

Natarajan and Other Vs. State

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Court : Chennai

Decided On : Oct-25-1991

Reported in : 1992CriLJ3221

Judge : Padmini Jesuddurai, J.

Appeal No. : Criminal R.C. Nos. 32 and 343 of 1987

Appellant : Natarajan and Other

Respondent : State

Advocate for Def. : Mr. P. Govindarajan, Govt. Adv. (Crl. side)

Advocate for Pet/Ap. : Mr. P.M. Sundaram, Adv.

Judgement :

ORDER

1. Both these revisions arise out of the same case and are hence disposed of together. Crl. R.C. 232/87 is by A. 1 in CC. 10291/82 on the file of the X Metropolitan Magistrate, Madras challenging his conviction for an offence under S. 4(1)(a) of the Tamil Nadu Prohibition Act, 1937 and sentence of imprisonment for a period of one year and a fine of Rs. 2,000/- imposed by the trial court and confirmed in appeal. Crl. R.C. 343/87 is by A. 3 in the same case and in directed against the order of confiscation of his lorry TMQ 1519 used for the commission of the above offence, the order being confirmed in appeal.

2. Both the petitioners along with A. 2 were tried for the above offence on the allegation that they entered into a conspiracy, between 24-11-1981 and 25-11-1981, to illicitly transport liquor, in violation of the above Act, in TMQ 1519 from Annanagar, Madras to Avadi and pursuant to the conspiracy on 25-11-1981 at 4.00 p.m. A.1 and A.2 were found transporting 5312 bottles of brandy and rum in the junction of Shanthi Colony, 3rd Avenue, Annanagar.

3. The prosecution case is briefly as follows : P.W. 2, the Sub-Inspector of Police, Annanagar while patrolling the area, saw a lorry bearing registration No. TMQ 1519 coming between the 3rd Avenue and 6th Avenue in Annanagar. On suspicion, he gave signal to the lorry to stop. Ignoring the signal the lorry speeded fast. P.W. 2 chased the lorry in a police van. At the junction of Shanthi Colony, the vehicle was stopped and the Driver A. 2 and the Cleaner A.1 ran away. P.W. 2 and his party chased them and caught hold of A. 1. A. 2 escaped. The lorry was searched in the presence of A. 1, P.W. 1 a retired Major and others and it was found that the lorry contained 5312 bottles of Brandy and Rum of different varieties. The lorry M.O. 1, the tarpaulin M.O. 2, the rope M.O. 3 and the bottles of contraband M.O. 4 series were seized by P.W. 2 under mahazar Ex. P.1, attested by P.W. 1 and others. P.W. 2 made a special report Ex. P.2 to P.W. 3 the Inspector of Police, Annanagar, who registered it as Crime No. 4632/91 for an offence under S. 4(1)(a) of the Act. A.1 was examined and thereafter A.2 and A.3 were made accused. M.O. 4 series were sent for chemical examination and P.W. 4, the Scientific Assistant attached to the Forensic Science Laboratory, Madras examined them and offered opinion in Ex. P.5 to P.16 that they were either rum or brandy. Further investigation was taken up by P.W. 7 who after completing it filed charge sheet against all the 3 accused for the above offences.

4. The trial court convicted A. 1 as mentioned above and acquitted A. 2 on the question of disputed identity. It also acquitted A. 3 on the ground that A. 3 had not been present in the vehicle at the time of interception and seizure and besides being the owner of M.O. 1, there was nothing to show his complicity with the crime.

5. Thiru P. M. Sundaram, learned counsel while dealing with the conviction of A. 1, would submit that he was not challenging, either the conviction or the sentence imposed on A. 1 and that A. 1 would be entitled to the benefit of two remission Government Orders passed by the Government of Tamil Nadu under S. 432, Cr.P.C. and the entire sentence of imprisonment for the period of 1 year, would stand remitted under the above said Government Orders and an observation to that effect in this judgment would suffice. Since the conviction and sentence of A. 1 are not challenged, they are confirmed. A.1 will be entitled to remission of the full sentence of imprisonment of 1 year under G.O. Ms. No. 180, Home (Prison-IV) Department, dated 28-1-1989 and G.O. Ms. No. 781 Home (P.R.C.) Department dated 11-4-1989. Each of these Government Orders had been issued on different occasions and each gives a remission of six months imprisonment to convicted persons. The petitioner in CrI. RC. 232/87 (A. 1) is entitled to the benefit of both Government Orders. His sentence of imprisonment stands remitted under the two Government Orders. It is, therefore, needless for him to surrender to custody. The fine has already been paid.

