In Re: Manu Iyer

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Court : Chennai

Decided On : Jul-23-1953

Reported in : AIR1954Mad485

Judge : Ramaswami, J.

Acts : Madras Cloth Dealers Control Order, 1948; Essential Supplies (Temporary Provisions) Act, 1946 - Sections 7

Appeal No. : Criminal Revn. Case No. 1256 of 1952 and Cri. Revn. Petn. No. 1098 of 1952

Appellant : In Re: Manu Iyer

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C.K. Venkatanarasimham, Adv.

Judgement :

Ramaswami, J.

1. This is a criminal revision case filed against the conviction and sentence of the learned Sub Divisional Magistrate of Koilpatti in C. C. No. 50 of 1952.

2. The facts are: There is no dispute that a valid licence had been issued under the Madras Cloth Dealers Control Order in the name of Ramaswami Aiyar, the

undivided father of the petitioner herein. It is also clear that the father and son were carrying on business as a joint family concern. This licence was renewed upto 1951. Ramaswami Iyer died in April 1950. In these circumstances the petitioner herein, the son of Ramaswami Aiyar had been prosecuted for selling M. Os. 1 to 5 to a hawker P. W. 1, viz, under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946, for contravening clause 4(1) of the Madras Cloth Dealers Control Order, 1948.

3. The case for the accused was set out in hiswritten statement as follows:

'My deceased father and myself were carrying on the firm 'Messrs. Ramaswami Iyer'. My father died about the month of April 1950 having already applied for the renewal of the licence for April to September 1950. Subsequent to his demise I presented a petition in person to the authorities intimating the factum of my father's demise and producing the certificate of income-tax assessment. Ajjain for October 1950 to March 31st, 1951. I remitted Rs. 12-8-0 on 18-9-1950 Intothe Tenkasi Sub Treasury and sent an application with letter along with the chalan mentioning in the application the fact of my father's death. I got the same licence renewed in the same name from the Department. Further, for the period of Apiil 1951 to September 1951 I did remit the licence fee in the Tiruchirapalli taluk Treasury Chalan No. 3853 ar.d sent the same along with an application to the Department through the District Piecegoods Merchants Association, Tirunelveli. I again got the licence renewed in the firm's name. So that throughout and on the alleged date 20-6-1951 I held a valid licence in the name of the firm.'

The learned Sub Divisional Magistrate declined toaccept the explanation of the accused, found theaccused guilty as charged and sentenced him to pay a fine of Rs. 50.

4. Two points are taken in revision before me, viz, that first of all, the licence granted would enure to the benefit of a member of the joint family; and secondly, that in this case there has absolutely been or could have been no 'mens rea' on the part of the accused.

5. Point 1: I am unable to accept the contention of the learned advocate for the petitioner that a licence issued in the name of a father would enure for the benefit of the other members of the joint family after his death. The language of Clause 4(1) or the Madras Cloth Dealers Control Order clearly shows that the licence issued is personal to the licencee. This stands to common sense also because a licencee is selected after taking into consideration various circumstances personal to himself like, his previous experience, standing in the business, character etc. If this were not to be the case, a person unfitted to be a licencee like another member of the joint family might automatically become a licencee notwithstanding the fact that if the State were to select a licencee and the rules for the selection were to be applied such a person would be ineligible. It is enough to mention that such' a member might be an idiot or a lunatic or a convicted person or a black-marketeer in his own rights. So I am unable to make the term 'licencee' herein include his heirs.

6. Point 2: The learned Advocate stands in a better footing in regard to this second contention.

7. Mens rea or guilty mind has from the earlist times been held to be an essential requisite for the proof of a crime. An act does not make a man guilty without a guilty intention. But there is generally no room for the application of this familiar concept in English Common law even in the Indian Penal Code as it is one of the most exhaustive Codes and devotes a full chapter towards its interpretation clause while an equally large part of it is devoted for the general exceptions which withdraw acts which would otherwise be offences from that category. It contains elaborate definitions and explanations which render this maxim cut of place. In fact its elaborate paraphernalia has been designed, it is said. to prevent captious Judges from wilfully misunderstanding the Code and cunning criminals from escaping its provisions. Therefore, the doctrine of 'mens rea' which is the second essential ingredient of crime in English Common Law is wholly out of place in construing the sections of the Penal Code which itself uses words, like 'knowingly', 'willingly', 'fraudulently', 'negligently' and so on.

8. In addition, there are again a large class of penal acts like the present one under consideration created under the provincial as well as under the Imperial Acts which are really not criminal but which are prohibited by the levy of penalty in the interests of the public. To these acts prohibited by statute the doctrine of 'mens rea' does not apply except when on public grounds it is introduced as an element in the offence or the prohibited act or occurs in the language of the statute itself. Modern statutes have thus created a large number of offences in which the liability is absolute.

In -- 'Pearks v. Ward', 1802 2 KB l (A), Chan-nell J. has laid down:

'By the general principles of the criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of 'mens rea'.. But there are exceptionsto this rule in the case of quasi criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any' rate in default of payment of a fine; and the reason for this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender Is liable to a penalty whether he had any 'mens rea' or not, and whether or not he intended to commit a breach of the law.'

9. in other words, in such cases the law regards the criminal act itself as sufficient prima facie proof of the presence of 'mens rea'. Every sane adult is presumed to intend the natural consequences of his conduct: -- 'R. v. Sheppard', (1810) Russ & Ry 169 (B). Where a statute forbids an act, the doing of the act itself supplies 'mens rea'. In such cases the prosecution need only prove the prohibited act and the defendant must then bring himself within a statutory defence.

10. There still remains however the Important requirement, viz., that unless Indeed the statute is so worded as to exclude even this defence, e.g., -- 'R v. Larsonneuf, 1935 97 JP 206 (C), and which cannot be stated to be the case in the instant matter in determining whether an act does create a more stringent prohibition regard must be had to the object of the statute, the words used, the nature of the duty, the person upon whom it is imposed, the person by whom it would in

ordinary cases be performed and the person upon whom the penalty is imposed: -- 'Mousell Bros. Ltd. v. L. N. W. Rly. Co.', 1917 2 KB 836 (D); -- 'Alien v. Whitehead', 1930 1 KB 211 (E), the conduct of the offender must have been voluntary, that is to say that his actions must have been conscious and uncompelled, although he may have had no idea that what he was doing was a thing that happened to be forbidden by the statute. Ignorance is no defence, but the defendant may escape if he shows that he did not do the act intentionally: -- 'Kat v. Diment', (For a detailed discussion of 'mens rea' In statutory offences, see Kenny. Outlines of Criminal Law, 16th Edn.. S. 31; Russell on Crime, 10th Edn., page 25 and the following; and Roscoe's Criminal Evidence, 16th Edn., page 27).

11. Therefore, applying these principles to the facts of the present case which have been set out above, this accused cannot be deemed to have committed this statutory offence and the honest and reasonable belief entertained by the accused would make the act charged against him an innocent one. The conviction and sentence of the accused are set aside and he is acquitted and the fine amount, if collected, will be refunded.