

In Re: Maniklal

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Court : Chennai

Decided On : Mar-28-1951

Reported in : AIR1952Mad164; (1952)IIMLJ115

Judge : Panchapakesa Ayyar, J.

Acts : Madras Civil Motor Cars Control Order, 1947

Appeal No. : Criminal Appeal No. 504 of 1950

Appellant : In Re: Maniklal

Advocate for Pet/Ap. : V. Rajagopalachari and ;R.V. Raghavan, Advs.;The State Prosecutor

Judgement :

Panchapakesa Ayyar, J.

1. This appeal has been filed by Manicka Lal, the Madras agent of Hindustan Motors Limited, Calcutta, and the second accused in C. C. Nos. 436, 436 and 437 of 1949 on the file of the third Presidency Magistrate, Madras, against his conviction on three counts, regarding the sale of three 'Hindustan Ten' cars at Rs. 9,350 each, as against the controlled price of Rs. 8,195 each under Section 12 of the Madras Essential Articles Control and Requisition (Temporary Powers) Act, read with Clause 6 of the Madras Civil Motor Cars Control Order, 1947. The first

accused, the absentee master of the firm, residing at Calcutta, was acquitted, by giving him the benefit of the doubt, and the second accused, the local manager of the firm in Madras, who actually sold the three cars in question above the controlled price, was convicted on all the three counts, and sentenced to pay a fine of Rs. 250 each, or Rs. 750 in all, or, in default, to undergo rigorous imprisonment for three months. He has paid the fines, and then appealed.

2. I have perused the records, and heard Mr. V. Rajagopalachari, for the appellant, and the State Prosecutor 'contra.' Mr. Rajagopalachari raised three main contentions. The first was that the letters of the Provincial Motor Transport Controller, Exs. D. 2 and D. 3, dated 25-11-1947 and 2-12-1947, while calling for certain particulars regarding the price of Rs. 9,350 fixed by the Calcutta Headquarters and mentioned by the appellant stated 'inter se', in Ex. D. 2, the letter to the appellant:

'You will have to sell the cars at the rates fixed in those circular letters and take steps to see that the particulars called for by me are furnished by your principals without which the Provincial Motor Transport Controller will not be in a position to recognise any increase in the prices Please take note that the failure to comply with this order will render you liable for prosecution.'

and that Ex. D. 3, the letter to the Headquarters firm at Calcutta said 'inter se':

'I have informed Messrs. Lakshman Prasad and Sons that the prices contained in your Circular Nos. 60 and 61 are the ruling prices now.'

The price mentioned in the circulars mentioned in these letters was Rs. 9,350 the price at which the cars were sold. But there are two considerations which will make the argument that these letters empowered the petitioner to sell at Rs. 9,350 untenable. The first is that the 'Provincial Motor Transport Controller had no power' to empower the appellant to sell at a price higher than the price which could be fixed under the rules, in other words, higher than Rs. 8,195. He evidently took the price of Rs. 9,350 shown in the circular of the firm, 'for the time being to be correct', on the assumption that the appellant would furnish particulars to show that Rs. 9,350 would be the proper price under the rules. So, it is 'not an absolute

permission' to the appellant to sell the car at Rs. 9,350, as it is based on the assumption that the particulars justifying a controlled price of Rs. 9,350, as shown in the circular, would be 'furnished in due course.' Nor was the person who gave this alleged absolute permission empowered to give such permission and fix the price at Rs. 9,350 without getting the particulars and getting the sanction of the Government. So the Provincial Motor Transport Controller's letters will only be relevant for two purposes; firstly, to show that the appellant had 'no moral turpitude', as he was relying on the price given by his principals at Calcutta and was calling for the particulars from Calcutta and had not the particular himself, at Madras, and had acted in good faith on an implied assumption that he was permitted to sell the cars 'valldly' at Rs. 9,350 per car on a supposed absolute permission by the Provincial Motor Transport Controller. Secondly, It will be relevant for the question of 'sentence', because of the absence of moral turpitude. But it 'will not be relevant for setting aside the conviction.' An illegal and unconditional permission (or even an illegal promise not to prosecute -- though there is no such promise here) by an officer not empowered to give any such permission or promise will, of course, be of no avail for the purpose of escaping from the liability for prosecution or 'conviction' for the offence. The remark in Exs. D. 2 and D. 3, regarding prosecution if the cars were sold for higher price than Rs. 9,350, will not imply a promise not to prosecute if the cars were sold only at Rs. 9,350 each, as urged by Mr. V. Rajagopalachari. To say 'If you commit murder, you will be prosecuted' will not mean that there will be no prosecution if there is no murder but only an offence of grievous hurt.

3. The second contention of Mr. Rajagopalachari was that the petitioner himself gave a price of Rs. 7,700 in his letter dated 23-3-1948 for the very type of car, and that this showed that he was not motivated by 'greed' in selling the car at Rs. 9,350 on the wrong assumption that the price shown in the Head Office circular must be the real controlled price. That may be so, but is not relevant for the purpose of considering the validity of the 'convictions.' There are two types of offences under our law; offences 'involving moral turpitude', and offences 'not involving moral turpitude', but having all the requisite elements required by law for a conviction, like, for Instance, buying or selling a controlled article without permit, not knowing that a permit is required; or keeping a gun without a licence by simply

forgetting to renew the licence. The offences committed by this appellant fall under the latter category. That is, though all the requisites under the law to complete the offences and warrant the convictions are found, moral turpitude, like greed, and other unworthy motives are absent, though, of course, 'totally irrelevant except for sentence.', So, I confirm all the three convictions of the appellant as all the requisites under the law to complete the offences are satisfied.

4. The third contention of Mr. Ralagopalachariwas that the sentence of fine of Rs. 250 on eachcount is far too heavy, considering the circumstances, and also the fact that several other similarcases are pending against the appellant, these threebeing merely test cases, and that a nominal fineof Rs. 10 or Rs. 15 will do on each count. ThoughI agree that the fines are far too heavy, I am ofopinion that a fine of Rs. 50 for each offence willbe 'the minimum thinkable' in this case, as Courtsmust necessarily make a distinction between salesof costly motor cars, as here, irregularly, and salesof a petty quantity of iron nails or vegetables, inawarding sentences. In the end, therefore, I modify the sentences Imposed by the lower Courtinto fines of Rs. 50 on each count, or Rs. 150 inall for the three offences put together. The excessane of Rs. 600, paid already by the appellant, willbe refunded to him.

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