

**Ramesh Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Jan-22-1985

**Reported in :** 1985CriLJ683; 1985(1)Crimes1072; 27(1985)DLT287; 1985(8)DRJ251

**Judge :** J.D. Jain, J.

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

**Appeal No. :** Criminal Revision Appeal No. 106 of 1984

**Appellant :** Ramesh Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** O.P. Soni,; Kamlesh Dutt and; G.S. Sharma, Advs

**Judgement :**

**J.D. Jain, J.**

(1) The facts giving rise to this revision petition against order dated 18th May 1984 of an Additional Sessions Judge succinctly are that the petitioner is a partner in the Firm-M/s. Wishan Das Kharaiti Lal, Naya Bazar, Delhi. The said firm holds a license as a wholesaler for dealing in edible-oils under the provisions contained in the Delhi Edible Oils (Licencing & Control) Order, 1977 (hereinafter referred to as 'the Order'). A raid was conducted by the officials of the Food and Supplies

Department, Delhi Administration, on the business premises of the petitioner on 14th August 1980. On scrutiny of various registers viz. stock register, bill book, cash book etc. it transpired that the petitioner should have with him in stock 1560 tins of edible oil. However, on physical verification only 1534 such tins were found in stock. Thus, there were a shortage of 26 tins of mustard and taramira oil. A case under Section 7 of the Essential Commodities Act (for short 'the Act') was, therefore, registered against the petitioner for alleged contravention of the provisions of 'the Order', the precise allegation against the petitioner being that the stock in hand did not tally with the stock of edible oil as shown in the stock register etc.

(2) The license o

(3) I have heard counsel for the parties. The learned counsel for the petitioner has canvassed with considerable favor that no infraction of either clause 8(4) of the Order or clause 9 of the license is prima facie made out and as such the learned Additional Sessions Judge fell into a grave error in arriving at the conclusion to the contrary and remanding the case for holding the trial. On a consideration of the submission made before me, I find considerable merit in the same.

(4) Clause 9 of the license provides that the licensee shall, except when specifically exempted by the Commissioner in this behalf, issue to every customer a cash memo or invoice, as the case may be, giving his own name, address and license number, the name, address and license number if any of the customer, the date of the transaction, the quantity sold, the price per Kg. or per bag, as the case may be and the total amount charged. He shall get signatures of the customer on the cash memo/invoice and shall keep a duplicate of the same to be available for inspection on demand by the licensing authority or any other officer authorised by the Commissioner in this behalf. Admittedly no cash memo or invoice was issued by the petitioner in respect of the quantity of edible oil in question. However, the submission of the learned counsel for the petitioner is that having regard to the nature of transaction and the business carried on by the petitioner it was not at all necessary. He has pointed out that the description of the goods and their quantity has been duly mentioned in the goods receipt issued by M/s. Vijay Lakshmi

Transport Company on 14th August 1980 in which the petitioner has been shown as consignor and M/s. Hira Nand Kishan Chand have been shown as consignee. Further, both these facts as also the approximate price of the goods have been mentioned in Form No. 31 prescribed under the U.P. Sales Tax Act which purports to have been duly signed by the importer M/s. Hira Nand Kishan Chand. The petitioner also placed on record a copy of letter dated 9th August 1980 written by the consignee firm to them requiring them to send 25/30 tins of mustard oil to them for sale. Moreover, according to the petitioner an entry with regard to 26 tins in question had been made in the cash book and this fact was also brought to the notice of the Deputy Commissioner, Food & Supplies, and duly noticed by him in his order dated 16th October 1980. Further, according to him, the definition of wholesaler includes a commission agent and, therefore, having regard to the nature of business being carried on by the petitioner as also the nature of the transaction, no violation of condition No. 9 of the license can be spelt out. The learned counsel for the State has, on the other hand, urged with considerable fervour that it was not open to the trial Court to take into consideration unproved documents at the stage of framing the charge and it was only at the trial that the documents relied upon by the petitioner in defense could be considered. There can certainly be no quarrel with this proposition of law but the learned Metropolitan Magistrate was absolutely justified in looking at the order of the Deputy Commissioner, Food & Supplies, exonerating the petitioner from the alleged, contravention of the various provisions of the Order and the license. His refusal to look at the same would have entailed avoidable harassment and expense to the petitioner in facing trial on a criminal charge. Certainly it is not the law that once the challan has been put in the accused must go through the mill of the trial irrespective of whether he has go prima facie a good defense which has been accepted by the concerned department. The argument of the learned counsel for the respondent that the jurisdiction of a departmental officer to scrutinise the facts of a case for proceeding under the provisions of the Order for alleged contravention of the license etc. is absolutely distinct from the jurisdiction of a criminal court and as such the criminal court must arrive at an independent finding with regard to the complicity of the petitioner / in the commission of crime is not at all tenable because basically it is the department which is to be satisfied whether

there is any contravention of the Order issued under Section 3 of the Act or the license issued there under and once the department is satisfied that no prima facie infraction of the conditions of the license or the provisions of the order is made out, it will be just an exercise in futility to p the alleged offender on trial. Indeed, the very bedrock of the prosecution is knocked out in a case like the present.

