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In Re: Natarajan and ors.

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Court : Chennai

Decided On : Dec-05-1975

Reported in : 1976CriLJ1502

Judge : Ratnavel Pandian, J.

Appellant : In Re: Natarajan and ors.

Judgement :

Ratnavel Pandian, J.

1. Accused 1 to 6 in C.C. No. 3721 of 1974 on the file of the Ninth Metropolitan Magistrate, Saidapet, Madras, are the revision-petitioners.

2. They stood charged by the Inspector of Police, Food Cell, C.I.D. Investigation Wing V Madras for offence under Clause 17 of the Tamil Nadu Kerosene (Regulation of Trade) Order, 1973, read with Section 7 of the Essential Commodities Act, 1955 and Sections 3 and 23 (1) of the Petroleum Act, 1934, on the allegation that on 16-7-1973 at about 4-30 p.m., at No. 188, Rathinasabhapathi Street, Puliyurpuram, Kodambakkam, the accused were in possession of 3,500 litres of kerosene, 170 litres of diesel and 800 litres of dangerous petrol valued at Rupees 4,000/- contained in barrels and tins for sale and that the said quantity of petroleum products, empty barrels, measuring vessels, funnels and connected records, were seized from the possession of the accused and that the accused were not having any valid licence for the possession of the said petroleum

products.

3. When examined, the accused admitted the abovesaid offence and pleaded guilty to the charge. Accordingly, the lower Court found them guilty of the abovesaid offence and sentenced accused 1 to 4 to pay a fine of Rs. 26/- each, in default to suffer R. I for two months each and accused 5 and 6 to pay a fine of Rs. 50/- each, in default to suffer regorous imprisonment for three months each and also to suffer imprisonment till the rising of the Court.

4. Now, the accused have preferred this revision petition, and the learned Counsel Mr. E. H. B. David, appearing for them advanced arguments (1) Challenging the Tamil Nadu Kerosene (Regulation of Trade) Order, 1975 (hereinafter referred to as the Order) and Clause 17 of the said Order as ultra vires and unconstitutional as it is beyond the jurisdiction of the legislative competence of the State Legislature, because the matter comes within item No. 53 of List I of Schedule 7 of the Constitution of India and only the Union Parliament can legislate, and contending (2) that the learned Magistrate has committed an irregularity by questioning the petitioners on the same day when the copies of the documents relied upon by the prosecution were given to them and that the learned Magistrate has failed to take the accused's answers to the charges in their language, (3) that there is mis-joinder of charges and of persons (4) that the learned Magistrate ought not to have given separate sentences in view of Section 71 of the Indian Penal Code, and (5) that the confiscation and sale of the properties is illegal and no offence has been made out under the Order and the Petroleum Act.

5. Coming to the first point, the learned Public Prosecutor would bring to my notice that this Order was made in the exercise of powers conferred by Section 5 of the Essential Commodities Act, 1955 (Central Act X of 1955) read with the Government of India Notification in G. O. 2314 dated July, 30, 1966, and contend that the State Legislature is competent to make the said Order, and the State Government has given reason for the enactment of the Order in the preamble of the Order itself, viz., 'Whereas the State Government are of opinion that for maintaining supplies of kerosene and for securing its equitable distribution and availability at fair prices it is necessary and expedient to provide for the licensing of

Kerosene', and therefore the Order and the impugned clause are within the competence of the State Legislature, and it is not ultra vires. I accept the argument of the learned Public Prosecutor and hold that the impugned Order is quite valid.

6. Coming to the next point, Mr. David would contend, relying on the decision in S. Chinnaswamy In re, 1972 Mad LW (Cri) 146 : 1973 Cri LJ 358 wherein K. N. Mudaliyar, J., while dealing with Sections 241 and 173 (4), Cr. P.C. has, by way of obiter dictum observed that in such cases the Magistrates would do well, in the interests of justice, to exercise their judicial discretion and take up the case for further hearing after one day's interval so that the accused may be enabled to contact either the lawyers or their relatives or friends for proper arrangements for their defence. Having regard to the undisputed fact in this particular case that the petitioners had engaged a lawyer and had the advantage of getting legal advice, it cannot be said that they were prejudiced by being questioned on the same day when the documents contemplated under Section 173 were furnished. After going through the records, I do not find that these petitioners have been marred by a haphazard and perfunctory recording of their admission which, in my opinion, had been made on their own volition. Even now, it is not the contention of the petitioners that they have not admitted the offence and therefore this contention is not sustainable.

7. Coming to the third contention, I find that the petitioners have been charged for offences both under the Order and the Petroleum Act (Central Act XXX of 1934). The contention of the petitioners seems to be that there is a misjoinder of charges in as much as possession of an article of certain description cannot be regarded as forming part of the same transaction with possession of an article of a different description, coming under two separate legislations. But, it is clear from the evidence that the petitioners kept the kerosene and the dangerous petrol together in their possession for the purposes of carrying on the business of a vendor of contraband. Therefore, they must be held to be in possession of the two articles in the process of carrying through the business of selling contraband. The learned Public Prosecutor has relied on the decision in Emperor v. Nga Lu Gale (1918) 19 Cri LJ 34 : AIR 1917 LB5(1), wherein the accused was convicted of an offence under Section 9 (c) of the Opium Act and Section 48 (d) of the Excise Act, and

sentenced to pay a consolidated fine of Rs. 100/- in respect of both the offences. A point was raised that as several offences were connected together as to form the same transaction, there is a misjoinder of charges and as such the conviction should be set aside. But, it was held that the possession of both the articles was part of the same transaction and that the accused could be tried jointly for both the offences and the trial cannot be said to be bad for misjoinder of charges. It was also held that there is no justification in law for the consolidated fine for two offences. In the instant case, we are not concerned about the second part of the abovesaid decision, because in this case the learned Magistrate has passed a separate sentence for the offence under the Order by imposing imprisonment till the rising of the Court, though he has not specifically mentioned the section or the head of the charge in his order. Therefore, I am of the view that it cannot be said that the trial is vitiated by the joint trial for both the offences.

8. In this case, it transpires from the materials on record that all the accused were dealing with the same transaction and as such it cannot be said that there is misjoinder of persons.

9. Coming to the next point, as the offences in this case are committed under two separate enactments, in my view, Section 71, I.P.C., is not helpful to the petitioners and as such the sentences cannot be questioned by invoking Section 71.

10. Coming to the last point, it is very clear that the petitioners were found in possession of dangerous petroleum. Section 3 (2) of the Petroleum Act says that save in accordance with the conditions of any licence for the purpose which he may be required to obtain by rules made under Section 4, no one shall import any dangerous petroleum and no one shall transport or store any petroleum. Mr. David has not advanced any acceptable argument to show that no offence has been committed. But, on the other hand, as already discussed, I find that there is clinching and acceptable evidence to hold that the petitioners have committed the offences under both the Order and the Act. Section 24 of the Act enables the confiscation of petroleum and receptacles. In this case, the petitioners have been in possession of 800 litres of dangerous petroleum, i.e., beyond the quantity of 30

litres permitted by the Act and the Rules made thereunder, and therefore the offence has been completed and the confiscation of the petroleum and the receptacles is quite legal.

11. Coming to the confiscation and sale of kerosene, the petitioners were in possession of 3500 litres of kerosene. Section 7 of the Essential Commodities Act empowers the State to forfeit to the Government the contraband and therefore the confiscation and sale cannot be challenged.

12. For the foregoing discussions, I am of the view that this revision petition is devoid of merit and hence it is dismissed.

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