

In Re Balaraman

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Court : Chennai

Decided On : Sep-08-1972

Reported in : 1973CriLJ1887

Judge : K.N. Mudaliyar, J.

Appellant : In Re Balaraman

Judgement :

ORDER

K.N. Mudaliyar, J.

1. Balaraman is the accused-petitioner who questions the propriety and the legality of the order passed by the District Magistrate (J.), Chingleput convicting him of the offence under Section 7 of the Essential Commodities Act, 1955. read with Section 2 of the same Act. for contravening clause 3. Sub-clauses (1) and (2). of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order. 1968. The accusation against him was that on 27-2-1968 at about 20-00 hours, at G. N. T. Road, Red Hills, opposite to the Bus Stand, the petitioner and seven others (already acquitted) were found transporting 55 bags of Sirumani Paddy in a lorry MDS. 5378 from Nellore side to Red Hills which is in Saidapet Taluk and which is a notified area, without a valid permit.

2. P.W. 1 is the Head Clerk in the Civil Supplies Section of the Collectorate at Kanhipuram, who proved the sanction order from the Collectorate. P.W. 1

further stated that the Inspector of Police, Food Cell, C.I.D. (P.W. 2) sent a report to the Collector, stating that Balaraman and seven others had possessed paddy in excess of two quintals and that they were transporting 55 bags of paddy in a lorry M.D.S. 5378. P.W. 2 is the Inspector, who speaks to the seizure of the paddy from the lorry M.D.S. 5378 coming from Nellore side at a good speed. loaded with gunny bags, which were seized after the lorry crossed Padianallur check-post and went inside Red Hills, a notified area. The petitioner (accused-1) Was found to be the driver of the lorry. P.W. 2 speaks to the fact of submitting area report to the Collector of the Chingleput District at Kanchipuram, requesting sanction, on 26-4-1969.

3. We have already noticed that P.W. 1 has proved the contents of Ex. P-I which is the sanction order.

4. The Government Pleader was given notice of this matter when the criminal revision case came on for admission and it was represented by the Government Pleader that the Inspector of Police. Food. Cell, mentioned about the contravention of the Madras Paddy and Rice Dealers Movement Control Order 1968. so far as the first accused (petitioner herein) is concerned. The said letter, addressed by the Inspector of Police (P.W. 2) to the Collector of Chingleput has not been proved in this case. Acting on the representation made by the Government Pleader, that so far as the petitioner is concerned, the allegation in the report of the Inspector is about the petitioner contravening the Madras Paddy and Rice (Movement Control) Order, 1968. I am of the view that the Collector was clearly wrong in according sanction to the prosecution of the petitioner for contravening Clause 3, Sub-clauses (1) and (2) of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order, 1968. The sanction order itself is vitiated by the wrong invocation of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order, 1968. instead of the Movement Control Order, 1968. On this ground alone. I am bound to acquit the petitioner of the alleged offence under Section 7 read with Section 3 of the Essential Commodities Act and Clause 3. Sub-clauses (1) and (2) of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order 1968.

5. The appellate order of the District Magistrate (J.) is attacked on another ground, viz.. that one instance of possession of Paddy by the first accused cannot bring the act' of the first accused within the ambit of the signification of the word 'dealer', and in support of this argument, the learned Counsel cited the rulings of this Court in Veerasikku In re.) and Karup-pannan In re 1971 MLW (Cri) 161).

6. Even acting on the testimony of P.W. 2 who stated that the 55 bags of Siruvani Paddy found in the lorry M-D.S. 5378 were in the possession of the petitioner I am unable to hold that the petitioner is a dealer within the meaning of Sub-clauses (1) and (2) of Clause 3 of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order, 1968.

7. I have myself perused the order of the District Magistrate (J.). Chingleput. In paragraph 7. the learned Magistrate has considered the argument of the learned Counsel for the defence that the prosecution has not proved that the accused is a dealer and that one instance as admitted by the Inspector in his evidence, is not sufficient to prove that the petitioner is a dealer. The learned Magistrate clearly erred in shifting the burden of proof to the 1st accused for proving that he is not dealer. Unless there is a specific provision in the statute shifting the burden of proof to the petitioner, just as one finds in the Prevention of Corruption Act (Central Act II of 1947) (as amended), it is wrong in law to expect any proof from the accused about his defence that he is not a dealer. The burden remains and continues to remain always on the prosecution to prove the case against the accused that he is r. dealer except in cases where the statute provides for the contrary position.'

8. The learned District Magistrate was clearly wrong in assuming that the onus shifts on the accused for proving that he is not a dealer. This is another grave illegality which vitiates' the conviction of the petitioner,

9. Besides I find that the accused has stated in his statutory explanation, when examined under Section 342 Cri. P. C, that the paddy found in the lorry belonged to him. In view of his plea claiming the ownership of the paddy seized by P.W. 2 the Inspector I have no hesitation in not merely acquitting the accused-petitioner of the offence under Section 7 read with Section 3 of the Essential Commodities Act

and Clause 3. Sub-clauses (1) and (2) of the Madras Paddy and Rice Dealers (Licensing and Regulation) Order. 1968, but also in directing the return of the market value of the paddy seized by P.W. 2.

10. The Revision Petition is allowed .

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