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Court : Rajasthan

Decided On : Feb-24-1977

Reported in : 1977WLN88

Judge : M.L. Shrimal, J.

Appeal No. : S.B. Criminal Revision Petition No. 37 of 1977

Appellant : Fatehlal

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

M.L. Shrimal, J.

1. On January 7, 1974 Balu (P.W. 1) went to Pannalal, Agriculture Extension Officer, Panchayat Samiti, Asind and asked him to supply urea fertilizer. Pannalal showed his inability for want of stock, at which Balu in a taunting language said that it was available in the market at black market rates, which made Pannalal to give him a hundred rupee currency note initialled by him. He asked Balu to purchase urea fertilizer available from the market and report back to him Balu in the company of Magna went to the accused-petitioner Fatehlal, who offered to sell fertilizer at the rate of Rs. 78/- per 'katta'. The real to purchase seven 'kattas' of

fertilizer at the rate of Rs. 78/- each was settled. Balu paid a currency note of Rs. 100/- to the accused, took delivery of one 'katta', assuring him that he would return to have the remaining 'kattas' when he would pay the balance. Thereafter Balu reported it to Pannalal. First information report Ex P. 1 regarding this transaction was lodged at the Police Station, Asind It bears the signatures of Balu, Pannalal and Magna. The Police after registering the case searched the house of the accused, recovered eight 'kattas' full of urea fertilizer and four empty bags of urea fertilizer. The marked currency note was also recovered from the possession of the accused petitioner. After usual investigation the Police submitted a challan against the accused under Section 3/7 of the Essential Commodities Act in Court of the Chief judicial Magistrate, Bhilwara. The accused pleaded not guilty to the charge. The statements of Balu and Magna corroborated by the first information report, recovery of the initialled currency note and the statement of Pannalal convinced the learned Magistrate that the accused and offered for sale seven 'kattas' of fertilizer at a price exceeding the maximum price fixed under Clause (3) by the Central Government. He further held that the accused sold one 'katta' of fertilizer to Balu at the rate of Rs. 78/- per katta', and the accused did not possess a certificate of registration required under Rule 5 of the Fertilizer Control Order, 1957. On the basis of the above findings the learned Magistrate held the accused guilty of the offence punishable under Section 3/7 of the Essential Commodities Act and sentenced him to three months' simple imprisonment and a fine of Rs. 1000/-, in default of the payment of which to suffer further simple imprisonment for one month

2. Being aggrieved by the aforesaid judgment dated July 30, 1976 the accused went in appeal which came up for hearing before the learned Sessions Judge, Bhilwara. The learned Sessions Judge after reappraisal of the evidence, affirmed the findings arrived at by the trial court and came to the conclusion that the accused was a dealer, who had no certificate of registration and he offered for sale and sold urea fertilizer at a rate higher than that fixed i.e. at the rate of Rs. 78/- per 'katta' whereas the rate fixed was Rs. 55.13 paisa per 'katta'. The conviction and sentence awarded to the accused by the trial court were upheld. Hence this revision petition.

3. The learned Counsel appearing on behalf of the accused-petitioner has urged that this sale was a casual transaction by the accused-petitioner to Balu and one transaction is not sufficient to hold that the accused was a dealer. The learned Counsel for the petitioner has frankly conceded that this point was not raised before the two courts below. The question whether the accused was a regular dealer in fertilizers or merely a casual seller is a question of fact. If during the course of trial some questions would have been put to Balu, Magna or other prosecution witnesses in cross-examination challenging the fact that the accused was a dealer and was doing the business of selling fertilizers then the prosecution could have examined further evidence to prove 'that the accused used to deal in fertilizers. It appears that the accused felt satisfied knowing his position fully well that this point was not challengeable before the trial court. It was not contested before the appellate court that the appellant was a dealer so much so that even in the memo of revision petition filed before this Court this point has not been raised. In such circumstances this point cannot be allowed to be raised at this stage. Apart from that from the evidence on record it has been proved that the accused first demanded Rs. 80/- per 'katta' but after some higgling agreed to sell it at the rate of Rs. 78/ per 'katta' and accepted a hundred rupee currency note against the transaction of sale of seven 'kattas' of urea fertilizer. Against a currency note of Rs. 100/- one 'katta' was delivered to Balu. For the rest of the bags it was settled that Balu would bring a can to take the remaining six 'kattas'. It has also been proved that in the search eight bags full of urea fertilizer were recovered from the possession of the accused and four empty bags of fertilizer were also found. All these facts considered in conjunction with presumption allowed to be raised under Section 14 of the Essential Commodities Act, 1955 are sufficient to hold that the petitioner was a dealer in fertilizer.

