

S.A. Ahmed Vs. Subramaniam

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Court : Chennai

Decided On : Feb-12-1971

Reported in : 1971CriLJ1395

Judge : K.N. Mudaliyar, J.

Appellant : S.A. Ahmed

Respondent : Subramaniam

Judgement :

ORDER

K.N. Mudaliyar, J.

1. S.A. Ahmad (A-1) is the petitioner praying for setting aside the order of the District Magistrate (J) Dharmapuri, directing the return of 70 bags of rice to Subramaniam (A-2) in S.T.R.C. 57 of 1969, dated 24-3-1970. The petitioner states that he was the owner as established by the evidence which has been admitted to be true by the second accused. It is on this ground the petitioner seeks for the return of the 70 bags of rice to him. In the order the learned District Magistrate stated that A.1 (when examined Under Section 342, Criminal P.C.) would deny that he had anything to do with this case and he went to the extent of stating that he never produced that bills Exs. P. 6 to P. 11. In my view, Exs. P. 6 to P. 11 ought not to have been marked as prosecution documents in the absence of the proper proof of the contents of the bills either by the vendor or by the buyer. In the

absence of such proof the value of Exs. P. 6 to P. 11 would be tantamount to the production of material objects in this case. I attach no importance to the so-called bills Exs. P. 6 to P. 11. By virtue of the plea raised by the petitioners (A. 1) and also by reason of the absence of proper proof of the ownership of the petitioner of the 70 bags of rice, the District Magistrate acquitted A. 1. After having got the benefit of acquittal, he now comes forward with an inconsistent plea that he is the owner of the 70 bags. If only he had made such a plea in the course of the proceedings against him in S. T. R.C. 57 of 1969 undoubtedly he would have been convicted by the District Magistrate. After getting the advantage of the acquittal, he has chosen to claim that he is the owner solely on the basis of the so-called admission made by A. 2 which has not been acted upon by the trial court. A. 1 has not placed any proof of the material for this Court to conclude that A. 1 is the real owner of the 70 bags of rice. As such his claim is, in my view, worse than frivolous. Regarding A. 2 who transported this 70 bags of rice in the lorry MYD 2712 he admitted the offence. Therefore, the learned Judge found him guilty of the offence Under Section 3 (1) of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order, 1968, Clause 3 (1) of the Madras Paddy and Rice (Movement Control) Order, 1968 and Clause 3 (1) of the Southern States (Regulations of Export of Rice) Order 1964 and convicted and sentenced him to pay a fine of Rupees 100.

2. But the learned District Magistrate after having found A. 2 guilty of the offence as notified above passed a very curious order that by reason of A. 2 bringing the rice in the lorry he chose to direct that the value of the rice which has been sold to the marketing society will have to be refunded to him. This order is, in my view, an illegal one, which has been passed contrary to the terms of Section 7 of the Essential Commodities Act, 1955. Undoubtedly, the Madras Paddy and Rice (Movement Control) Order, 1968 was one issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) as is made clear in the preamble to G. O. Ms. 385, Food, 11th April, 1968. The material part of Section 7 of the Essential Commodities Act, 1955, is extracted here below.

If any person contravenes whether knowingly, intentionally or otherwise, any order made Under Section 3:

(a) he shall be punishable

(i) ...

(ii) ...

(b) any property in respect of which the order has been contravened or such part of thereof as to the court may seem fit including any packages, coverings or receptacles in which the property is found and animal, vehicle vessel or other conveyance used in carrying the property, shall be forfeited to the Government:- Provided that if the court is of opinion that it is not necessary to direct forfeiture in respect of the whole or. as the case may be, any part of the property (or any packages, covering or receptacles or any animal, vehicle vessel or other conveyance) it may, for reasons to be recorded, refrain from doing so.

In view of the terms of the material part of Section 7 of the Essential Commodities Act, 1955 extracted above, undoubtedly the finding of the trial Magistrate is that the Madras Paddy and Rice (Movement Control) Order, 1968 has been contravened by A. 2 (Subramaniam). The property in respect of which the order has been contravened is 70 bags of rice, that was being transported by A. 2, Section 7 (1) (b) makes it mandatory that the property in respect of which the order has been contravened shall be forfeited to the Government. No doubt, there is the proviso which vests judicial discretion in the court for refraining from doing so, for reasons to be recorded. It is true that in Section 342, Criminal P.C. statement A. 2 claims that he is the owner of the 70 bags of rice. But I am unable to find any proof of the ownership of A. 2 in respect of this property. Even assuming for one moment that A. 2 is the owner of the 70 bags, the terms of Section 7 (1) (b) would make it mandatory, in my view, particularly in view of the District Magistrate's finding that A. 2 is guilty of the offence, to forfeit the 70 bags of rice on his own finding of A. 2 being guilty, while keeping the proviso in his view. In view of the terms of Section 7 (1) (b) read with the proviso, I consider that interests of justice require that the 70 bags of rice shall be forfeit-I ed to the Government.

3. The petition filed by A. 1 is totally baseless and devoid of any merit. In my view, he has displayed a certain amount of brassiness in coming to this Court by putting forward two inconsistent pleas and attempting to abuse the process of court. The petition is dismissed.

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