

S. Marimuthu Vs. the State

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Court : Chennai

Decided On : Dec-19-1990

Reported in : 1992CriLJ2126

Judge : K. Swamidurai, J.

Appeal No. : Criminal Appeal No. 155 of 1986

Appellant : S. Marimuthu

Respondent : The State

Advocate for Def. : Mrs. D. Kalaiselvi, Adv. for Public Prosecutor

Advocate for Pet/Ap. : D. Rajagopal for ;M. Karpagavinayagam, Adv. ;P. Navaneethan and ;G. Chandrasekar, Adv.

Judgement :

1. The accused in S.T.C. No. 45 of 1985 on the file of the learned Special Judge (Essential Commodities Act), Madurai is the appellant. He was charged for offences punishable u/Ss. 3(1)(2) and 5(1) of the Tamil Nadu Essential Commodities (Display of Stocks and Prices and Maintenance of Accounts) Order 1977 read with S. 7(i)(a)(i) of the Essential Commodities Act.

2. P.W. 4, Marudayya was the Inspector of Police, Crimes, Civil Supplies, Madurai South on 17-7-1985 he inspected the shops and found the accused running

business under the name and style of 'Raja Biscuits Company' at door No. 115, Netaji Road, Madurai. He was having a licence R.C. No. 400208 and he was selling bread. P.W. 4 found that there was no board showing the stock and also showing the price list of the commodities. P.W. 4 prepared a mahazar, Ex. P1 and he got attention by P.W. 1. Then he served a copy of Ex. P1 on the accused and went to the police station and registered a case in Cr. No. 1780/85 u/S. 3(1)(2) read with S. 5(1) of the said Act. Ex. P4 is the first information report. Then he examined P.Ws. 2 and 3 and then sought for sanction from the Collector of the District under Ex. P2. Then, after getting the sanction from the Collector under Ex. P2 on 22-8-1985 he filed the charge-sheet against the accused on 30-8-1985. P.W. 1 is the mahazar witness, who has attested the mahazar under Ex. P1. He turned hostile while he was examined in Court. P.W. 2, Narayanaswami is doing business in grocery at door No. 103. His evidence is that he saw P.W. 1 attesting the mahazar, Ex. P1. He too also attested the same. It was suggested to this witness that P.W. 1 was not there at the time when Ex. P1 was prepared by the police. P.W. 3 Sabanayagam, is the Assistant in the Office of the Collector of Madurai. His evidence is that District Collector granted sanction for prosecution under Ex. P2. Ex P3 is the requisition given by the Inspector of police. In cross-examination P.W. 3 has stated that he received Ex. P3 on 2-8-1985 from the Inspector of Police requesting for sanction and that the statements of witnesses were not sent along with the report. P.W. 4 is the Inspector of Police. His evidence in Chief examination is that he has sent the requisition Ex. P3 along with the reports of witnesses, mahazar and the first information report to the Collector. His evidence is that he received the sanction under Ex. P2 and filed the charge-sheet on 30-8-1985.

3. The accused, when questioned under S. 313, Cr.P.C., with reference to the incriminating circumstances available from the evidence of the prosecution witnesses, pleaded not guilty and denied the charges. The accused has also filed a written statement in this case.

4. The learned Special Judge found the accused guilty under the above said provisions of law and convicted and sentenced him to undergo rigorous imprisonment for three months and also to pay a fine of Rs. 100/- under each of

the three counts and directed the sentences to run concurrently.

5. Mr. D. Rajagopal, learned counsel for the appellant contended that the sanction under Ex. P2 is not according to law and that the Collector, Madurai has not applied his mind before granting sanction. P.W. 3, the Office Assistant of the Collector of Madurai has stated in his cross-examination that apart from the report, Ex. P3 dated 2-8-1985 from the Inspector of Police, the other records like statements of witnesses, first information report etc., have not been sent to the Collector whereas P.W. 4, Inspector of Police has stated in his chief examination that he has forwarded the first information report, mahazar and statements of witnesses to the Collector of the District along with his report Ex. P3. Ex. P2 is the sanction order dated 22-8-1985 issued by the Collector of Madurai. On a careful perusal of the same it appears that no other record has been despatched along with the report, Ex. P3 of the Inspector of Police and, therefore, the Collector has no record at all to peruse before granting sanction for prosecution. The Collector is expected to issue sanction under cl. 9(b) of the Tamil Nadu Essential Commodities (Display of Stocks and Prices and Maintenance of Accounts) Order 1977. But, there is no material for the Collector for granting sanction. Therefore, learned counsel for the appellant contended that the sanction granted by the Collector is a farce and that the Collector has not applied his mind before granting the sanction. Therefore, the sanction is illegal and there is no valid sanction. The prosecution of the accused is not maintainable. In this view of the matter, the conviction and sentence imposed on the accused are set aside and the appeal is allowed and the fine amount if any paid by the appellant is directed to be refunded to the accused.

6. Appeal allowed.