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Court : Kolkata

Decided On : Aug-04-1948

Reported in : 1949CriLJ270

Judge : Sen, J.

Appellant : Ramnath Agarwalla

Respondent : The King

Judgement :

ORDER

Sen, J.

1. The petitioner has been convicted under Rule 81 (4), Defence of India Rules, for not following the provisions of Cl 5, Bengal Sugar Licensing Order, 1943, and he has been sentenced to pay a fine of Rs. 300, in default to undergo rigorous imprisonment for three weeks. The petitioner is the Managing Director of Goenka and Company Sales Limited who deal in sugar. The charge against him is that he did not keep registers properly so as to show accurately the amount of sugar in stock and that thereby he contravened the provisions of Clause 5 of the afore. said Bengal Sugar Licensing Order.

2. The defence taken inter alias was that at the time the incorrect entries in the registers were made the petitioner was on leave and not at Darjeeling where the

registers are kept and that the contravention took place without his knowledge. He also took the plea that he exercised all due diligence to prevent such contravention by giving written instructions, Ex. A, to the subordinate officer to carry on the company's work diligently during his temporary absence. This defence was negated by both the Courts below and the petitioner has been convicted and sentenced as stated above. Now, it has been well established that before a person can be convicted of an offence of this description which is punishable by a heavy term of imprisonment the prosecution must prove mens rea unless there is something in the Act which expressly absolves the prosecution from proving it and makes a mere disobedience per se punishable. This was the view taken by the Judicial Committee in the case of *Srinivas Mall Bairoliya v. The King-Emperor* 51 C. W. N 900 : A.I.R. (34) 1947 P. C. 136). Here there is nothing to show that the petitioner had a guilty mind. He was away from the place of business and it was the subordinates who kept the registers defectively. In this connection I would also draw attention to the Supplementary and Procedural Rules under the Defence of India Rules contained in Part VIII. I refer to Rule 122. It says that if the person contravening any of the provisions of these Rules is a company or other body corporate, the director, manager, secretary etc., shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention. Now, the petitioner is the director of a company and he has proved that he was not at the place of business on the relevant dates and that he says that he did not know of the contravention. The learned Court below says that there is no evidence to indicate that he had no knowledge about the incorrect manner in which the stock was being maintained. I do not see what other evidence could be given to prove a negative fact. Next, I am of opinion that the written instructions given to the subordinate staff would also exonerate the petitioner as it shows that he exercised all due diligence to prevent such contravention. He could not be expected to do anything more while he was away from the place of business. The learned advocate appearing for the Crown frankly states that having regard to the decision of the Privy Council he cannot support the conviction. I accordingly set aside the order of conviction and sentence and acquit the petitioner. The rule is made absolute.

3. The fine, if paid, shall be refunded.

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