Krishnamoorthy Vs. the State

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Court : Chennai

Decided On : Jan-08-1991

Reported in : 1992CriLJ1735

Judge : T.S. Arunachalam, J.

Appeal No. : C.A. No. 476 of 1986

Appellant : Krishnamoorthy

Respondent : The State

Advocate for Def. : A. Shanmugham, Addl. Public Prosecutor

Advocate for Pet/Ap. : N.T. Vanamamalai, ;Sr. Counsel for B. Ramamoorthy and ;K.S. Rajagopalan, Advs.

Judgement :

1. The appellant was tried in S.T.C. (E.C.) No. 30 of 1986 on true file of the Special Judge, Essential Commodities Act cases, Thanjavur for having violated clause 6(2) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 punishable under S. 7(1)(a)(ii) of the Essential Commodities Act. The trial Court found the appellant guilty as charged and sentenced him to undergo rigorous imprisonment for six months.

2. The sustainability of the verdict of the learned trial Judge is challenged in this appeal.

3. The prosecution case will have to be stated in brief for the disposal of this appeal. The petitioner was at the relevant time the Branch Manager of Thanjavur Co-operative wholesale Stores Limited No. 1 situate at Pattukkottai. When the sales depot was inspected by the higher authorities, certain irregularities, in the distribution of scheduled commodities to the card holders, were noticed. The inspection revealed that the record maintained by the appellant in the sales depot showed that he had distributed sugar and rice to the family card holders over and above the actual quantum of such commodities noted in the family cards. To substantiate its case, the prosecution had examined P.Ws. 1 to 11 and marked Ext. p. 1 to p. 52. The case of the appellant was one of denial. He did not examine any defence witness but chose to mark Ex. D. 1, the acknowledgment signed by P.W. 1 for having received certain documents. Of the witnesses examined, P.Ws. 4 to 10 are the family card holders. P.W. 1 was the inspecting authority, who had checked the sales depot on 14-9-1985 and noticed certain irregularities. P.W. 2 belongs to the Flying squad of the civil supplies investigation, and he was present with P.W. 1 during latter's inspection. P.W. 3 was at the relevant time the Manager of the godown at Pattukkottai. P.W. 11 is the Investigating Officer, who charge-sheeted the appellant.

4. Mr. N. T. Vanamamalai, learned Senior Counsel appearing on behalf of the appellant contended, that the positive evidence of P.Ws. 4 to 10, that they had obtained the scheduled commodities recorded in their family cards in their entirety, would negative violation of Cl. 6(2) of the Order. If that be so, the very foundation of the prosecution case got shattered and the appellant would therefore be entitled to the acquittal. He further contended that under the Order, servants are not specifically made liable and for any act of commission or omission of the servant, the authorised dealer alone will have to be held responsible. He pointed out that 'authorised dealer' has been defined under cl. 2(b) of the Order to mean a dealer appointed by the Commissioner and included he Co-operative Societies, the Tamil Nadu Civil Supplies Corporation and such other agencies running fair price shops. He further referred to Cl. 14 of the order and that part necessary for this case,

reads as hereunder :-

'Every authorised dealer shall be held responsible for all the acts of commission and omission of his partners, agents, servants and other persons who are allowed to work in the shop.'

On the basis of this provision, he argued, that the Thanjavur Co-operative Wholesale Stores Limited, was the authorised dealer, which should be made liable for any act of commission and omission of the servant and the appellant cannot be held liable. He further contended that proceedings initiated against the appellant alone for violation of Cl. 6(2) of the Order was bad and that the prosecution should have been launched only against the authorised dealer. To substantiate his contention he referred to the judgment of Maheswaran, J. in P. Ramu In re 1988 MLW 61 and that of K. M. Natarajan, J. in S. Chandran v. State (1988) 2 MWN 114. The judgment of K. Swamidurai, J. in N. Pandi v. State 1990 TLNJ 112 was also brought to my notice, wherein the learned Judge had taken the view, that the for acts of commission and Omission of partners, agents, servants and other persons who were allowed to work in the shop of the authorised dealer, they alone cannot be held responsible. Maheswaran, J. and K. M. Natarajan J. had taken the view, that the proper person to be prosecuted was only the Society and the persons employed by the authorised dealer cannot be prosecuted. I have carefully considered the submissions of the learned senior Counsel, after hearing Mr. A. Shanmugham, the learned Additional Public Prosecutor. This appeal can be disposed of on a short factual ground, without dwelling deep into the intricate questions of law placed for my consideration. Clause 6(2) of the Order reads as hereunder :

'The authorised dealer with whom the family card is registered shall on production of such card by the holder, make necessary entries in the card and supply the scheduled commodities not exceeding the quantities for which he is eligible.'

All that this clause contemplates is that the authorised dealer should make necessary entries in the family card of the card holders and the quantity of scheduled commodities supplied to them on such cards should not exceed the quantity to which they were eligible. The positive evidence of P.Ws. 4 to 10 be it in chief examination or cross-examination, clearly shows that for their respective family cards, they had obtained scheduled commodities which have been recorded in their family cards themselves. P.W. 4 holds, the family card Ex. P. 9 He has deposed that for the month of July, 1985 he had purchased 4.050 kgms. sugar and totally 21 kgms of rice. as found entered in Ex. p. 9. He has further deposed that his family card had not been utilised by any one-else and the commodities mentioned in the family card had been purchased only by him. P.W. 5, the holder of family card Ex. P. 10, P.W. 6, the holder of family card Ex. p. 11, P.W. 7, the holder of family card Ex. p. 12, P.W. 8, the holder of family card Ex. p. 13, P.W. 9, the holder of family card Ex. p. 14, P.W. 10, the holder of family card Ex. p. 15 have similarly deposed, that they had obtained in July 1985 the schedule commodities which had been recorded in their respective family cards.

