

C. Devamani and ors. Vs. the State and ors.

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Court : Chennai

Decided On : Apr-15-1982

Reported in : 1983CriLJ1320

Judge : M.N. Moorthy and ;Natarajan, JJ.

Acts : Essential Commodities Act - Sections 3, 6A and 6B

Appeal No. : Crl. R.C. Nos. 797 of 1977, 15, 122, 157 and 158 of 1978, Cr.R.P. Nos. 791 of 1977 and 15, 122, 157

Appellant : C. Devamani and ors.

Respondent : The State and ors.

Advocate for Def. : Advocate General Assisted by N. Dinakar, Govt. Adv.

Advocate for Pet/Ap. : K. Alagumalai, ;K. Venkatasubba Raju and ;I. Subramaniam, Advs.

Judgement :

1. On a reference by Paul, J., these criminal revisions come before us for being disposed of by a Division Bench. The common question of law raised for consideration in these cases, is whether means rea must be established, before the Collector of a District or Presidency Town can pass an order of confiscation of (a) an essential commodity seized in pursuance of an order made under Section 3 of the Essential Commodities Act, (b) any package, covering or receptacle in

which such essential commodity is found, and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity, in exercise of his powers under Section 6-A of the Essential Commodities Act (hereinafter referred to as 'the Act').

2. Suryamurthy, J. has answered the question in the affirmative in two cases, viz., (Arunachala Mudaliar in re 1979 Mad LW Cri 98 and R. Ramaswami v. R. D. O. Vridhachalam, 1979 Mad LW Cri 121) Paul, J., was of opinion that Section 6-A is a self contained section dealing only with confiscation of an essential commodity, its package or the conveyance used to transport it and such being the case, it is not necessary to prove mens rea for an order of confiscation being passed under Sections 6-A and 6-B. As the learned Judge considered the matter to be of great public importance, he deemed it proper to have the matter referred to a Bench. The Honourable Chief Justice has accordingly referred the matter to a Bench and that is how, these cases come up before us for disposal.

3. Briefly stated, the facts in the criminal revisions are as follows : In Cri.R.C. No. 797 of 1977 and 122 of 1979 the Sessions Judge of Chengalpattu has confirmed on appeal the order of the District Collector of Chengalput in confiscating under Section 6-B of the Act, lorries belonging to the respective revision petitioners. In Cri.R.C. 15 of 1978 the Sessions Judge of Tirunelveli has confirmed on appeal the order of the District Revenue Officer, Tirunelveli, confiscating certain stocks of foodgrains and edible oils belonging to the revision petitioner, under-section 6-B of the Act. In Cr.R.C. 157 and 158 of 1978, the Sessions Judge of North Arcot Dist. has confirmed on appeal the order passed by the District Collector of North Arcot confiscating the petitioners' lorries and also bags of paddy under-section 6-B of the Act. The main ground of attack in all the revisions is that before ordering the confiscation of the stocks of paddy etc., and or the vehicles, as the case may be, it should be proved by the State that the petitioners, who are the owners of the confiscated goods or vehicles, had mens rea. Before we refer to the reported cases cited at the Bar, we may refer to the objects and the relevant provisions of the Act and the amendments and that have been introduced by various amending Acts.

4. The Act was enacted 'to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities.'

Section 3 confers powers on the Central Government to control the production, supply, distribution etc. of essential commodities. Section 7 of the Act is the penal section and it provides for contravention of any order made under Section 3. The section is a composite one and provides for punishment of offenders guilty of contravention of the orders passed under Section 3 and also for forfeiture to Government (1) any property in respect of which, the order has been contravened; (2) any package, covering or receptacle in which the property is found; and (3) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

5. Section 6-A independently provides for confiscation of (a) an essential commodity, (b) any package, covering or receptacle in which such essential commodity is found; and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. This section states that this power of confiscation can be exercised irrespective of the fact whether a prosecution is instituted or not or the contravention of any order passed under the Act. There are two provisos to Section 6-A and they read as follows :

"Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section; Provided further, that, in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance."

Section 6-B lays down that no order for confiscation of any essential commodity, package, covering, receptacle, animal, vehicle, vessel, etc., shall be made under

Section 6-A, unless the owner of the essential commodity, package, covering, receptacle, animal, vehicle, etc., as the case may be, is given a notice in writing, informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering, receptacle, animal, vehicle, etc., and given an opportunity of making representation in writing, objecting to the confiscation and is given a reasonable opportunity of being heard in the matter. Sub-clause (2) of Section 6-B gives an opportunity to the owner of the animal, vehicle, vessel or other conveyance used in carrying the essential commodity to prove to the satisfaction of the Collector, that it was used in carrying the essential commodity without the knowledge or connivance of the owner, his agent, etc., and that all reasonable and necessary precautions had been taken for preventing the abuse of the animal, vehicle, vessel or other conveyance.