6. The learned counsel dealing with the revision filed by A. 3, challenging the order of confiscation of M.O. 1 lorry would submit that, A. 3 had faced the trial along with A. 1 and A. 2 and had been acquitted and once the court had found that A. 3 has not committed any offence, M.O. 1 cannot be confiscated and there was absolutely no material to show that A. 3 had knowledge about the commission of the offence by A. 1 and as such, the order of confiscation has to be set aside. The learned counsel relied upon the decisions of this Court in Maruthamuthu, In Re 1966 LW CrI. 185, and A. I. George, In re 1979 LW CrI. 108 : 1980 Cri LJ 43 rendered by different judges under this Act and the decision of the Supreme Court in State of Madhya Pradesh v. Asad Bharat Finance Company, : 1967 CriLJ285 .

7. The learned Public Prosecutor was also heard on this aspect.

8. The question that arises for determination is whether M.O. 1 the lorry is liable for confiscation.

9. Confiscation of vehicles used in the commission of offences is provided for in different penal statutes. The principles that govern confiscation would depend

upon the actual provision relating to it as found in each penal statute. These provisions are not always identical. It will therefore be proper to extract the relevant provisions relating to confiscation under this Act.

10. The relevant portion of S. 13 is as follows :

13. In any case in which an offence has been committed against this Act, the liquor in respect by means of which the offence has been committed shall be liable to confiscation along with vehicle used to carry the same.

11. Section 14 is as follows :-

14(1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the court decides that anything is liable to confiscation, such confiscation shall be ordered by the court.

(2)

Provided that no vehicle shall be confiscated under sub-section (1) or sub-section (2) if the court after hearing the owner of such vehicle is satisfied that the onwer had exercised due care in the prevention of the commission of such an offence.'

12. Section 14-A is as follows :-

'14-A. Where any vehicle is used in the commission of any offence under this Act and is liable to confiscation, the onwer thereof shall be deemed to be guilty of such offence and such onwer shall be liable to be proceeded against and punished accordingly unless he satisfies the court that he had exercised due care in the prevention of the commission of such an offence.' Section 14-A had been inserted by the Tamil Nadu Prohibition (Amendment) Act, 1979 and S. 14(1) and the proviso extracted above, substituted the original provision.

13. A reading of S. 14-A would show that the object of introducing this new provision of making the owner of a vehicle liable for confiscation guilty of such offence if he fails to satisfy the court that he had exercised due care in the prevention of the commission offence is that the order of a vehicle has a primary

duty to see that his vehicle is not used for the commission of any offence and he has to exercise due care to prevent the commission of the offence with his vehicle. Keeping this duty of the owner of the vehicle in mind, Section 14-A has been inserted. In the same way, when a vehicle is liable for confiscation, it is the owner of the vehicle who has to satisfy the court that he had exercised due care in the prevention of the commission of the offence. It is immaterial whether the offender is convicted or acquitted. No doubt, it is not mandatory on the part of the court to order confiscation in every case where a vehicle had been used for the commission of the crime. The decisions relied on by the learned counsel, namely in *Maruthamuthu In Re* 1966 LW Cr. 185, and *A. I. George In Re* 1979 LW Cr. 108 : 1980 Cri LJ 43 were rendered prior to the amendment in 1979. The introduction of Section 14-A by the amendment in 1979 has changed the whole complex of the issue dealing with confiscation of vehicles proved to have been used in the commission of the crime. The above two judgments, therefore, could no longer be taken to apply to the issue, in the background of Section 14-A.

14. The decision of the Supreme Court in *State of Madhya Pradesh v. Azad Bharat Finance Company*, : 1967 CriLJ285 relied on by the learned counsel for accused No. 3 was rendered under the Opium Act 1878 as amended by the Madhya Bharat Amendment Act. The relevant provisions extracted in the above judgment would show that they are basically different from those under this Act. Under S. 11 of the Opium Act, even as amended by the Madhya Bharat Amendment Act, conveyance used for carrying opium is also liable for confiscation. The said amendment was to the effect that the conveyance used in carrying opium should be confiscated. The Supreme Court was interpreting whether the above provisions were mandatory or discretionary and held that it was only discretionary and the court laid down certain principles which should guide the discretion, the first being, that the owner of the vehicle should have knowledge, that the penal provisions should be so construed that a person who has not committed or abetted any offence should not be visited with the penalty. The court also indicated that the State's amendment would possibly have to be struck down as imposing unreasonable restrictions under Art. 19 of the Constitution. The Supreme Court gave the guidelines for the exercise of the discretion in the background of the Opium Act, under which a provision similar to S. 14-A is absent

and the duty of the owner of the vehicle to satisfy the court, that he had exercised due care to prevent the commission of the crime is also absent. The above decision, therefore, cannot be taken as interpreting the relevant provisions under this Act relating to confiscation. Which are basically different from those under the Opium Act.

