

Pawan Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-09-1988

Reported in : 1989WLN(UC)165

Judge : R.S. Verma, J.

Appeal No. : S.B. Cr. Revision Petition No. 364 of 1980

Appellant : Pawan Kumar

Respondent : State of Rajasthan

Disposition : Petition Allowed

Judgement :

R.S. Verma, J.

1. The learned Chief Judicial Magistrate Banswara in criminal original case No. 17/75 vide judgment dated 7-7-1979 found Pawan Kumar guilty of an offence under Essential Commodities Act and convicted and sentenced him to undergo rigorous imprisonment for four month's and to pay a fine of Rs. 300 & in default of payment of time to undergo further rigorous imprisonment for two month's Aggrieved by the aforesaid judgment, Pawan Kumar went in appeal to the learned Sessions Judge, Banswara. His appeal was dismissed after due hearing by the learned Sessions Judge on 4-11-1980. Aggrieved Pawan Kumar have come in

revision to this court.

2. Briefly stated the prosecution case is that Pawan Kumar was granted a licence to run a fair price shop by Tehsildar Ghatol for the period from 28-12-72 to 31-3-1974 in pursuance of the Rajasthan Sugar Dealers Licensing Order, 1967 there in after called the order), on the terms and conditions specified in licence Ex. P 4. This licence inter-alia laid down condition No. 3 as follows:

3. The licence shall issue to every customer a correct receipt or invoice as the case may be giving his own name, address and licence number the name, address the licence number (if any) of this customer the date of transaction the quantity sold, the price per quintal and the total amount charged and shall keep a duplicate of the same be available for inspection on demanded by the licencing authority or any other officer authorised by him in this behalf.

A special condition No. 3 was further specified as follows:

3. The licence shall maintain true and correct account of the sugar received and sold by him under the allotment issued to him by the Collector.

3. On 29-3-1974 Enforcement Inspector Ram Charan PW 2 made an inspection of the fair price shop run by Pawan Kumar at Somalia and found stock of 10 qtl. 31 k g. and 200 gms, of sugar in the licensee's go-down. The sugar was short by 1 qtl. 6 kg and 100 gms. Ram Charan prepared a memo of this checking Ex. P. 1 in presence of Phool ji PW. Vijay Singh PW 3 Rameshwar PW 5. It is alleged that revision petitioner Pawan Kumar was present when this checking was made and he was also made to sign Ex. P. 1. On the basis oF aforesaid inspection, the Enforcement Inspector, Ghatol lodged A report (also marked Ex. P 1) with Station House Officer, Pipalkhunt upon which a case under Section 3/7 of the Essential Commodities act was registered. Investigation was made by PW 6 Kishore Singh and eventually a chargesheet was filed against the revision petitioner for an offence under Section 3/7 of the Essential Commodities Act.

4. The learned Chief Judicial Magistrate, Banswara framed a charge against the revision petitioner on 24-11-1975 for offence under Section 3/7 of the Essential

Commodities Act inter-alia mentioning that his licence for fair price shop of sugar was checked on 29-3-1974 by the Enforcement Inspector and 1 qtl. 6 k.g. 100 gms. sugar was found short and there by he has. violated condition No. 3 of licence issued by Rajasthan Sugar Dealers Licence Order, 1967. The revision petitioner pleaded not guilty and claimed trial. At 1989 WLN(UC) Pawan Kumar v. State of Rajasthan (Verma, J.) 167 the trial, prosecution examined PW 1 Phoolji, PW 2 Ram Charan, PW 3 Vijay Singh, PW 5 Rameshwar, PW 6 Kishore Singh and PW 7 Nagin Lal. In the abatement recorded under Section 313 Cr.P.C. revision petitioner maintained that his stock of sugar was correct. He claimed that he had been challenged just to harass him. He did not lead any evidence in defence.

5. Learned Chief Judicial Magistrate after hearing both the parties was of the view that prosecution had proved beyond reasonable doubt that Pawan Kumar was a licenced sugar dealer and licence Ex. P. 4 had been issued to him on 29-3-1974. His shop was checked by PW 2 Ram Charan Enforcement Inspector and there was a deficit in the go-down to the tune of 1 qtl. 6 k.g. 100 gms. of sugar and thereby the revision petitioner had violated condition No. 3 of the licence (Ex. P. 4) He, therefore convicted sentenced Pawan Kumar as aforesaid.

6. In the appeal filed before the learned Sessions Judge, it was contended that the charge had not been brought home against Pawan Kumar beyond shadow of reasonable doubt. Reliance was placed on the evidence of Phoolji and Vijai Singh to show that Inspector Ram Charan had not got the stock weighted at all and it was only by way of surmises that the deficit was recorded. Learned Sessions Judge repelled this contention and relying upon testimony of Ram Charan upheld the conviction and sentence, passed by the learned Chief Judicial Magistrate. Aggrieved Pawan Kumar has come in revision to this Court.

