

In Re: P. Rayappa Goundar

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SooperKanoon Citation : sooperkanoon.com/820040

Court : Chennai

Decided On : Jun-13-1972

Reported in : (1972)2MLJ389

Appellant : In Re: P. Rayappa Goundar

Judgement :

ORDER

S. Maharajan, J.

1. This revision is directed against the judgment of the learned District Magistrate, Coimbatore, convicting the 3rd accused Rayappa Gounder of the offence under Clause 3(1) of the Tamil Nadu Paddy and Rice Dealers (Licensing Regulation and Disposal of Stocks) Order, 1968 read with a Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, and sentencing him to pay a fine of Rs. 100, and in default, to undergo rigorous imprisonment for two months and confiscating a sum of Rs. 850 deposited by the 3rd accused as a condition precedent to the return of 20 bags of paddy to him.

2. In Manipur Administration v. Mild Chandra Singh : 1964 CriLJ465 , the Supreme Court construed the definition of 'dealer' as contained in Clause 2(a) of the Marapur Foodgrains Dealers Licensing Order, 1958. That clause defines a 'dealer' as meaning a person engaged in the business of purchase, sale or storage for sale, of any one Or more of the foodgrains in quantity of one hundred maunds or

more at any one time. The definition contained in Clause 2(e) of the Tamil Nadu Paddy and Rice Dealers (Licensing Regulation and Disposal of Stocks) Order, 1968 is identical in language except as to the quantity and runs as follows:

'Dealer' means a person engaged in the business of purchase, movement, sale or storage for sale of paddy or rice in quantity of two quintals or more at any one time in the State except in Kanyakumari District and a person engaged in such business in any quantity in Kanyakumari District and includes commission agents engaged in such business and also persons engaged in house boiling to process paddy at an average of 50 kilograms per day in a period of three days in this stage....

The Supreme Court, while interpreting the definition in the Manipur Foodgrains Dealers Licensing Order, held that, before a person can be said to be a dealer, it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the schedule and that the requirement is not that the person merely sells, purchases or stores the foodgrains in question, but that he must be carrying on the business of such purchases sale or storage, and the concept of business in the context must necessarily postulate a continuity of transactions. Their Lordships held that it is not a single, casual or solitary transaction of sale or purchase or storage that will make a person a 'dealer', and that if the element of continuity contained in the definition is ignored, it would be rendering the use of the word 'business' redundant and meaningless. Their Lordships further pointed out that the definition has been so deliberately worded as to raise a limited presumption in order to exclude cases of cultivators who may on occasions be in possession of more than the prescribed quantity of foodgrains grown in their own fields or cultivators who otherwise come into possession of such quantity of foodgrains once in a year and casually sell them or store them.

3. In this case, it is conceded by the learned Public Prosecutor that no evidence has been adduced by the prosecution to make out that the petitioner (3rd accused) was carrying on the business of purchase, sale or storage of paddy. Assuming that the petitioner transported paddy without a licence, he would still not be liable, in the absence of proof that he has been indulging in a continuity of transactions of

purchase, sale or storage. It is true that Sub-clause (2) of Clause 3 of the Tamil Nadu Paddy and Rice Dealers' (Licensing and Regulation) Order, 1968, embodies the statutory presumption that where stock of more than two quintals of paddy or rice is found with a given individual, he must be deemed, unless the contrary is proved, to have stored the same for the purpose of sale, but Sub-clause (2) makes it clear that this presumption would be available only for the purpose of Sub-clause (1) of Clause 3 which reads as follows:

No person shall start afresh or carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

As has been held by the Supreme Court in the decision cited supra, such a presumption will not avail the prosecution because the prosecution would still have to show that the store of the foodgrains was made by the petitioner for the purpose of carrying on the business of sale within the meaning of Clause 3(1). If the element of 'business' which is essential to attract the provisions of Clause 3(1) is not established, the presumption raised under Clause 3(2) cannot be pressed into service. As the prosecution has failed to prove by independent evidence that the single, casual or solitary transaction of transport of paddy indulged in by the petitioner was part of any 'business' he was carrying on, the conviction of the petitioner is illegal and has to be quashed. In the result, the conviction and sentence imposed by the lower Court upon the petitioner (3rd accused) are set aside and the petitioner acquitted of the offence punishable under Clause 3(1) of the Tamil Nadu Paddy and Rice Dealers' (Licensing and Regulation) Order, 1968 read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. The amount of Rs. 850 which has been directed by the lower Court to be confiscated, will be returned to the petitioner, and the fine, if collected, will be refunded to him.