6. In *Nathulal v. State of M.P.*, , the Supreme Court had to go into the question, whether means rea is an essential ingredient of a criminal offence under Section 7 of the Act. Dealing with the matter, the Supreme Court held as follows (at P. 73 of Cri LJ) -

"Having regard to the object of the Act, namely, to control in general public interest, among others, trade in certain commodities, it cannot be said that the object of the Act would be defeated if means rea is read as an ingredient of the offence. The provisions of the Act do not lead to any such exclusion. Indeed, it could not have been the intention of the Legislature to impose heavy penalties like imprisonment for a period up to 3 years and to impose heavy fines on an innocent person who carries on business in an honest belief that he is doing the business in terms of the law. Having regard to the scope of the Act; it would be legitimate to hold that a person commits an offence under Section 7 of the Act, if he intentionally contravenes any order made under Section 3 of the Act. So construed the object of the Act will be served and innocent persons will also be protected from harassment."

7. After this decision, the words 'knowing, intentionally or otherwise' were inserted in Section 7 of the Act, by amendment Act 36 of 1967. The Legislature by the said amendment made it clear that means rea was not an essential ingredient for a

prosecution being launched or confiscation being ordered under Section 7 of the Act for contravention of any order. However, by another amendment Act, viz., Act 30 of 1974, these words were deleted. The position of law, after the amendment Act 30 of 1974 was passed, was considered by a Bench of the Patna High Court in *Mewalal Kapildeo Prasad v. State of Bihar*, 1978 Cri LJ 873, and the Bench held as follows -

"In my opinion, the effect of this amendment will be that since that date the position was restored as it was when that said sub-section was considered by the Supreme Court in the aforesaid *Nathulal's* case, , in view of this amendment, before an

accused person can be held to be guilty for having contravened any provision of the licensing order, it must be established that he had the necessary mens rea. If on the other hand, it is found that the contravention was unknowingly and unintentionally (done), he cannot be held guilty for contravention of any such provisions."

The Bench also went into the question whether the principles, which are applicable to a criminal case, are also applicable to a proceeding for confiscation under Section 6-A of the Act. The Bench held as follows -

"By a reference to Section 6-A it will appear that the condition precedent to the exercise of the jurisdiction by the Collector is that there has been a contravention of the order made under Section 3 of the Act and the articles in question have been seized in accordance with the provisions of any such order. Sub-section (1) of Section 7, which is the penal provision, also says that a person shall be punishable if he has contravened any order made under Section 3. It is a well settled rule of interpretation that a word occurring in the same Act is usually to be given the same meaning unless a different intention is expressed by the provisions of the Act. As such, the word 'contravention' has to be interpreted in Section 6-A and in Section 7 to mean that the provision of any order framed under Section 3 of the Act has been contravened intentionally. On the other hand, if it is found that the contravention was unintentional and the person concerned had taken all reasonable care and was carrying on the business in a bona fide manner, then, in

my view, even for Section 6-A of the Act, it has to be interpreted that in the eye of law, there has been no contravention so as to visit the dealer with the consequences of confiscating the articles which had been seized. A similar view has been expressed by a learned single Judge of Allahabad High Court in the case of Kishorilal Bihasi v. Addl. Collector and District Magistrate, Kanpur, . The learned Judge has rightly pointed out, if I can say so with respect, that Section 6-A and Section 7 are in pari material and as such, the same meaning is to be given to the words used in the two sections. The result is that it has to be held that the order of confiscation passed by the respondent District Magistrate, which has been affirmed by the respondent Commission is illegal, because the necessary ingredient of Section 6-A has not been established."

8. The question was also considered by a Division Bench of the Bombay High Court in Madhav Keshav Mirashi v. State of Maharashtra, 1977 Cri LJ 1800 and the Bench observed as follows -

"It is therefore clear where a person is to be prosecuted for the imposition of any of the penalties under Section 7 or any proceedings are to be taken for the confiscation of the goods under Section 6-A before the Collector, the requirement to be proved is that there has been a contravention of any order issued under the Act. In other words, the same set of circumstances must be established before an order of confiscation is passed or confiscation of property is directed by the Collector under Section 6-A. This being so, it would appear to us that means rea would be a necessary element to be proved before confiscation could be ordered."

9. It was on these decisions, Suryamurthy, J. placed reliance in Arunachala Mudaliar in re, 1979 Mad LW (Cri) 98 and Ramaswami v. R. D. O. Vridhachalam 1979 Mad LW (Cri) 121 to hold that means rea was an essential ingredient before ever an order of confiscation can be passed under Section 6-A of the Act. It is correctness of this view, which is disputed by Paul, J. in his reference.