7. Learned counsel for the petitioner submits that in this case Ex. P.I does mention deficit of 1 qtl. 6 kg. 100 gms. of sugar but in fact there is no-evidence on record to show that any weighment of sugar was got done. It is submitted that Ram Charan had noted down the deficit only on the basis of counting of bags. It is stated in Ex P.I that 10 Qtl. 31 kg. 200gms. of sugar was found at the godown. This much

quantity of sugar would have taken a good deal of time in getting the weighing done. A proper weighing machine would have been required to make this weighing. If really weighing would have been done. Ex. P. 1 would have mentioned this fact. But since all this was not done Ram Charan vaguely mentioned that physical verification of the stock was made. He did not mention about the factum of any weighing in Ex. P. 1. As such any shortage in the stock of sugar was assumed merely on surmise and conjectures and the petitioner should not have been convicted and sentenced on such basis.

8. Learned Public Prosecutor opposes the revision petition and submits that there was a deficit of sugar in stock of the revision petitioner and as such this court should not disturb the conviction and sentence recorded by the learned Chief Judicial Magistrate and maintained by the learned Sessions Judge.

9. I have carefully considered the rival contentions and have also gone through the record of the learned court below. Ex. P.1 does not mention that any weighing of sugar was done by Ramcharan, Enforcement Ins. It of course vaguely mentioned that physical verification of the godown had been done. Ex. P. 1 does not mention the name of the person who might have made the weighing of the sugar available in the godown at the time of inspection. Had really weighing been done, this fact would have naturally found mention in Ex. P. 1. Omission to mention that weighing of sugar had been done at the time of checking renders the defence contention probable that actually no weighing might have been done and storage might have been recorded counting sugar bags. This takes me to the consideration of the evidence of the attesting witnesses of Ex. P.1. Phoolji has deposed in his examination in chief that Inspector from Ghatol had come and had counted sugar bags lying in the shop of Pawan Kumar. Inspector had prepared Ex. P.1 and he had attested the same, In cross-examination he has categorically admitted that no weighing of sugar was got done. He clarifies this by saying that sugar bags had been counted and in all there were 11 bags and on that basis approximation had been done. It would be proper to recall here that Phoolji was not declared hostile and no permission was sought by the learned Public Prosecutor to cross-examine this witness. Hence, the prosecution is bound by the testimony of this witness which remains unchallenged on the question of alleged

weighment. To the same effect is the testimony of PW-3 Vijai Singh and he has also categorically stated that sugar was not got weighed in his presence. This witness was also not declared hostile nor permission we sought to challenge his statement by way of cross-examination.

10. Ramcharan (PW. 2) is the most important witness in the case upon whose testimony implicit reliance has been placed by the learned courts below. He stated in his examination in chief that he made physical verification of the stock of sugar and found that 10 qtl. 01 kg. 200 gms. and 1 qtl. 6 kg. 100 gms. of sugar was short. He claims to have prepared Ex. P 1. It may be stated that this witness does states that he got any weighment done. Hence this testimony of Ramcharan is very much compatible with the testimony of other witness when they say that no weighment was got done but only sugar bags were counted. This shows that Ramcharan made a surmise about shortage only on the basis of counting of bags. In a criminal case entailing serious penalty such approximation was neither proper non desirable. When a shortage was alleged, the Inspector was under a duty to get proper weighment done to substantiate the charge of shortage.

11. Rameshwar the other witness pertaining to the aforesaid alleged checking was of course declared hostile and was cross examined by learned A.P. His statement was not much assistance in this case either to the prosecution or to the revision petitioner.

12. Kisbore Singh PW 6 is the witness who investigated into the matter. He admits that he himself did not made any physical verification. He clearly admits that accord to the investigation made by him receipt of sugar and distribution thereof tallied with each other. The evidence of Kishore Singh thus, does not assist the prosecution in any manner. In other .words, he does not support the charge of shortage.

13. I may here state that the learned Sessions Judge did not consider this aspect of the matter at all that Phoolji and Vijay Singh were witnesses of the prosecution and bad not been declared hostile and had not been cross examined in any manner to challenge their testimony. He also failed to take note of the situation that Inspector Ramcharan himself did not speak of any weighment, Hence, I am of

the view that the prosecution has failed to prove beyond doubt that there was a shortage in the stock of the sugar kept by the revision petitioner in his shop. When it is so the conviction and sentence passed upon the petitioner cannot be maintained.

14. No other point was urged before me.

15 In view of what I have stated above, this revision petition is liable to be accepted and is hereby accepted. The judgment of the learned courts below and sentences recorded by them against the revision petitioner for the offence under Section 3/7 of the Essential Commodities Act are set aside and he is acquitted of the charges under Section 3/7 of the Essential Commodities Act. Fine, if paid, shall be refunded to the revision petitioner.

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