15. Though the learned Magistrate has not given any specific reason for confiscating M.O. 1 the learned Sessions Judge has stated that though A. 3 was an accused in the case and when questioned under S. 313, Cr.P.C., he had not stated that the vehicle had been used for the commission of the crime without his knowledge. He had therefore ordered confiscation.

16. It is true that A. 3 had been acquitted despite S. 14-A which was sufficient to convict him, even if the charge under S. 7(1) of the Act had failed against A. 3 for want of any direct evidence regarding conspiracy. Once the trial court found that an offence had been committed under S. 4(1)(a) of the Act by one of the other accused and M.O. 1 lorry had been used for the commission of the offence, S. 14-A ought to have been invoked against A. 3 and it was for A. 3 to establish that he had taken due care to prevent the commission of the crime. When he fails to establish the same, he has to be convicted. Neither the trial court, nor the State seems to have been aware of the amended provision of S. 14-A. The acquittal of A. 3 has now become final.

17. It has been established that M.O. 1 lorry was used to commit an offence under S. 14(1)(a) of the Act. Subsequent to the amendment in 1979 and the introduction of S. 14-A and interpreting S. 14(1) and the proviso in the spirit of the amendment, we cannot read into the Section that unless knowledge of the owner of the vehicle about the commission of the crime is established, court can never confiscate the vehicle. In the first place Section 14 as it stands, does not require knowledge to be proved. Further importing into Section 14, the requirement of knowledge of the owner of the commission of the crime, would be contrary to the spirit of the newly introduced S. 14-A and the amended S. 14(1) and proviso. The object of these changes relating to confiscation is that, it is the duty of the owner of the vehicle to exercise due care to see that his vehicle is not used for the commission of the

crime. If he fails to satisfy the court that he exercised due care, he is visited with the penalty of confiscation of the vehicle. The amendment in 1979 has been made in order to prevent violations of these penal provisions by using fast-moving heavy-vehicles for these crimes by punishing, not only those who are actually caught in the process of transporting who will mostly be the employees of the owner of the vehicles - but also penalise the owner of the vehicles by confiscating the vehicle. In a situation when the employees of the owner of the vehicles have used the vehicle and have committed offences in spite of due care by the owner, it would always be possible for the owner of the vehicle to establish that despite his due care, the offence had been committed. In the context of S. 14-A and the substituted S. 14(1) and proviso, it is not necessary that the knowledge of the owner of the vehicle need be established as a pre-requisite for the court to confiscate the vehicle - It may be one of the several circumstances for the court to decide as to whether or not, the owner of the vehicle had taken due care to prevent the commission of the crime. To hold otherwise, would be to defeat the very object of amending the above provisions relating to confiscation of vehicles.

18. In the instant case, the only question that has to be considered is whether A. 3 has proved as he is required to prove under the proviso to Section 14(2) - that he had exercised due care in the prevention of the commission of the crime. It is not denied by A. 3 that A. 1 was his cleaner. All the 3 accused were tried together. They were defended by a common counsel and there was only one not of cross-examination. Nowhere in the cross-examination, it has been suggested on behalf of A. 3, that A. 3 had taken any care of the prevention of the crime and despite the same, his employees had used his vehicle to commit the offence. A. 3 has been questioned under S. 313 Cr.P.C. Except a total denial of every circumstances put to him, A. 3 had not stated that he had taken due care to prevent the commission of the crime and yet his vehicle had been used by his Cleaner and his Driver, to transport the liquor. It had never been the case of A. 3 that despite him, A. 1 and his Driver had taken the vehicle and illicitly transported M.O. 4 series. This is not a case of a driver and a cleaner, while on a lawful trip had illicitly concealed some contraband in the vehicle, so that the court could reasonably infer, that in the normal course of events, the owner of the vehicle, could not have prevented the criminal act of his driver and cleaner. This is a case, in which there was a full lorry

load of 5312 bottles of liquor of different varieties of brandy and rum. No other article was found in M.O. 1 lorry. Under these circumstances, I have no hesitation to hold, that though that the trial court has held that there was no evidence to prove conspiracy between the three accused to transport liquor and consequently A. 3 was entitled to an acquittal, still since A. 3 had failed to satisfy the court that he had taken due care in the prevention of the crime, M.O. 1 has to be confiscated as required under S. 14, which requires confiscation, even if the accused is acquitted. Having had a full opportunity to establish during trial, that the offence was committed despite his due care to prevent the commission of the crime, A. 3 had failed to do so. The order of confiscation, therefore is upheld.

19. In the result, both the revisions are dismissed.

20. Petitions dismissed.

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