

In Re: M.P. Govindaraj

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Court : Chennai

Decided On : Jul-08-1966

Reported in : (1966)2MLJ401

Appellant : In Re: M.P. Govindaraj

Judgement :

ORDER

P. Ramakrishnan, J.

1. The facts in this case are briefly the following. The petitioner Govindaraj is doing business in Karaikal. He was found proceeding in a lorry MDF. 2838 near Kancheepuram and in the lorry there were 125 tins each containing four gallons of French Polish. French Polish is an item included in the Madras Denatured Spirit Methyl Alcohol and Varnish (French Polish) Rules, 1959, series of rules framed by the Madras Government under the powers conferred under the Madras Prohibition Act. Rule 6(ii) of the Rules provides that

no person may possess or transport within any area in the State denatured spirit...methyl in excess of the limits prescribed in the Sub-rule (i) above except under and in accordance with the terms and conditions of a license for possession, or a permit for transport, as the case may be.

2. The petitioner along with the driver was prosecuted before the Sub-Magistrate; Kancheepuram, for contravention! of the above rule read with Rule 11 of the said

Rules. The driver was acquitted and the petitioner was convicted and sentenced to pay a fine of Rs. 25. His conviction and sentence were confirmed by the District Magistrate in appeal. He has filed the present revision case.

3. Learned Counsel for the petitioner stressed before me that the prosecution case itself is that the petitioner was taking the aforesaid quantity of French Polish from Karaikal under the strength of Exhibit P-4, a gate pass issued by the authorities at Karaikal, to Bangalore for which State he had a permit, Exhibit P-3, issued in his favour by the Mysore Excise Department. It is therefore not at all in dispute, that the accused was taking this quantity of French Polish from Karaikal, an Union territory, to Mysore, another State, through the intervening State of Madras. The accused's Counsel urged that this action of the accused, will not satisfy the definition of transport, and therefore his conviction Under the aforesaid rule cannot be upheld. 'Transport' is defined in Section 3(20) of the Madras Prohibition Act, as meaning to move from one place to another within any local area to which that Act applies. It is urged by learned Counsel that though there was movement inside the Madras State of the goods when they were found at Kancheepuram, the actual movement of the goods for the purpose of the definition of transport, must be reckoned from the starting point, that is, Karaikal to the destination, namely, in Mysore territory. It will therefore be an error, to construe the act of transport which in this case was from Karaikal to Bangalore, as consisting of an infinite series of transports from any two intervening points selected at random between the above two termini. For this view, he has the support of the judgment of Sir John Beaumont, C.J. of the Bombay High Court in a Bench decision reported in *Emperor v. Dagadu Shetiba* : AIR1938 Bom43 . That case dealt with the definition of ' transport' given in the Bombay Abkari Act (V of 1878), which is in almost identical terms with the definition in the Madras Prohibition Act. Referring to many absurd situations which will arise, if the act of transport is construed as involving a number of minor transports within any two points between the termini, comprising of the starting point, and the destination the learned Judge observed:

Strange results would follow if that be the construction of the Act....In my view that cannot be the meaning of the Act. I think that when the Act talks about transport from one place to another it means transport from the starting point to the ultimate

destination. It is a question of fact for the Court to determine what the destination may be....But merely passing through a place in the course of a journey does not, in my judgment, amount to transporting to that place.

The learned Public Prosecutor appearing for the State referred to a decision of a single Judge of this Court, Kailasam, J. in CrI.R.C. Nos. 1030 and 987 of 1963 where a similar plea appears to have been urged by the accused. On the facts of that case, it appeared that the accused had not established their plea that the starting point of the journey was outside the Madras State. Further, the judgment and reasoning of the learned Chief Justice in *Emperor v. Dagadu Shetiba* : AIR1938 Bom43 was not also made available when that case was disposed of. In the present case the prosecution itself does not deny the fact that the accused was transporting the goods from Karaikal to Mysore State and that the lorry was stopped at an isolated place, Kancheepuram, in the middle of the journey. Obviously the principle laid down in the Bombay High Court decision would clearly apply to this case and I am of opinion that the accused cannot be prosecuted for transport within the meaning of Rule 6(ii) of the Rules mentioned above.

4. The learned Public Prosecutor however urges that even if transport is left out, in the circumstances of the case there would be an import of the goods, from Karaikal to Madras. Section 3(7) of the Madras Prohibition Act, defines 'import' as bringing into any local area to which that Act applies from any other local area in the State of Madras to which that Act has not been extended. In the alternative he also urges that the accused should be charged for possession which also requires a licence under Rule 6(ii) of the Madras Denatured Spirit Methyl Alcohol and Varnish (French Polish) Rules, 1959. The word 'import' in the definition does not preclude an export after import and an export may be immediately after import. So, where, as in this case, the accused has admittedly brought the goods into Madras from Karaikal no doubt with an intention, at the end of the transit through Madras State, to take them into Mysore territory, there will be an act of import, followed by export, but there is no requirement in the Act, that the import should be for consumption or sale inside the State of Madras. If in a proper case, a charge has been framed for contravention of Rule 5 of the Rules, which prohibits import without a licence, the argument of the Prosecutor that the accused is liable for

import in any event could be usefully considered, and the accused convicted on the basis of proper proof. Similarly it may also be open in such a case to bring home to the accused a charge for possession, even if a charge for transport is not made out. On the basis of the charge as framed against the accused in this case, it is clear that the conviction for an offence of transport is not sustainable. Seeing that a small fine of Rs. 25 has been imposed notwithstanding that a large quantity of the French Polish was involved in the transport, it is clear that both the Courts below did not take a serious view of the contravention, but convicted the accused for a technical contravention of the rule. In the above circumstances I do not consider it necessary to take any further steps in the case for dealing with the accused under any other provision of law. The revision case is allowed and the conviction and sentence of the accused are set aside. The fine if paid will be refunded to the petitioner.