4. The next contention of the learned Counsel for the petitioner is that in the first information report the averment is only regarding making an offer to sell urea fertilizer and not regarding the actual sale of one 'katta' of urea. As such prosecution case is false. I do not feel persuaded to agree with the learned Counsel. No doubt it would have been much better if the details would have been mentioned in the first information report, but the first information report is not the last word of the prosecution. The main purpose of the first information report is to

move the criminal law in motion. Good and reliable evidence led in the case and relied upon by the two courts after careful scrutiny cannot be discarded simply because the first information report is not a detailed one or has not been as artistically drafted as the learned Counsel wished it to be.

5. The third contention is that the hundred rupee currency note alleged to have been recovered from the possession of the accused was not sealed on the spot, and as such Pannalal could have initialled it later on. The identity of the currency note given by Pannalal to Balu has thus not been established. I do not find any merit in this contention. The learned Counsel concedes that in the recovery memo the number of the currency note has been mentioned and it has also been mentioned that it bears the initials 'Pannalal'. If the note bore the initials of Pannalal at the time of recovery, the possibility of Pannalal signing it later on can be very safely ruled out, and this contention needs to be mentioned but for rejection.

6. The fourth contention is that the prosecution has failed to prove by cogent and reliable evidence that the article sold by the accused-petitioner was urea fertilizer. But urea fertilizer is a common type of fertilizer which is being used by the farmers every day. There is nothing unnatural if Balu and other witnesses examined in this case, who are cultivators and who knew what they were talking about said that the article purchased by Balu and recovered from the possession of the accused-petitioner was urea fertilizer. If the petitioner had the slightest doubt about the correctness of these statements, he could have challenged them by cross-examination or by making a suggestion that the substance was not urea fertilizer. It is really for the court of fact to decide whether upon a consideration of the totality of facts in a case it has been satisfactorily established that the object recovered from the possession of the accused and told by him was urea fertilizer or not. I see no reason why the accused in the position of the petitioner, who is a businessman and dealer in fertilizer and who could be presumed to have enough knowledge about the composition of the urea fertilizer could not raise the question in the trial court that the article sold by him was not urea fertilizer. If such a question would have been raised the prosecution could have cured whatever weakness there might be in the

evidence on that point. I do not think that he should be allowed to raise it at a stage when it may be difficult or impossible to adopt a conclusive test. In *Shri Chand Batra v. State of U.P.* : 1974 CriLJ590 such a question was raised regarding the strength the liquor & their lordships repelled the argument on similar grounds. I stand fortified on this point by the decision of their Lordships of the Supreme Court quoted above. In the statement of the accused recorded under Section 342, Cr. P.C. in was pertinently asked of him whether the article recovered from him was urea fertilizer and was also asked whether the article sold by him was urea fertilizer. The accused made a general denial and did not raise the dispute regarding the nature of the article alleged to have been possessed by him or sold by him. P.W 5 Pannalal who is an Agriculture Extension Office in the Panchayat Samiti, Asind, is expected to know what urea fertilizer is He has stated that the six 'kattas' recovered from the house of the accused were of urea of Shriram Fertilizer. He further stated that the 'katta' of urea purchased by Balu was also seized vide seizure memo Ex P. 6. An Officer of the Panchayat Samiti, who is an Agriculture Extension Officer of the Panchayat Samiti is required to deal with the supply of fertilizer to the cultivators and is required to explain the use of fertilizer to the farmers. He can, therefore, be termed as one of the experts within the meaning of Section 45 of the Evidence Act.

7. The learned Counsel lastly urged that the 'katta' was not produced in the court by the prosecution, and as such the story of sale has not been established at all. Non-production of a 'Katta' in the court in itself is not sufficient to discard the reliable and cogent evidence relied upon by the two counts below. It has, in no way, affected prejudicially the case of the accused-petitioner. The learned Counsel has read over to me the statements of Balu and other witnesses from the certified copies. I find no infirmity in their statements on the basis of which it can be said that the two courts below have erred in placing reliance on their statements. Two courts below have held that the accused sold urea fertilizer to Balu, It has appeared in evidence that the 'katta' was seized vide Ex. P. 6. If the accused wanted to see it, he could have got it produced.

