

In Re: A.V. Viswanatha Chetti

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Court : Chennai

Decided On : Sep-07-1944

Reported in : AIR1945Mad24

Appellant : In Re: A.V. Viswanatha Chetti

Judgement :

ORDER

Happell, J.

1. The petitioner has been convicted of offences punishable Under Rule 81(4) read with Rule 81(2), Defence of India Rules and has been sentenced to pay a fine of Rs. 60 or, in default, to undergo six weeks rigorous imprisonment. The petitioner, as a result of an inspection of his business premises on 8th June 1943, was found to have failed to exhibit a notice board in front of his shop showing the prices of the food grains for sale and to have failed to maintain his stock account correctly in contravention of Rules 3 and 7 of the license issued to him under the Food Grains Control Order. Rule 81(4), Defence of India Rules, provides that

if any person contravenes any order made under this rule he shall be punishable with imprisonment for a term which may extend to three years or With fine or with both.

2. The Food Grains Control Order was made Under Rule 81(2). Mr. Jayarama Ayyar for the petitioner does not challenge the finding that the petitioner had

contravened the terms of his license. He argues that no offence punishable Under Rule 81(4) was committed because there has been no contravention of an order made Under Rule 81 but a mere breach of a condition of the license issued under the order. This argument was advanced before Kuppuswami Ayyar J. in *In re Chenchu Raghavalu Chetti* A.I.R. 1944 Mad. 41 and he refused to accept it. Mr. Jayarama Ayyar, however, says that he feels justified in pressing the same argument before me because *In re Chenchu Raghavalu Chetti* A.I.R. 1944 Mad. 41 was dismissed in limine and because the attention of Kuppuswami Ayyar J. was not drawn to a Bench decision of the Calcutta High Court in *Umesh Chunder Ghosh v. Queen Empress* (1999) 26 Cal. 571. The question in *Umesh Chunder Ghosh v. Queen Empress* (99) 26 Cal. 571 arose under the Opium Act (1 of 1878). The appellant had been convicted Under Section 9, Opium Act, on the footing that by failing to keep correct accounts of the sale of opium he had contravened a rule made Under Section 5 of the Act. Rule 15 (1) of the rules made Under Section 5 stated that

a person to whom a license has been granted... may sell opium by retail in accordance with the conditions specified in the license.

3. The conditions were issued as subsidiary rules by the Board of Revenue and Rule 13 sets out the manner in which accounts of the sale of opium were to be kept. Rule 18 provided that in case of an infringement of any of the conditions the license should be cancelled. I do not find that any general proposition is laid down in *Umesh Chunder Ghosh v. Queen Empress* (1999) 26 Cal. 571 such as is contended for by Mr. Jayarama Ayyar, namely, that a breach of a condition in a license issued under an order is not punishable as if it was a breach of the order itself. The learned Judges who decided *Umesh Chunder Ghosh v. Queen Empress* (1999) 26 Cal. 571 seem to have founded their decision on the fact that the subsidiary rules which constituted the license were issued separately by the Board of Revenue and not by the Government, that the penalty provided for a breach of the rules issued by the Board of Revenue was cancellation of the license, and that Government had not issued any rule Under Section 5 of the Act which makes the preparation of an incorrect account punishable Under Section 9. In my opinion, the reasoning on which the decision in *Umesh Chunder Ghosh v.*

Queen Empress (1999) 26 Cal. 571 is founded will not apply to the contravention of a condition of the license issued under the Food Grains Control Order. It is true that the license is actually issued by the Provincial Government or by an officer authorized by the Provincial Government to do so; but Clause (4) of the order states that licences shall be in Form A, a form set forth in Schedule 2 to the Order, and Clause (6)(1) enacts that

no person being the holder of a license issued or deemed to be issued under this Order shall contravene any of the conditions mentioned in Form A,

and, while stating that the license of any person who contravenes any of its provisions may be cancelled, specifically provides that this is without prejudice to any other action that may be taken against him. It is clear that the Government of India intended that the conditions of the license should be regarded as part of the Food Grains Control Order so that a contravention of any one of the conditions would be a contravention of an order made Under Rule 81(2) and punishable Under Rule 81(4), and, in my judgment, effect has been given to the intention by the terms of the Food Grains Control Order. With respect, therefore, I agree with the decision of Kuppuswami Ayyar J. in *In re Chenchu Raghavalu Chetti* A.I.R. 1944 Mad. 41. The petition is dismissed.

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