay a fine of Rs. 500/- (five hundred) each under Section 9 of the E.C. Act for making and maintaining false statement of accounts regarding their stock position of edible oil. On appeal against that order of conviction, learned Second Addl. Session's Judge, Cuttack acquitted Indian Traders and Hazi Abu Bakar (accused Nos. 1 and 2) and maintained conviction of accused Munsii Shamsuddin only under Section 7(1)(a)(ii) of the Act. He modified the sentence and imposed fine of one thousand rupees and the period undergone as the substantive sentence.

3. In course of submission, Mr. Mohapatra, learned Standing Counsel, Vigilance concedes that keeping in view the provision in Order 1977 and absence of assertion or proof that the accused persons were licensed dealers, the case against them under Section 7(1)(a)(ii) is not pressed. He, however, submits that in view of clear provision in Clause-3 of Order 1977 and proof of breach of that order by the accused persons, each of them are liable to punishment. He criticizes the slipshod method in which the appeal was disposed of by learned Addl. Sessions Judge. Mr. Mishra, the amicus curiae, on the other hand states that in the above context the punishment of fine of Rs. 500/-(five hundred) by the trial Court was modified to reduced amount of fine by the appellate Court as against accused Munsif Shamsuddin and that order of conviction being not under challenge, no useful purpose would be served by remanding the appeal for fresh consideration against the other two accused persons because of sweeping disposal of the appeal by learned Addl. Sessions Judge.

4. On due consideration of such submission and keeping in view that the occurrence took place about 25 years back, this Court is not inclined to remand the Criminal Appeal for the whimsical disposal by the appellate Court for the sake of restoring the order of fine imposed by the trial Court so far as two out of three accused persons are concerned, when one of the accused persons was sentenced in the manner indicated above by the learned Counsel. Under such circumstance, the Government Appeal is disposed of without interfering with the order of the appellate Court.