10. In all the cases before us, it is common ground that the order of confiscation has been passed after the Amendment Act 30 of 1974 was passed. The question therefore for consideration is whether, the position stands reverted to what it was when the Supreme Court delivered judgment in Nathulal's case, .

11. The normal rule, it is no doubt true, is that means rea is an essential ingredient before even a prosecution of an order passed under the Act. However, it is equally well settled that the Legislature has power to exclude means rea for launching a prosecution under any Act for contravention of its provisions. As early as in *Sherras v. De Rutzen* (1895) 1 QB 918, the proper tests which are to be applied for determining the question whether means rea is an essential ingredient or not have been succinctly laid down. They are : (1) the object of the statute and the subject matters dealt with; (2) the wording of the provisions of the Act; and (3) whether the achievement of the object of the Act will be frustrated if means rea is not excluded. If it is found that the object of the Act will be frustrated if means rea is construed as an essential ingredient then it can be taken that means rea will stand excluded by necessary implication.

12. In the instant case, the important factor to be noticed is, that Section 6-A has been enacted only to confiscate the essential commodity or its or its vehicle of transport. It does not deal with the prosecution of the offender for any contravention of any law or order. In other words, the liberty of the citizen is not affected. The confiscation provision has been made only to protect the interests of the general public for making available certain commodities declared essential by the Act. Even here, an option has been given to the owner of the animal, vehicle, vessel, etc., to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance. It is, therefore, open to the affected party to pay an amount not exceeding the market price of the animal, vehicle, vessel or other conveyance and avoid its confiscation.

13. In *State of Maharashtra v. Mayer Hans George*, , a German national by birth was prosecuted for having carried gold bars on his person in contravention of the provisions of the Foreign Exchange Regulation Act. The defence was that the German national did not have means rea when he carried the gold bars on his person. The Supreme Court held as follows -

"But if the bringing into India was a conscious act and was done with the intention of bringing it into India the mere 'bringing' constitutes the offence and there is no

other ingredient that is necessary in order to constitute a contravention of Section 8(1) than that conscious physical act of bringing. If then under Section 8(1) the conscious physical act of 'bringing' constitutes an offence. Section 23(1-A) does not import any further condition for the imposition of liability than what is provided for in Section 8(1). On the language, therefore, of Section 8(1) read with Section 24(1), we are clearly of the opinion that there is no scope for the invocation of the rule that besides the mere act of voluntarily bringing gold into India any further mental condition is postulated as necessary to constitute an offence of the contravention referred to in Section 23(1-A)."

In another portion of the judgment, their Lordships held as follows -

"In our opinion, the very object and purpose of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated if a condition were to be read into Section 8(1) or Section 23(1-A) of the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision."

13-A. In *Andhra Grain Merchants v. Union of India*, , the Supreme Court had to consider the constitutional validity of Sections 7, 10 and 19 of the Prevention of Food Adulteration Act, 1954. Dealing with the question whether the creation of absolute liability amounts to imposing unreasonable restriction, the Court held as follows -

"But in considering whether creation of absolute liability amounts to imposing unreasonable restrictions, the court has to strike a balance between the individual right and public weal. The Courts will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for infringement of the law which involves grave danger to public health. The Courts will undoubtedly consider whether without imposing absolute liability the object of the statute could be reasonably secured. For that purpose the Court will consider the object of the Act, apprehended danger to the public interest, arising out of the activity if not controlled and the possibility of achieving the intended results by less stringent provisions. The nature of the trade in foodstuffs, the channels of supply

and the movement of goods from trader to trader and fertile sources of adulteration and misbranding make it extremely difficult in a large majority of cases to establish affirmatively that storage or sale of adulterated or misbranded foodstuff was with a guilty mind. Provisions in the statute book creating absolute liability for sale of adulterated food are fairly common It is true that for the protection of the liberty of the citizen, in the definition of offences, blameworthy mental condition is ordinarily an ingredient either by express enactment or clear implication; but in Acts enacted to deal with a grave social evil, or for ensuring public welfare, especially in offences against public health, e.g. statutes regulating storage or sale of articles of food and drink, sale of drugs, sale of controlled or scarce commodities, it is often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind.

14. If from the scheme of the Act it appears that compliance with the regulatory provisions will be promoted by imposing an absolute liability, and that it cannot otherwise be reasonably ensured, the court will be justified in holding that the restriction on the right of the trader is in the interest of the general public. Adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public. The Statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments.

