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State of Rajasthan Vs. Amra Ram

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Court : Rajasthan

Decided On : Mar-11-1987

Reported in : 1987WLN(UC)323

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Revision Petition No. 227 of 1980

Appellant : State of Rajasthan

Respondent : Amra Ram

Judgement :

Ashok Kumar Mathur, J.

1. This is a revision petition by the State against the order of the learned Sessions Judge, Pali dated 25-2-1980 whereby he has set aside the order of the Collector, Sirohi dated 18-10-1979 passed under Section 6A of the Essential Commodities Act, 1955.

2. The facts giving rise to this case are that the respondent was holder of a retail licence in kerosene. It is allegnd that this kerosene dealer used to charge more than the fixed price of kerosene. On 24-8-1979 when the Inspector inspected his shop he found that his opening stock was 220 litres and at the time of checking 54 litres has already been sold out and 166 litres kerosene was found to be available,

But neither he displayed the price nor the stock at the shop. Therefore, he was found to have contravened condition No. 3 of the Rajasthan (Display of Prices and Stock of Essential Commodities) Order. 1977 (here in after referred to as 'the 1977 Order') as well as condition No. 10 of the Rajasthan Kerosene Oil Dealers Licensing Order, 1971 (here in after called as the 1971 'Order'), there by committing an offence under Section 3 of the Essential Commodities Act and liable to be prosecuted under Section 6A of the Essential Commodities Act. A notice was issued to the respondent to show-cause why his stock cannot be seized under Section 6A of the Act. The accused respondent appeared before the Collector and took the plea that he has not committed any breach of the licence and it was further submitted that the price list was already on the folding side of doors on the shop and it was also written on the container of the kerosene as such any prospective buyer could know the price. It is further alleged that no record has been produced that he has charged more than the price fixed by the Sate. Therefore, he prayed that this seized stock may be released. The Collector did not accept the plea of the respondent and found him guilty under the 1977 and 1971 Orders read with Section 3 of the Essential Commodities Act seized 165 litres of kerosene under Section 6A of the Essential Commodities Act. Aggrieved against this the accused respondents Amra Ram preferred an appeal before the learned Sessions Judge, Pali and and the learned Sessions Judge, Pali by his judgment dated 25-2-1980 accepted the appeal and set aside the order of the Collector, Sirohi on the ground that the accused has not been proved to have committed the breach of the orders and he had repeatedly requested that the original containers may be summoned as the rates have already been written over that. But those containers were not perused. Therefore, the accused cannot be held guilty. Secondly, the learned Sessions Judge has further found that the Inspector had no jurisdiction to inspect the shop of the accused respondent and in this connection the learned Sessions Judge relied upon the Government Notification No. S O 74 Published in the Rajasthan Gazette Extraordinary 4(Ga)(II) dated 22-7-1975 (pages 163 164) for coming to the conclusion that this notification does not empower the Inspector of that area to inspect the shop of she accused respondent Amra Ram kerosene dealer. The learned Sessions Judge set aside the order of the Collector, Sirohi for the aforesaid reasons by his judgment dated 25-2-1980.

Aggrieved against this, the State preferred the present revision petition before this Court. The same was admitted and notice was given to the accused respondent Amra Ram. Inspite of service of notice Amra Ram has not appeared before this Court.

3. We have heard learned Public Prosecutor and perused the record. We are of the view that the learned Sessions Judge has not approached the matter correctly. According to condition No. 10 of the 1971 Order every licensee has to display the opening balance and the price of kerosene oil at the start of each day in the prescribed Form 'G'. Condition No. 10 reads as under:

Display of Stock position--Every licensee shall display the opening balance and the price of Kerosene Oil at the start of each day in the prescribed Form 'G' the opening balance and price of the Kerosene Oil at the start of each day, in the form

Similarly Condition No. 3 of the 1977 Order lays down that how the price list and stock have to be displayed outside the shop. Condition No. 3 reads as under:

Display of list of prices and stock of articles--On and after the date of commencement of this Order every dealer shall during the hours of his business display conspicuously in Form 'A' a list of prices and stocks of articles he deals in at a place as near to the entrance of his business premises as possible:

Provided that for articles 'Edible Oils' and 'Hydrogenated vegetable Oil' the actual stock position at the beginning of each day shall be displayed in Column No 4 of the list in Form 'A' and for the rest articles of the Schedule, the words 'available or not available' shall be written as per note given below or Form 'A'.:

Provided also that numerals to be used in the list prices and stocks shall be either in the Devnagari form on numerals or any international form of Indian numerals:

Provided further that in the case of an article is added to the Schedule at any time after the commencement of this Order, the period of fifteen days shall be counted from the date on which such article is added to the Schedule.

