

Manoharlal Vs. State

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Court : Rajasthan

Decided On : Sep-10-1981

Reported in : 1982CriLJ1411

Judge : M.B. Sharma, J.

Appellant : Manoharlal

Respondent : State

Judgement :

ORDER

M.B. Sharma, J.

1. This revision arises out of a case Under Section 3/7 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act). Under the said section, accused petitioner was convicted by the learned Chief Judicial Magistrate, Udaipur for contravention of condition (8) of license granted to the accused petitioner under the Rajasthan Hydrogenated Vegetable Oils Dealers Licensing Order, 1968 (hereinafter referred to as the Order). The accused petitioner was sentenced to undergo simple imprisonment for one month and to pay Rs. 1,000/-, as fine and in default of payment of which further to undergo simple imprisonment for two months. The learned Chief Judicial Magistrate also ordered the forfeiture of 34 tins of the oil seized from the accused petitioner.

2. In a revision petition which was filed by the accused petitioner in the court of Additional Sessions Judge, Udaipur, the learned Judge maintained the conviction of the accused petitioner but modified the sentence awarded. The accused petitioner was sentenced to imprisonment already undergone and to pay a fine of Rs. 300/- or in default further simple imprisonment for three months.

3. The learned Counsel for the petitioner does not challenge the conviction of the accused petitioner and the fine and sentence imposed by the learned appellate court and rightly so. There is sufficient material on record that condition (8) of the Order has been contravened by the accused petitioner and, therefore, the accused was rightly convicted Under Section 3/7 of the Act for the contravention of condition (8) of the Order. The contention of the learned Counsel is that the learned court has erred in not allowing him to argue about the forfeiture of 34 tins. He submits that a revision petition was filed against the conviction, the judgment was one and in para 1 of the grounds of the revision it is clearly mentioned that a penalty of forfeiture of property i.e. vegetable oil tins was wrongly passed. While a matter is under revision it is open for the court to decide the matters involved therein in case those matters are questions of law. According to the learned advocate the contravention of Clause (8) of the Order made Under Section 3 of the Act only related to two tins of vegetable oil and there is no contravention as far as the 34 tins are concerned. He therefore, submits that the seizure of 34 tins of hydrogenated vegetable oil was not warranted by law and as such those tins should not have even been seized and forfeited.

4. I am of the opinion that the submission of the learned advocate has force, The learned appellate court has refused to deal with the submission of the learned advocate with regard to the seizure of 34 tins of the vegetable oil on the ground that no appeal or revision with regard to that part of the order of the learned trial court was filed. In the revision petition the conviction of the accused petitioner was challenged and in case the conviction would have been set aside the tins of vegetable oil could not have been forfeited. Thus the learned appellate court erred in not dealing with the argument of the learned advocate that 34 tins of vegetable oil could not have been forfeited. Clause (16) of the Order deals with powers of entry, search etc, The Licensing Authority or any other officer authorised by the

State Government on that behalf may with such assistance, if any, as if he thinks fit, enter, inspect, to break of, search any premises, place or vessel in which he has reason to believe that any contravention of the provisions of this Order or of the conditions of any licence issued thereunder has been, is being or is about to be committed. He can also search, seize and remove stocks of hydrogenated vegetable oils and the animals, vehicles, vessels or other conveyance used in carrying the said hydrogenated vegetable oils in contravention of the provisions of this Order, or of the conditions of the licence issued thereunder and thereafter take or authorise the taking of all measures necessary for securing the production of stocks of hydrogenated vegetable oil and the animals, vehicles, vessels or other conveyance so seized, in a court and for their safe custody pending such production. Under the above referred provisions of the Order only such stock of hydrogenated vegetable oil relating to which contravention of the order or of condition of licence issued thereunder takes place can be seized. Under Section 7(1)(c) of the Act if any person contravenes any order made Under Section 3, then besides convicting and sentencing him the court has to order that any property in respect of which the order has been contravened, shall be forfeited with the Government. The words 'any property in respect of which' are not without significance. Therefore, only that property in respect of which the order is contravened can be seized and forfeited to the Government, It is not the case of the prosecution that the order was contravened with regard to 34 tins of vegetable oil which were seized. The case of the prosecution was that 2 tins of vegetable oil out of forty had been sold. There was no entry about their sale. Only 34 tins were in the stock and four had been sold that day thus condition (8) of the licence was contravened so far as 2 tins of vegetable oil were concerned. The competent authorities could not have seized the 34 tins of vegetable oil relating to which the order or any condition of the licence was not contravened. The learned Magistrate could not have ordered the forfeiture of the 34 tins of the vegetable oil.

In the result, the revision is partly allowed. The conviction and sentence of the accused Under Section 3/7 of the Act for contravention of condition (8) is dismissed. The order of the learned Magistrate confiscating 34 tins of hydrogenated vegetable oil is set aside. The tins or their price if they have been sold, shall be returned to the petitioner.

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