Nagamanickam Vs. State

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Court : Chennai

Decided On : Aug-09-2000

Reported in : 2000(4)CTC230

Judge : R. Balasubramanian, J.

Acts : Code of Criminal Procedure (CrPC) , 1973, Sections 245; Essential Commodities Act, 1955; Tamil Nadu Scheduled Commodities (Regulation of Distribution by Car System) Order 1982 - Clause 6(2) and 3, 14(1)

Appeal No. : Crl.R.C. No. 675 of 1998

Appellant : Nagamanickam

Respondent : State

Advocate for Def. : Mr. R. Karthikeyan, Government Adv.

Advocate for Pet/Ap. : Mr. K. Kalyanasundaram, Adv.

Judgement :
ORDER

1. The 4th accused in S.T.C.No.9 of 1997 on the file of the Special Court for E.C/N.D.P.S Act cases, Coimbatore, Periyar and Nilgiris Coimbatore described as an 'authorised dealer' of fair prior shop No.2 represented by Nagamanickam, President, Udumalpet Co-operative Marketing Society, Dharapuram Road,

Udumalpet is the petitioner herein. A1 to A3 in that S.T.C. are the respective employees of the Society.

2. A complaint was lodged alleging violation of Clause 6(2) and (3) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982, in that A1 to A3 short measured kerosene to witnesses. The complaint also shows that there was an excess stock of eight litres in the stock of the Society itself. The complaint specifically avers that A1 to A3 are responsible for the violation and the President of the 4th Accused Society was not even available at the time of the check. In the face of the above undisputed facts, the revision petitioner moved an application in C.M.P.No.72 of 1998 in S.T.C.No.9 of 1997 with a request to drop the proceedings against him, as there are no materials at all, either in the complaint or in the statements recorded during investigation implicating A4 in any manner with the offence complained of. The learned trial Judge dismissed that application on merits. Hence the present revision.

3. Heard Mr.K.Kalyanasundaram learned counsel appearing for the revision petitioner and Mr.R.Karthikeyan learned Government Advocate appearing on the criminal side for the State. The argument of the learned counsel for the petitioner is that, there are absolutely no materials on record in the S.T.C. referred to above, from which it could even be inferred, that the revision petitioner is involved in the commission of the offence and therefore the revision petitioner cannot be proceeded with. I heard Mr.R.Karthikeyan learned Government Advocate on this aspect. It appears that originally summons were served on the Managing Director of the said Society. On his representation before court that he cannot be made liable on the set of facts disclosed in the records his name was deleted and the Investigating Agency filed supplemental report implicating A4 as described earlier in this order.

4. The materials available on record do not show the involvement of the revision petitioner in his capacity as the President of the authorised dealer in the commission of the crime. The entire averments available on record relate only to A1 to A3. It is stated in the complaint that the President of the Society was not present during inspection and that the salesmen namely. Packer, Ravi

Subramanian and Gnanasekaran are responsible for the violations. It is also stated therein that the Accountant failed to discharge his duties properly and directly participated in the offence. In Tamil Nadu Civil Supplies Corporation Ltd., Tirunelveli v. Inspector of Police, Civil Supplies, C.I.D., Tirunelveli, 1993 L.W.Crl. 601 a learned single Judge of this Court had held that under Clause 14(1)(a) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order 1982, the authorised dealer cannot be straight away held liable for the criminal activities of the servants or the salesmen, unless it is shown that he had any knowledge about the same. The complaint and the materials collected thereafter do not implicate the revision petitioner in his capacity as the President of the authorised dealer, either directly or indirectly in the commission of the offence. The above referred to judgment had also been cited in the judgment of the Full Bench of this court in Ganga Bai v. Inspector Civil Supply C.I.D., North Unit, : 1999(2)CTC385 . However the Full Bench, noticing the above case law, went onto hold that the case law referred to above would not apply to that Full Benchjudgment: In Tamil Nadu Civil Supplies Corporation Ltd., Tirunelveli v.Inspector of Police, Civil Supplies, C.I.D., Tirunelveli, 1993 L.W.Crl. 601 ithas been held as follows:

"Held: The facts in this case show that it was A5 salesman, who wastransporting the eight bags of rice and that it was he, who made the false entriesin the bills books as if rice had been distributed to the card holders and that he is guilty of some offences. The question is how is A1 guilty of any offence? it is not in dispute that A1 is an authorised dealer. ' I do not understand how clause 6(2) is violated at all by A1, from the facts of the prosecution case.' This clause is to the effect that if a family card, which is registered with the authorised dealer is produced by the card holder, the authorised dealer shall, after making necessary entries in the card, supply the scheduled commodities (not exceeding the quantity for which he is eligible.) It is not understandablehow A1 has violated this when A5 has made false entries in the bills as if rice has been supplied to card holders. Therefore clearly no offence under clause 6(2) is committed at all.

Even if any offence is committed under this clause, again, it is difficult tounderstand how A1 the authorised dealer can be said to have committed an offence.

Clause 14(1) prescribes that for any commission and omission of the partners, agents, servants and other persons, who are allowed to Work in the fairprice shop vis-a-vis the Regulation Order, the authorised dealer also is responsible. Certainly, the authorised dealer cannot be made responsible for any intentional offence committed by its employees.'

To the same effect is another judgment of this Court reported in Tamil NaduCivil Supplies Corporation, etc., v. State, etc., 1996 (2) L.W Crl. 495. whereinit has been held as follows:

'Merely because Clause 14(1)(a) says, that the authorised dealer can be held to be responsible, in the absence of any material, the appellant cannot be held liable for an offence that has been committed by the salesman/A2 in thiscase.'

5. In view of the law laid down by this court as stated above and in viewof total absence of materials on record against the revision petitioner, I am ofthe opinion that the learned trial Magistrate had erred in dismissing thedischarge petition filed by the accused. Accordingly this revision is allowed;the order under challenge is set aside and the revision petitioner/A4 isdischarged from the proceedings in S.T.C.No.9 of 1997 on the file of thePresiding Officer, Special Court for E.C/N.D.P.S. Act cases for the District ofCoimbatore, Periyar and Nilgiris at Coimbatore.