4. The plea of respondent Amra Ram is that he has displayed the so-called price list and stock on the folding doors of the shop. This plea cannot serve the purpose. The idea is that the dealer has to display the price and the stock of the commodity at a conspicuous place at the shop so as to enable the consumers to know the rates. Simply by putting the so-called price list at the folding doors which is not visible that will not serve the purpose. The plea of the accused itself shows that the price list and the stock were not displayed on a conspicuous part of the shop so as to easily visible to the consumers. The respondent Amraram has also taken the plea that the rates were also mentioned on the containers of the kerosene and he wanted these containers to be produced in the court. This plea of respondent Amra Ram is also not tenable. The 1971 as well as the 1977 Orders clearly lay down that the dealers have to display the price list and stock on the shop so as to easily conspicuous. Simply by writing the rates on the container of the kerosene will not serve the purpose. He has to display the rates and the stock in a manner as required by the aforesaid two Orders and this superficial compliance cannot be said to be a sufficient compliance of the orders. Thus, the approach of the learned Sessions Judge does not appear to be correct.

5. Likewise the learned Sessions Judge has also committed an error in holding that the Inspector of the Supplies Department was not competent to inspect the shop of the accused respondent Amra Ram. In fact Condition No. 16 under which the so-called notification was issued clearly lays down that the Enforcement Officers/Inspector of that district were entitled to inspect the shops. Condition No. 16 reads as under:

16. Power of entry, search seizure, etc.--(1) The Licensing Authority or any First Class Magistrate, any Police Officer who in not below the rank of Sub-Inspector. District Supply Officer, Asst. Distt. Supply Officer, Area Supply Officer, Enforcement Officer/Inspector, Officers of the Industries Department not below the rank of Industries Inspector, including the Inspectors, Weight and Measures, Industries Extension Officers, Commercial Tax Inspector, Asst. Commercial Taxes Officer and Commercial Taxes Officer in his respective jurisdiction or any other officers, authorised by the State Government in that behalf may with such assistance, if any, as he thinks fit:

(a) require the owner, occupier or any other person or incharge of any place, premises, vehicles, or vessel in which he has to believe that any contravention of the provisions of this order of the conditions of any licence issued thereunder, has been, is being or is about to be committed it to produce any books of account or other documents showing transactions relating to such contravention;

(b) enter, inspect or break open and search any place of premises, vehicle 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;

(c) seize any books of accounts and documents which in his opinion would be useful for or relevant to, any proceeding under the Essential Commodities Act, 1955, and return such books of accounts and documents to the person from whom they were seized after copies thereof or extracts therefrom as certified that person have been taken;

(d) search and remove animals, vehicles, vessels or other conveyance used in carrying kerosene oil in contravention of the provision of this Order and seize and remove kerosene oil in respect of which such person has reason to believe that contravention of the Order has been, is being, is about to be committed and of any books of accounts and documents, which in his opinion would be useful for or relevant to any proceedings under this Act and the return of such books of accounts or documents to the person from whom they are seized after copies thereof or extracts therefrom as certified by that person have been taken.

(2) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1898, relating to search and seizure shall, as far as may be, apply to search and seizure under this clause.

6. The circular which bas been relied upon by the learned Sessions Judge only enables the Inspectors attached to the Food Commissioner's Office, Jaipur to inspect the shops all over the Rajasthan. The aforesaid notification issued by the Government of Rajasthan reads as under:

'NOTIFICATION UNDER THE RAJASTHAN KEROSENE OIL DEALER

licensinc order, 1971

FOOD AND CIVIL SUPPLIES DEPARTMENT

NOTIFICATION

Jaipur, July 12, 1915

--Section Order 74--In exercise of the powers conferred by clause 16 of the Rajasthan Kerosene Oil Dealers Licensing Order, 1971, the State Government hereby authorises the following officers of Food and Civil Supplies Department to exercise all powers of entry, search, seizure etc.

(i) The Additional District Supply Officer in their respective jurisdiction;

(ii) The Quality Inspectors/Enforcement Officers/Enforcement Inspectors posted in the Office of the Food Commissioner, Jaipur in the whole of the State of Rajasthan.

[(No. F. 17(32) FS/Legal/71), Published in Rajasthan Gazette Extra-Ordinary 4(Ga)(II); dated 22-7-1975, Pages 163-164]

A perusal of this notification would show that this only enables some of the officials attached to the office of the Food Commissioner to inspect any area all over the Rajasthan. By this it cannot mean that the Enforcement Officer/Inspectors which have been authorised under Condition No. 16 are deprived of their powers of inspection. Thus, the learned Sessions Judge has erroneously come to the conclusion that by virtue of this notification all the Inspectors of that area are deprived of their power to inspect the shop.

7. In the result, the revision petition of the State is accepted and the order of the learned Sessions Judge, Pali dated 23-2-1980 is set aside and the order of the Collector, Sirohi, dated 18-10-1979 is affirmed.

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