5. Irrespective of the irregularities which might have been noticed by P.Ws. 1 and 2 on their inspection of this depot, the positive evidence of P.Ws. 4 to 10 negatives violation of the provision of Cl. 6(2) of the Order, If that be so, no case has been made out by the prosecution for punishing the appellant under S. 7 of the Essential Commodities Act. On this short ground this appeal deserves to be allowed and is accordingly allowed. The appellant shall stand acquitted.

6. Before parting with this case, I will have to refer in brief, to the authorities placed before me by the learned Senior Counsel. The law laid down by G. Maheswaran, J. and K. M. Natarajan, J. may require reconsideration in a deserving case. It cannot be overlooked, that the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 was made in exercise of the power conferred by S. 3 of the Essential Commodities Act. The object of the Order was for securing equitable distribution of essential commodities. It was found necessary and expedient to regulate the distribution, through family cards. It is apparent that it was found necessary to enact the order for the welfare of the community at large. It is no doubt true that authorised dealer's defined under the Order means a dealer appointed by the Commissioner and includes the Co-operative societies, the Tamil Nadu Civil Supplies Corporation and such other agencies running fair price shops. It is also true that unlike similar orders like Tamil Nadu Foodgrains Dealers Licensing Order, 1968, Tamil Nadu Kerosene

(Regulation of Trade) Order 1973, Tamil Nadu Sugar (Regulation of Trade) Order, 1981, Tamil Nadu Tea (Registration of Dealer and Declaration of Stocks) Order, 1984 etc., where servants also have been made liable, this order under cl. 14 holds the authorised dealer responsible for all the sets of commission and omission of his partners, agents, servants and other persons who are allowed to work in the shop. Before, Maheswaran J. and K. M. Natarajan, J. the provision of S. 10 of the Essential Commodities Act, had not been placed for consideration. S. 10 of the Act reads as hereunder.

'Section 10. Offences by companies :- (1) If the person contravening an order made under S. 3 is a company, every person, who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-sec. (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent of connivence of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section, -

(a) 'Company' means any body corporate, and includes a firm or other association of individuals; and

(b) 'director' in relation to a firm means a partner in the firm.'

The purport of S. 10 of the Act is very clear and plain. If the contravention of the Order made u/S. 3 of the Act is by a Company, the persons who should be held guilty and punished are (1) the company itself; (2) every person, who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company and (3) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence had been committed. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person in charge only may be prosecuted. The conniving Officer may individually be prosecuted. But before the person in charge or an officer of the Company can be held guilty in that capacity, it must be established that there had been a contravention of the Order by the Company. Merely because Cl. 14 of the Order contemplates, that every authorised dealer shall be held responsible for all the acts of commission and omission of his partners, agents, servants and other persons who are allowed to work in the shop, it appears to me, prima facie, that such persons cannot be excluded from prosecution, in view of the provisions of S. 10 of the parent Essential Commodities Act. Otherwise the very purpose of the welfare legislation would get frustrated. I feel the the vicarious liability of the person in charge of and responsible for the conduct of the business of the Company cannot be erased on the basis of Cl. 14 of the Order, without reference to S. 10 of the Essential Commodities Act. Probably the view taken by G. Maheswaran, J. and K. M. Natarajan, J. may deserve reconsideration appropriately in any appropriate case. The view of Swamidurai J. is that in the event of acquittal of the principal offender, it would be innocuous to prosecute the salesman. That stands on an entirely different footing. Useful reference to S. 6 of the Essential Commodities Act which reads as hereunder :

'6. Effect of orders inconsistent with other enactments :- Any order made under S. 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.'

and the enunciation of law by the Supreme Court in : 1954 CriLJ1322 (Harishanker Bagla v. M.P. State), will be helpful on this question.

7. I also wish to refer to the judgment of the apex Court in Sheoratan Agarwal v. State M.P. : [1985]1SCR719 . Chinnappa Reddy, J. speaking on behalf of the Bench stated as hereunder :

'Section 10 does not state that if the person contravening the Order made under the Essential Commodities Act is a Company, the prosecution of the Directors, the Officers and servants of the Company or other persons is precluded unless the Company itself is prosecuted. There is no statutory compulsion that the person in charge or any officer of the company may not be prosecuted unless he be ranged along side of the Company itself. S. 10 indicates the persons who may be prosecuted where the contravention is made by the Company. It does not lay down any condition that the person in charge or an officer of the company may not be separately prosecuted if the Company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. S. 10 lists the persons, who may be held guilty and punished when it is a Company that contravenes on order made under S. 3 of the Essential Commodities Act. Naturally before the person in charge or an officer of the Company is held guilty in that capacity, it must be established that there has been a contravention of the Order by the Company.'

With these observations on the question of law placed before me, which requires no serious consideration in this appeal, this appeal shall stand allowed.

8. Appeal allowed.