15. In *Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh*, it had to be considered whether means *rea* was an

essential ingredient before ever confiscation could be ordered under Section 52-A of the Sea Customs Act. The Supreme Court answered the question in the negative and held as follows -

"What is to be proved against a vessel, which is charged with having contravened Section 52-A is that there has been a contraction, adaptation, alternation or fitting and that the said construction, adaptation, alteration or fitting has been made for the purpose of concealing goods. Therefore, if an alteration in a vessel made for the purpose of concealing goods is proved, the contravention of Section 52-A must

be inferred. In other words, the section prohibits absolutely the entry of the vessel, which shows that there has been in its construction, adaptation, alteration or fitting made in them for the purpose of concealing goods."

Viewing the matter thus, the Supreme Court held that means rea was not an essential ingredient before ever an order of confiscation could be passed under Section 52-A of the Sea Customs Act.

16. Fortified by these decisions, we are of opinion, that if it is not necessary that means rea must be established before ever an order of confiscation under Section 6-A could be passed in respect of an essential commodity or its package, covering or any animal, vehicle or vessel used for its conveyance. We are unable to subscribe to the view that Section 6-A is in pari material with Section 7. As pointed out by the Supreme Court in *Shah and Co. v. State of Maharashtra*, two statutes can be stated to be in pari material

only if they relate to the same person or thing or to the same class of persons or things.

17. As already stated, Section 7 deals with prosecution and provides for the offender being sent to prison and also subject to fine. Section 6-A is an independent provision and it only provides for confiscation of the essential commodity or its package or animal, vehicle, etc., used for its transport. The two provisions stand on entirely different planes and, therefore, the constructions applicable to Section 7 need not and would not be applicable to proceedings under Section 6-A.

18. Learned counsel appearing for the revision petitioners argued that under the first proviso under Section 6-A, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 could be confiscated if the goods and been seized from the producer. It was, therefore, argued that if an essential commodity transported in violation of an order could not be confiscated on the ground that the commodity belonged to a producer or grower, then it would be inequitable to confiscate the package, covering receptacle, in which the essential commodity was found or any animal vehicle or vessel in which the commodity was

transported. We are not persuaded by this argument, because the Legislature has shown a concession to agricultural by enacting the first proviso to Section 6-A. The non-liability of the essential commodity will not absolve the liability of other persons owning the packing or the vessel in which the essential commodity was transported from being confiscated. The object of the Act is to see that the essential commodities are not clandestinely removed or hoarded and hence, there is nothing illegal in the package or the covering or the vessel or the conveyance in which the essential commodity was transported, from being confiscated even if the commodity itself is not confiscable on the ground it belonged to a producer. Moreover the second proviso gives a concession to the owners of the package or the vehicle to avert the confiscation by paying a fine not exceeding the market price prevalent on the date of seizure of the essential commodity.

19. We may also refer to sub-clause (2) of Section 6-B, which gives the owner of an animal, vehicle, vessel, etc. and opportunity to prove to the satisfaction of the Collector that he had taken all reasonable and necessary precautions to prevent the abuse of the animal, vehicle, vessel, etc., and in spite of such precautions having been taken, the animal, vehicle or vessel had been misused for transporting an essential commodity in violation of an order of the rules. By this provision, the rigour of Section 6-A has been softened.

20. On account of another reason also, we are unable to accept the view taken by the Patna High Court that after the Amendment Act 30 of 1974, the position stood reverted to the one laid down in Nathulal's case, . Section 10-C of the Act has been introduced by Act 30 of 1974 and the section reads as follows :-

"10-C. Presumption of culpable mental state :- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such state with respect to the act charged as an offence in this prosecution.

Explanation :- In this section 'culpable mental state' includes intention, motive, knowledge of a fact and the belief in or reason to believe a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability".

21. By reason of Section 10-C the Courts have been enjoined to presume means rea in every case, but the presumption has been made a rebuttable one. An opportunity has been afforded to the effected person to prove to the Court that he had no means rea when the act forming the subject-matter of the prosecution was committed.

22. We are, therefore, of opinion that the object of the Act will be defeated if means rea is held a condition precedent for a valid order of confiscation being passed under Section 6-A. We therefore, affirm the view taken by Paul, J. in the reference.

23. The resultant position would, that the ratio laid down by Suryamurthy, J. in Arunachala Mudaliar In re 1979 Mad LW (Cri) 98 and in R. Ramaswami v. R. D. O. Vridhachalam, 1979 Mad LW (Cri) 121, will no longer be good law.

24. In accordance with the view we have taken, all the revisions have to fail and they will accordingly stand dismissed. It is, however, open to the concerned revision petitioners to move the Collector under the second proviso to Section 6-A of the Act to redeem the confiscated vehicle on payment of appropriate fine fixed by the Collector.

25. Revisions dismissed.

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