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Court : Rajasthan

Decided On : Mar-31-1976

Reported in : 1977CriLJ694; 1976(9)WLN231

Judge : Kalyan Dutta, J.

Appellant : Prahlad

Respondent : State of Rajasthan

Judgement :

ORDER

Kalyan Dutta, J.

1. This is a reference made by the Additional Sessions Judge, Tonk, with a recommendation that the order of the Sub-Divisional Magistrate, Tonk, dated 27th January, 1973, convicting Prahlad petitioner for an offence punishable under Section 3/7 of the Essential Commodities Act, hereinafter referred to as the Act. read with Section 3 of the Rajasthan Hydrogenated Vegetable Oils Dealers Licensing Order, 1968, hereinafter referred to as the Licensing Order, and sentencing him to pay a fine of Rs. 30/-, and in default of payment of fine to undergo simple imprisonment for seven days and confiscating six tins of hydrogenated vegetable oil to the State may be quashed on the ground that the petitioner could not be prosecuted and convicted for this offence, as Sub-section (2) of Section 3 of the Licensing Order was amended by Notification No. F. 17 (32)

Food/Sup/Legal/68, G.S.R. 12 published in the Rajasthan Raj Patra Extraordinary 4 (Ga) (i) dated 29th May, 1972, and a quantity of 100 Kgs. of hydrogenated vegetable oil was substituted for a quantity of 66 Kgs. of such oil for purpose of storage or sale.

2. The brief facts of this case are that on 4-1-1973, Lalit Prasad, Enforcement Officer, Tonk, inspected the shop of Prahlad petitioner and found 6 tins of hydrogenated vegetable oil of Chetak Brand weighing 99 Kgs, in it. The tins of the hydrogenated vegetable oil were stored by the petitioner at his shop for sale without obtaining a licence by the Licensing Authority. The prosecution was, therefore, commenced against the petitioner in the court of the Sub-Divisional Magistrate, Tonk, for infringing the conditions of the Licensing Order, 1968. The learned Sub-Divisional Magistrate framed a charge against the petitioner under Section 3/7 of the Act read with Section 3 of the Licensing Order. The charge was read over and explained to the petitioner, to which he pleaded not guilty. The petitioner admitted before the Sub-Divisional Magistrate that he had no licence with him for storage of 99 Kgs. of hydrogenated vegetable oil for sale at his shop and that he kept those tins inside his shop for sale without obtaining a licence under the Licensing Order. The learned Sub-Divisional Magistrate convicted the petitioner on his plea of guilty, but, as the petitioner was a first offender, he did not think it proper to pass a deterrent sentence against him in this case. Accordingly, the petitioner was sentenced to a fine of Rs. 30/-, only. Aggrieved by his conviction and sentence, the petitioner filed a revision-petition in the court of the Additional Sessions Judge, Tonk, who, after hearing the parties and relying upon several authorities, came to a conclusion that the conviction of the petitioner v/as unsustainable in the eye of law because by virtue of amendment of subsection (2) of Section 3 of the Licensing Order, vide Notification No. F. 17 (32) Food/Sup/Legal/68, G.S.R. 12, published in the Rajasthan Raj Patra Extraordinary 4 (Ga) (i) dated 29th May, 1972, the petitioner could store 100 Kgs. of hydrogenated vegetable oil for sale without obtaining a licence. The Additional Sessions Judge, Tonk, has, therefore, made this reference.

3. I have carefully gone through the record and heard Mr. V.S. Dave for the petitioner and Mr. D.S. Shishodia for the State. I may observe at the outset that

the Additional Sessions Judge, Tonk, committed an error in making a reference to this Court. Neither the Act, nor the Licensing Order made by the State Government in exercise of its powers by Section 3 of the Act read with the Notification of the Government of India, in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) No. 1 III, dated 24th July, 1967, are laws of temporary nature, because no time is fixed for their duration. Hence, it cannot be said that the liability incurred by the petitioner on 4-1-1972, for infringing Sub-section (2) of Section 3 of the Licensing Order ipso facto terminated with the amendment of Section 3 of that Order. It is undoubtedly true that a prosecution launched against a person under a temporary statute automatically lapses with the repeal of the statute in the absence of a savings clause, similar in effect to Section 7 of the General Clauses Act, 1897, but if the provisions of any statute or order are not temporary in character, the proceedings taken against a person under a statute or an order did not ipso facto terminate as soon as the statute or the order is amended or repealed. In the present case when the shop of the petitioner was inspected by the Enforcement Officer, Sub-section (2) of Section 3 of the Licensing Order provided that a person could store at any time hydrogenated vegetable oil for sale in quantity not exceeding 66 Kgs. without obtaining a licence. As the petitioner was found to have stored 99 Kgs. of hydrogenated vegetable oil for sale at his shop, he was prosecuted for infringement of Section 3 of the Licensing Order, but later on, by notification No. F. 17 (32) Food/Sup/Legal/68, G.S.R. 12, Sub-section (2) of Section 3 of the Licensing Order was amended to the effect that a person could store 100 Kgs. of hydrogenated vegetable oil for sale at any one time without obtaining a licence. The petitioner's contention is that by virtue of amendment made in Sub-section (2) of Section 3 of the Licensing Order, a new provision regarding the quantity of hydrogenated vegetable oil was substituted for the existing provision, with the result that the existing provision was repealed and a new one was inserted in its place and that the prosecution launched against him could not be validly continued before a competent court after such amendment. The above contention is not acceptable, because, even if it is held that Sub-section (2) of Section 3 of the Licensing Order was repealed by notification No. F 17 (32) Food/Sup/Legal/68, G.S.R. 12, the provisions of Section 6 of the General Clauses Act, 1897, would

come into play and liabilities incurred under the old sub-section would not ipso facto terminate with the repeal of that sub-section, unless there is a contrary intention disclosed by such amendment. Accordingly. I am of the view that the conviction and the sentence of the petitioner cannot be set aside, merely because an amendment was made in Sub-section (2) of Section 3 of the Licensing Order by Notification No. F. 17 (32) Food/Sup/Legal/68, G.S.R. 12, hereinafter authorising a person to store for sale 100 Kgs. of hydrogenated vegetable oil without obtaining a licence.

4. The reference is, therefore, devoid of substance and is hereby rejected. The case is sent back to the learned Additional Sessions Judge, Tonk, for hearing the revision-petition on merits after giving notice of the date, time and place of hearing to the parties concerned.

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