8. The points raised by the learned Counsel for the accused-petitioner are points of fact depending on the appreciation of oral evidence. The trial court after dealing

with the matter in detail has come to the conclusion that the accused sold one katta' of urea fertilizer to Balu. It further held that the accused offered to sell six more 'kattas'. A transaction for the sale was complete between the accused petitioner and Balu. These findings of fact have been affirmed by the appellate court, and on the basis of these finding the courts below have come to the conclusion that the prosecution has been able to bring home the guilt to the accused-petitioner. Where in a trial for an offence the point for determination, as is in the case on hand of fact, depending on the appreciation of oral evidence and the courts below have dealt with it and were satisfied that the case of prosecution was established. The High Court in revision can rightly decline to interfere with such finding of fact. Reference may be made to *Narayan Tiwari v. State of West Bengal* : AIR 1954 SC726 .

9. The process of appraising the evidence led by the prosecution and the accused in a case can be equated almost to the process of holding a balance the time-honoured symbol of Justice. In this process of holding the balance what pieces of evidence, of course excluding the inadmissible evidence would till the balance in favour of one party is to be judged by the courts of facts. The appreciation of evidence is a mental process involving selection, assessment and conclusion. What evidence ought to weigh and how much can not be eligibly 1aid down. A High Court would not interfere in appraisal of evidence in revision.

10. In *Dulichand v. Delhi Administration* : 1975 CriLJ1732 Hon'ble Bhagwati J., speaking for the Court held that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re appreciation (sic) evidence. I, therefore, hold that the learned Sessions Judge, Bhilwara was correct in upholding the conviction of the accused petitioner under Section 3/7 of the Essential Commodities Act.

11. Now remains the question of the sentence. The learned Counsel for the petitioner urged that the accused petitioner is an old and respectable man and he should not be sent to jail. I do not feel persuaded to agree with the learned Counsel for the petitioner The basic approach to rapid economic development of India lies through a sharp and sustained increase in agricultural productivity. To

make each acre of cultivated land produce more per year involves a many sided effort for which, the use of fertilizer is recognised as the key factor. From the stage of persistent food deficit which had to be met by heavy imports of food-grains we have reached to the stage of a surplus storage of 118 Million Tons. This could be possibly done mainly by agrarian reforms like imposition of ceiling on agricultural holdings and supply of different types of fertilizers at cheaper rates by Government subsidy. Making the supply of fertilizer scarce and selling it at higher rates than prescribed (black marketing) is bound to have a disastrous impact on the State's efforts to stabilize the country's economy. Smugglers, hoarders and black marketeers have no country, caste or nation of their own. Their only 'God' and concern is the yellow metal 'Gold'. The offence for which the accused petitioner has been convicted is of the species of economic' crime which need to be curbed effectively. The ineffectiveness of prosecution in arresting the wave of white-collar crime must disturb the judges conscience. The Court is not a computer. which registers what is fed into. it and answers by mechanical intelligence but a human being to get at the truth with impartial tools, unbiased but committed to conscience objective truth and public good. An anti-social adventurer cannot claim for his nefarious and injurious activities any greater legal regard than for the defence of society itself. If members belonging to higher status in life should show scant regard for the laws of this country which are for public good, for protecting the common man, the consequential punishment for the violation of such laws must be equally deterrent and such person should be made to suffer in equital for the harm he has done to the society. I do not consider it to be a fit case in which benefit of Section 4 of the Probation of Offenders Act may be extended to the accused petitioner. The Law Commission also had in its 47th Report recommended the exclusion of the applicability of probationary process in the case of special and economic offences.

12. I find no merit in this revision petition. The revision petition is therefore dismissed in limine and the conviction and sentence awarded to the accused-petitioner by the courts below are upheld.

13. The learned Counsel prays that the case be certified as being a fit one for filing an appeal to the Supreme Court. The decision of this case has turned on facts and

position of law which I have set out in this case stands well-settled by the decisions of their Lordships of the Supreme Court and the various decisions of this Court. It is one of the routine cases and no question of law or of general importance is involved in it. There is, therefore, no reason to certify that this is a fit case for appeal to the Supreme Court of India.

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