

In Re: Venugopal Naidu

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Court : Chennai

Decided On : Mar-26-1947

Reported in : AIR1948Mad39; (1947)2MLJ164

Appellant : In Re: Venugopal Naidu

Judgement :

ORDER

Yahay Ali, J.

1. This is an application to revise the order of conviction and sentence passed against the petitioner who was accused 2 in C. C No. 278 of 1945 on the file of the Sub-Divisional First Class Magistrate, Saidapet, under Section 3 (1) of the Madras Food Grains Control Order read with Rule 81(4) of the Defence of India Rules. The trial Court found him guilty and sentenced him to pay a fine of Rs. 300 in default to six weeks' rigorous imprisonment. The conviction and) sentence were confirmed in appeal by the Sessions Judge, Chingleput. The petitioner was found actually transporting 8 carts containing 86 bags of paddy, each bag holding 64 Madras measures, along the public highway without a permit as required under the rules. P.W. 6, the Special Deputy Tahsildar for procurement of grains at Trivellore intercepted him on the spot, held an enquiry and recorded; from the petitioner a statement marked as Ex. E. He also recorded similar statements (Ex. D) from the cart drivers, P. Ws. 4 and 5. He then forwarded them to the Assistant Commercial Tax Officer, P.W. 1, who held another enquiry and recorded again a statement Ex.

A from the petitioner and another statement Ex. B from a person who was the first accused in the case and who was said to be carrying on this business in partnership with the petitioner. The conviction of the appellant rests principally upon the statements recorded by P.W. 6 on 23rd March, 1945, and P.W. 1 on 24th March, 1945. Objection was taken to the admissibility of these statements on the ground that the Assistant Commercial Tax Officer P.W. 1 was in the position of an investigating officer and that any statement recorded by him would have to be excluded under Section 162 of the Code of Criminal Procedure, but this argument in any way does not apply to the statement recorded, by P.W. 6. Even the contention that the statement recorded by the Assistant Commercial Tax Officer is not admissible in evidence is wholly untenable. In the Madras Foodgrains Control Order, 1945, there is no provision which clothes any officer or officers of the Commercial Tax Department with the powers of an officer in charge of a police station to investigate an offence. Reference was made in this connection to the decision of a Bench of this Court in Someshwar H. Shelat, In re : AIR1946 Mad430 . That was a case, no doubt, of a statement recorded by a special officer of the Commercial Tax Department and it was held that that statement was not admissible, but the statement recorded by that officer in that case was in the exercise of the power conferred upon him by Sub-section (3) of Section 12 of the Hoarding and Profiteering Prevention Ordinance which definitely states:

The officers empowered by the Central or Provincial Government shall within the respective-areas for which they were appointed, have power to investigate all offences punishable under this ordinance, and, in conducting any such investigation shall, within the said areas, have all the powers, duties, privileges and liabilities of an officer in charge of a police station under the Criminal Procedure-Code, 1898, when investigating a cognizable offence within the limits of his station.

The learned Judges were persuaded entirely by the language of this sub-section in coming to the conclusion that such an officer had the full status of a police officer and that his powers and duties must be limited to those of a police officer under the Code of Criminal Procedure which means that when such a statement is reduced to writing it can only be used in accordance with the provisions of Section

162 of the Code of Criminal Procedure or under Section 27 of the Evidence Act. That decision has clearly no application to a case of this kind arising under the Madras. Foodgrains Control Order, which does not contain any provision even remotely analogous to Sub-section (3) of Section 12 of the Hoarding and Profiteering Prevention Ordinance.

2. The second question that was raised was that these statements were not admissible because the Deputy Tahsildar extorted the statement from the petitioner under duress. This allegation was rightly found against by both the Courts below.

3. The last argument was that even according to the language of the statements-themselves there was no admission that the petitioner was engaging in any undertaking which involves the sale in wholesale quantities of any foodgrains so as to attract the application of Section 3(1) of the Foodgrains Control Order. I have closely perused the statements and I have no doubt that they amount to saying that the paddy was being transported for purpose of sale in connection with the business in which the petitioner as well as the first accused who was discharged had joint interest.

4. I find no substance in any of the contentions raised. The petition is dismissed.

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