

Gyasiram Vs. the State

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Court : Rajasthan

Decided On : Feb-10-1964

Reported in : AIR1964Raj237; 1964CriLJ581

Judge : I.N. Modi, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3(2) and 7(1); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190

Appeal No. : Criminal Ref. No. 12 of 1963

Appellant : Gyasiram

Respondent : The State

Advocate for Def. : S.R. Singhi, Adv.

Advocate for Pet/Ap. : R.P. Goyal, Adv.

Judgement :
ORDER

I.N. Modi, J.

1. This is a reference under Section 439 Cr. P.C. by the Sessions Judge, Bharatpur in a case under Section 3 read with Section 7 of the Essential Commodities Act (No. X of 1955, hereinafter called the Act) and arises under

circumstances presently to be mentioned.

2. The accused petitioner is a food-grain dealer holding a license under the Rajasthan Food-grains Dealers Licensing Order, 1958, (hereinafter referred to as the Order of 1958). On the 14th November, 1958, the Tehsildar, Bnaratpur, who is the licensing authority in this class of case, inspected the petitioner's shop. He discovered that the petitioner was not maintaining account-books or receipt-books' properly as required under the conditions of the license. Consequently, he reported the matter to the police at Bharatpur. After the usual investigation, the police challaned the petitioner for an offence under Section 3 read with Section 7 of the Act for failure to maintain accounts as stated above in the court of the Special Magistrate, Bharatpur.

The learned Magistrate framed a charge against the accused for contravening conditions Nos. 3 and g of the license issued under the Order of 1958. Condition No. 3, broadly speaking, requires that the licensee shall maintain a register of daily accounts for each of the foodgrains for which license has been given to him, showing correctly the opening stock and the closing stock on each day together with the quantity received less the quantity delivered. Condition No. 5 lays down that the licensee shall issue to every customer a correct receipt or invoice giving the necessary particulars mentioned therein and that he shall keep a duplicate of the same to be available for inspection on demand by the licensing authority or any officer authorised by him in this behalf. The accused went up in revision against the order of charge. His case was that the particular breach for which he was being prosecuted fell under Section 3(2)(i) of the Act and that it was punishable under Section 7(1)(a)(i) with imprisonment for a term which may extend to one year only (apart from fine) and on this submission it was further contended that it was a non-cognizable offence and triable as a summons case, and, therefore, the police had no power to investigate the case nor the Magistrate to take cognizance of it on a police report, and, therefore, the whole prosecution be quashed and the accused be discharged.

The recommendation of the learned Sessions Judge is that the submission of the petitioner that his prosecution properly fell under Section 3(2)(i) of the Act and that

the same was punishable' under Section 7(1)(a)(i) with an imprisonment for a term which may extend to one year only is correct, and that being so, the offence was a non-cognizable, one and the investigation by the police into this offence was irregular. The learned Judge was, however, further of the opinion that the trial had not been completed in this case but was in an initial stage only and, therefore, the charge be quashed and the Magistrate be directed to try the case in accordance with the procedure laid down for the trial of a summons case.

3. I have heard learned counsel for the petitioner and learned counsel for the State, and carefully examined the law bearing on the subject. Learned counsel for the State opposes the reference, his principal submission being that the petitioner was a license-holder under the Order of 1958 and his case therefore fell to be governed by Clause (d) of Sub-section (2) of Section 3 and not by Sub-section (2) (i) thereof as urged by learned counsel for the petitioner, and in that view of the matter, it is maintained that the offence for which the petitioner is being prosecuted would fall under Section 7(1)(a)(ii) and not under Section 7(1)(i), and consequently the offence with which the accused petitioner was charged is punishable with imprisonment for a term of three years and is cognisable and triable in the manner of a warrant case and, therefore, both the investigation and the charge were perfectly proper. Section 3(2)(d) provides for an order to be made for regulation of the storage, transport, distribution, disposal, acquisition, sale or consumption of an essential commodity by license, permit or otherwise.

4. The narrow point for decision is whether the last-mentioned submission is correct. Unfortunately, the language of Section 3 is not as explicit and happy as one might have wished it to be. At the same time, on a careful and close examination of its entire language, I have come to the conclusion that the submission of learned counsel for the State cannot be accepted as correct. The first sub-section of Section 3 lays down that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. This is a very comprehensive provision, and various orders have been issued by the Central

Government from time to time as also by the State Government under authority delegated to it under Section 5 of the Act in this behalf and the order of 1958 is one such order with which we are concerned in the present case.

