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Court : Chennai

Decided On : Jan-19-1979

Reported in : 1979CriLJ1209

Judge : Suryamurthy, J.

Appellant : Mohan Babu

Respondent : State

Judgement :
ORDER

Suryamurthy, J.

1. This is a criminal revision case against the judgment of the learned Sessions Judge of Chingleput dismissing Criminal Appeal No. 73 of 1976 on the file of his Court and confirming the order of confiscation of the lorry, M D E 8649, passed by the District Collector of Chingleput.

2. On 29-9-1975 at about 1.30 p.m.; the Tahsildar of Ponneri noticed the lorry going in the direction of Madras from Ponneri Taluk, at Irulipattu village. Suspecting that there may be illicit transport of paddy by the said lorry (M. D. E 8649) the Tahsildar stopped the lorry near the Solavaram Panchayat Union Office and checked the lorry. He found 75 bags of paddy being transported in the lorry. The driver did not produce any valid permit or no objection certificate entitling him

to carry the paddy in the lorry. The log books did not contain any entry. He seized the lorry and the paddy bags. Only the driver was present at the time of the seizure. Since no permit or no objection certificate was produced, the Tahsildar was of opinion that the driver of the lorry had contravened the provisions of the Tamil Nadu Paddy and Rice (Movement Control) Order. The lorry was retained in the Taluk Office compound for orders from the Collector. The lorry has been subsequently returned to the revision petitioner on his executing a bond. Notice under Section 6-B of the Essential Commodities Act was issued and, after hearing the petitioner and perusing the statement filed by him, the Collector had ordered confiscation of the lorry. This order has been confirmed by the learned Sessions Judge.

3. It is seen from the order of the Collector that Chingleput District, except the Saidapet Taluk, Avadi Township, 36, Nazatathpet, 37, Varadaraja-puram and 63, Agaram (Mal) villages in Sriperumbudur Taluk, has been declared as a notified area for the purpose of movement of paddy and rice under Clause (3)(1) of the Tamil Nadu Paddy and Rice (Movement Control) Order, 1970 (to be hereafter referred to as the Order of 1970), in G. O. Ms. No. 289, Food, dated 27-9-1975. Clause 4(1) of the Order of 1970 lays down that 'no person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry or aid or abet in the transport, movement or otherwise carrying of paddy or rice from one notified area to any other area or any other notified area or from any other area either through a notified area, or into the notified area in a State by road/rail or otherwise, except under and in accordance with the conditions of a permit issued by the Government or by an authorised officer.' The Collector was of the opinion that the provisions of Clause (4)(1) of the Order of 1970 have been contravened by the attempt of the driver to transport the 75 bags of paddy from one notified area to another. The lorry was seized at Sholavaram which is well within the notified area of Chingleput District and at a distance of 11 kilometres from Red Hills, which is said to be in the excepted area. The lorry, when it was stopped and checked, was nowhere near the border between two different notified areas. A statement purported to have been given by the driver that he was taking the bags of paddy to Red Hills is among he records of these proceedings. Subsequently, the driver has given a statement to the effect that he was taking the

paddy to a rice-mill in Panchatti because he was told by the owners of the paddy that they had the necessary permit. There is no ground at all for rejecting the later statement of the driver. In any event, as the lorry was far away from the border of Chingleput district when it was seized, there is no justification for presuming that the lorry was going to cross the border of Chingleput district and thereby transport the paddy from one notified area to another notified area. In the circumstances, I am unable to uphold the finding of the Collector confirmed by the learned Sessions Judge that the provisions of Clause (4)(1) of the Order of 1970 had been contravened.

4. The Collector as well as the learned Sessions Judge have come to the conclusion that the driver of the lorry has also contravened the provisions of Clause 4(1) and Clause 8(1) of the Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974 (to be hereafter referred to as the Order of 1974). Clause 4(1) of the Order of 1974 reads as follows:

Clause 4: Licensing of Wholesalers:-

(1) Subject to the provisions of Clause (3) no person shall start afresh or carry on business as a wholesaler except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

Clause 8(1) reads as follows:

Clause 8: Retail Trade in Paddy or Rice:

(1) No person shall, on or after the commencement of this Order, carry on business as a retailer, unless he has been registered as such under this Order by the licensing authority. Such registration shall continue to be valid unless cancelled or suspended.

It is not the case of the Department that either the driver or the owner of the lorry was a dealer and therefore, the presumption raised by Clause 2(i) of the Order of 1974 that any person who is in possession of one quintal or more of paddy or rice at any time shall, unless otherwise established, be presumed to be a dealer, will not be applicable to the instant case. Neither the driver nor the owner of the lorry

has come forward with any claim for the paddy seized. That paddy has been sold and the value thereof has been confiscated to the Government. Assuming that the provisions of Clause 4(1) of the Order of 1974 had been contravened, that would not entitle the Collector to confiscate the lorry, because there is no provision for confiscation of the lorry for contravention of any of the provisions of the Order of 1974. Therefore, this revision petition is allowed and the order of confiscation of the lorry, M D E 8640 confirming the order of confiscation are set aside. The security or surety bond executed by the revision petitioner shall stand cancelled.

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