

Sebastian Vs. State of Kerala

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Court : Kerala

Decided On : Oct-13-1961

Reported in : 1962CriLJ435

Judge : P. Govinda Menon, J.

Appellant : Sebastian

Respondent : State of Kerala

Judgement :

ORDER

P. Govinda Menon, J.

1. Accused in C.C. 61 of 1959 on the file of the First Class Magistrate's Court, Trichur Who has been convicted for an Offence Under Section 6(3) of the Indian, Explosives Act Act IV of 1884 and whose appeal before the Sessions Judge of Trichur was dismissed has filed this revision petition.

2. The accused is the proprietor of Jupiter Trading Concern in Trichur, a firm licensed to possess fireworks and Chinese Crackers. On 15-9-1958, P.W. 4 the Assistant Inspector of Explosives checked the consignment of fire works which P.W. 7, the manager of the accused had taken to the Trichur Railway Station. On checking the stock it was found that some of the fireworks contained cassia chlorate. Possession of an explosive mixture containing sulphur in admixture with

potassium chlorate is prohibited under the Government of India Notification No. M. 1217 dated 9-2-39. At the request of the accused the samples were sent to the Chemical Examiner, Trivandrum, who also certified that the samples contained potassium chlorate.

3. The evidence of P.W. 1 the goods clerk, P.W. 2 the forwarding agent of the accused, P.W. 7 the manager and P.W. 4 the Assistant Inspector of Explosives has proved that the explosives were produced for testing preliminary to the transit by rail for and on behalf of the accused. This fact is not disputed by the accused. Possession of the explosives must be taken to be that of the accused even though it was P.W. 7 the manager who actually produced it before the Explosives Inspector. Possession of the prohibited article through his servant or agent really constitutes possession by the accused as the so-called possession of the representative is detention and not possession in a legal or judicial sense.

4. The learned Counsel appearing for the accused contends that the accused had no mens rea or the knowledge that the fireworks contained prohibited material and in the absence of such guilty knowledge he cannot be found guilty of the offence charged. It is true that *cactus non facit reum nisi mens sit rea* is a cardinal doctrine of criminal law, but the legislature can create offenses which consist solely in doing an act or being in possession without any intention whatsoever. Whether mens rea is a constituent part of a crime or not must in every case depend upon, the wording of the particular enactment.

5. Goddard, J. in *Evans v. Dell* (1937) 53 TLR 310 at P. 313 stated:

With the complexity of modern legislation one knows that there are times when the court is constrained to find that, by reason of the clear terms of an Act of Parliament, mens rea or the absence of mens rea becomes immaterial and (but if a certain act is done, an offence is committed whether the person charged, knew or did not know of the act.

6. In *Brend v. Wood* (1946) 62 TLR 462 at p. 463, Lord Goddard, C.J. again reiterated the same principle:

It is of the utmost importance for the liberty of the subject that a court should always bear in mind that unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

7. In *Sherras v. De Rufzen* (1895) 1 QB 918 at p. 921 Mr. Justice Wright pointed out:

There is a presumption that mens rea . . . intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence, but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered

8. In *Halsbury's Laws of England*, Vol. 11 at page 11 the learned author says:

In a limited class of offence, mens rea is not an essential element. This class consists, for the most part, of statutory offences of minor and only quasi-criminal character and in order to determine whether mens rea is an essential element of an offence, it is necessary to look at the object and terms of the statute which creates it,

9. In *Hariprasada Rao v. The State* : 1951 CriLJ768 , his Lordship Fazl Ali, J. has observed:

Unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind.

10. In *State v. Caulfield Holland Ltd.* : (1953) 111 LLJ 458 Bom , and was held that it was open to the legislature to provide for offences where mens rea might not be an essential element and that if the legislature expressed its intention in that behalf in unambiguous and clear language, the principle that mens rea must ordinarily be established in a criminal case would have no application.

11. This decision has been followed in a later decision of the Bombay High Court in *State v. Ismail Shakur Morani* A.I.R. 1958 Bom, where the entire case-law has

been discussed. The charge was Under Section 5(3) of the Act which penalises manufacture; possession etc. of explosives in contravention of rules made under the Act and Section 6(3) penalises manufacture, possession etc. in contravention of notifications issued under the Act. It was held:

When the Legislature enacted Section 5(3) of the Act. it intended that the state of the mind of a person or his knowledge or his intention should be immaterial for the purpose of constituting an offence under that sub-section.

12. Thus there is a judicial agreement that in order to find whether mens rea is or is not a constituent element of an offence created by a statute we must turn to the words of the statute. The legislature can either clearly or by necessary implication rule out mens rea as a constituent part of a crime. If the essence of the offence is solely in the doing of an act or in the mere possession and nothing more was required the question of mens rea would not arise. On the other hand if the legislature intended that the state of the mind of the doer should be a constituent part of the offence this prosecution would fail without proof of mens rea.

If we look into the various sections of the Explosives Act. no such word as 'knowingly' or 'intentionally' occurs, before the word 'imports' or 'possesses.' It is clear that the intention of the legislature in enacting these provisions was that the state of the mind of the person was immaterial and irrelevant when an offence is committed.

13. In order to gather the intention of the legislature when the Indian Explosives Act was enacted, we may with advantage turn to the provisions of Sections 3, 4 and 5 of the Explosive Substances Act. 1908. Section 3 says:

Any person who unlawfully and maliciously causes by any explosive substance

Section 4 provides:

Any person who unlawfully and maliciously ... (a) does any act with intent to cause by an explosive substance ... (b) makes or has in his possession or under his control any explosive substance

Section 5 provides:

Any person who makes or knowingly has in his possession or under his control any explosive substance....

It is, therefore, clear that when the legislature intended that the state of the mind of a person should be a vital constituent element of an Offence, words indicative of that intention would be expressly used.

14. But in the Indian Explosives Act, such or similar words are conspicuous by their absence, which must show beyond doubt that when the legislature enacted Sections 5 and 6 of the Act, it intended that the state of the mind of a person or his knowledge or his intention should be immaterial for the purpose of constituting an offence. The legislature has enacted the Act and has provided that explosives should not be manufactured or that explosives should not be stocked except under conditions which would not be detrimental to the public safety, health and convenience. So stocking of prohibited explosives is made punishable without any proof of mens rea. There are other enactments, for instance, the Prevention of Food Adulteration Act which penalises sale of adulterated food without proof of mens rea.

15. For these reasons the argument of the learned Counsel for the petitioner that the accused cannot be convicted of the offence unless the requisite mens rea is proved cannot be accepted. The result is the conviction has to be confirmed and the revision petition has to be dismissed.

16. Regarding the sentence it is not claimed that these fire-works containing potassium chlorate were manufactured by the petitioner himself. In *Emperor v. Mahadevappa* A.I.R. 1927 Bom 209 Mr. Justice Crump in the course of his judgment stated that the accused's ignorance though is not a defence was often taken as a mitigating circumstance. Following this view, I consider, a fine of Rs. 150/- would be sufficient to meet the ends of justice.

17. In the result while confirming the conviction, the sentence is reduced to a fine of Rs. 150/-. Excess fine, if paid would be refunded. With this modification the

revision petition is dismissed.

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