(5) I find support for the view I have taken from a reported decision of the Supreme Court in *Uttam Chand & another v. Ito, Central Circle, Amritsar*, : [1982]133ITR909(SC) . In that case the Income-Tax Officer had granted registration to a firm known as M/s. Handa and Chopra, Amritsar, for the assessment years 1960-61 onwards to 1969-70. Although the constitution of the firm continued changing from time to time, Smt. Janak Rani was throughout shown as one of the partners. Later on Smt. Janak Rani asserted before the Income Tax Officer that the assessed firm was not a genuine firm and that she was not a partner therein. She even denied her signatures on the partnership deeds. Thereupon, the Income Tax Officer vide his order dated 8th February 1972 cancelled the registration of the firm holding that it was not a genuine one. The appeal of the assessed too was rejected by the Assistant Appellate Commissioner. Eventually, however, the Income-Tax Appellate Tribunal on an appraisal of the material on record found that Janak Rani was a partner in the firm and that the firm was genuine and set aside the cancellation order of the Income-Tax Officer. In the meantime, the Income-Tax Officer initiated prosecution of the partners of the firm under Section 277 of the Income-Tax Act for having filed false returns. The assessed went in revision to the Punjab & Haryana High Court for quashing the prosecution against the firm. However, a learned Single Judge of the said High Court dismissed the revision petition, inter alia, observing that the proceedings before the Magistrate were entirely independent of the findings the Income-Tax Appellate Tribunal and that the finding of the Tribunal was not binding on the criminal court and could not operate as a bar to the prosecution of the assessed. The Supreme Court after granting special leave to .appeal against the aforesaid order of the Punjab & Haryana High Court quashed the proceedings with the following observations:

'HEARDcounsel, special leave granted. In view of the finding recorded by the Income-tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessed-firm and that the firm was a genuine firm, we do not see how the assessed can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution.'

The ratio of this judgment, to my mind, is quite clear. It is that where departmental authorities whose task it is to ensure strict compliance with the provisions of Licencing and Control Order are satisfied that there is efface no contravention of the provisions of the relevant Order or the license issued there under, it would be utterly unjust and unfair to prosecute the socalled offender on a criminal charge under Section 7 of the Act when the said charge essentially arises out of the alleged infraction of 'the provisions of the Order promulgated under Section 3 of the Act or the conditions of the license issued there under. Further, it is not for the criminal court, in a situation like this, to sit in appeal over the order made by the departmental authorities and see for itself whether the said order is based on admissible evidence or not. Suffice it to say that the departmental officers are not required to follow technical provisions of the Evidence Act and insist upon strict proof of documents produced before them by the alleged offender. Hence, all these considerations are not at all germane to the question whether charge be framed or not. It is enough that the departmental authorities have absolved the petitioner of the alleged contravention.

(6) As for the observation of the learned Additional Sessions Judge that the petitioner has prima fade violated provisions of clause 8.4 of the Order, it would appear that he has simply overlooked the provisions contained in sub-clauses (1) & (2) of clause 8 and thus mis-contrued sub-clause (4) thereof. Clause 8 of the Order is extracted below for ready reference :

'8.Regulction of sale, distribution etc. (1) The commissioner, may from time to me, by order notified in the official Gazette, regulate manufacture, purchase, sale or distribution of edible oils on the basis of permits or quota cards or in any other manner as he may deem fit, specifying, if necessary the quantity of edible oil that

may be purchased or sold by the licensees .or purchased by the permit/quota card holder from the licensees and then, every licensee and permit/quota card holder shall comply with such orders. (2) Every licensee and permit/quota card holder shall comply with any direction that may be given to him from time to time by the Licensing Authority in regard to manufacture, purchase, sale storage, distribution and disposal of edible oil and the manner in which accounts thereof shall be maintained and returns submitted. (3) No person to whom a permit or quota card or any authority has been issued for purchase or sale of edible oil shall contravene any term or condition of such permit, quota card or authority or transfer any such document to any other person in any manner whatsoever. (4) No person, who has acquired or purchased edible oil under and in accordance with a direction issued under sub-clause (2) or order issued under sub-clause (1) shall divert, transfer or dispose of edible oil so acquired or purchased save and except in the manner authorised under such direction or order. Provided that the powers under this clause shall not be exercised in respect of imposing restrictions on inter-state movement of edible oils without the prior concurrence of the Central Government.'

On a plain reading of sub-clause (4) it is manifest that before a person can be found to have committed breach of the same it must be established as a condition precedent that he had acquired or purchased edible oil under and in accordance with a direction issued under sub-clause (2) or order issued under sub-clause (1) of Clause 8. The learned counsel for the State fairly and frankly conceded that no specific direction or order was issued by the Commissioner or any other competent authority of the Food & Supplies, Department of Delhi Administration under sub-clause (1) or (2) of Clause 8 and as such the question of contravention of sub-clause (4) on the part of the petitioner does not arise. He candidly conceded that the petitioner could have purchased edible oil from any source and he was not required to obtain any permit or license from the Department of. Food & Supplies for that purpose. Similarly, the petitioner was entitled to sell or dispose of the edible oil acquired/purchased by him, in any manner and to any person but strict adherence to the conditions of the license in the matter of keeping regular accounts and stock register etc. was necessary. I have already dwelt upon the latter aspect of the matter and no further probe is called for. Hence, there is no escape from the conclusion that the learned Additional Sessions Judge has mis-

conceived and misconstrued the scope of sub-clause (4) of clause 8 of the license and as such the conclusion arrived at by him cannot be sustained.

(7) To sum up, therefore, this revision petition succeeds, the impugned order is set aside and the prosecution against the petitioner is quashed.

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