5. Then we come to Sub-section (2) which lays down that without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide for a number of matters which are enumerated under ten clauses thereof. Generally speaking, it may be stated that these clauses enable the Government concerned to make provision in the various orders made by it for regulating the production or manufacture of any essential commodity by a system of licenses or permits, or regulating the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity also by a system of licences or permits or any other like method, or controlling the price at which any essential commodity may be bought or sold, or requiring any person holding in stock any essential commodity to sell the whole or any specified part of the stock to the Central Government or a State Government or to an officer or agent thereof, and so on and so forth. Particular mention may be made of Clause (1) of Sub-section (2) which duly expanded reads as follows :

The order made under Sub-section (i) may provide : 'For requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order'.

6. This brings us to Section 7 which deals with penalties, and it appears that division has been made for breaches of any order made under Section 3 into two broad classes, namely (i) breach of an order made with reference to Clauses (h) and (i) of Sub-section (2) shall be punishable with imprisonment for a term which may extend to one year with liability to pay fine also and (2) breach of any other order has been made punishable with imprisonment for a term which may extend to three years with like liability to pay fine. A further provision has been made for forfeiting the property (with respect to which the order may have been contravened) to the Government, but with that we are not concerned here.

7. Now having regard to the scheme of Section 3 read with Section 7 of the Act, I am disposed to think that the present case does fall within Section 7(1)(a)(i) which lays down that in the case of an order made with reference to Clause (h) or Clause (i), the breach will be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine, and it does not fall within the next following clause of that section. It is correct that the petitioner is a license holder. But merely on that account, his case would not fall under Clause (d) of Sub-section (2) thereby becoming punishable under Section 7(1)(a)(ii) with three years imprisonment, because according to the scheme of the Act, it seems to me that breaches in various respects occurring under a particular order have been classified for the purposes of Section 7, and where the breaches alleged are with respect to Clause (h) or Clause (i) in an order made under Sub-section (2) of Section 3, then such a case is bound to fall under Section 7(1)(a)(i), and no other view can be reasonably accepted as correct.

8. In coming to this conclusion, I have been mainly guided by the language of Section 3(2) read with that of Section 7. Section 3(2) lays down that an order made under Sub-section (1), may provide for a number of contingencies or objectives referred to in the various clauses of that sub-section. This Sub-section, therefore, in its essence provides that in an order made under Sub-section (1), provision might be made for achieving the various objects enumerated under the several clauses of that Sub-section. Thereafter Section 7 classifies the breaches of such provisions into two Broad classes and provides different punishments for them according as the offence has reference, to Clause (h) or (i) of Section 3(2) in which case the offence has been made punishable with imprisonment extending upto one year and is therefore cognizable, or has reference to other clauses in which case it would be punishable with imprisonment extending upto three years, and would be non-cognizable.

9. Having regard to these considerations, I am clearly of opinion that the petitioner here is being charged for breach which falls within Clause (i) of Sub-section (2) of Section 3 of the Act, and that being so, there is no escape from the conclusion that the offence was a non-cognizable one triable in the manner of a summons case. I hold accordingly.

10. The next question is whether the investigation made by the police in this case was illegal and the learned Magistrate could not take cognizance of it on the basis of such an investigation. The answer to this question is conclusively furnished by a decision of their Lordships in *H.N. Rishbud v. State of Delhi*, (S) AIR 1955 SC 196. In this case, their Lordships pointed out that it was undeniable that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial, and that it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance under Section 190, Cri. P. C. and further that while no doubt in one sense Clauses (a), (b) and (c) of Section 190 (1) are conditions requisite for taking of cognizance, it would not be possible to say that cognizance on an invalid police report was prohibited and was, therefore, a nullity, and such an invalid report may still fall either under Clause (a) or (b) of Section 190(1).

Their Lordships finally observed that in any case Cognizance so taken was only in the nature of error in a proceeding antecedent to the trial and to such a situation Section 537, Cri. P. C. would be attracted. That is to say, if cognizance is in fact taken on a police report which is assailed as being vitiated by the breach of a mandatory provision relating to investigation, the trial cannot be quashed unless the illegality in the investigation, can be shown to have brought about a miscarriage of justice. Another way of looking at such invalid police reports may be to treat them as complaints. See *Public Prosecutor v. A. V. Ramiah*, AIR 1958 Andh Pra 392. But in whichever way we look at the case, it cannot possibly be held that merely because an irregularity like this occurs, the entire prosecution need be quashed and the accused discharged. If the case had proceeded to completion then the only question for consideration should have been whether any prejudice had been caused to the accused thereby, and, if it had not been, any irregularity in the investigation or the trial could not have affected the result. As the present case, however, is just at the initial stage, it is possible to correct the error made by the Magistrate by quashing the charge and directing him to proceed with the trial of the case after the manner of a summons case. I order accordingly.

11. The result is that this reference is accepted and the charge framed, against the accused is quashed and the trial Magistrate, is directed to try the accused

according to law in accordance with the procedure laid down for the trial of a summons case.

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