

Kalipada Nandi Vs. the State

Kalipada Nandi Vs. the State

SooperKanoon Citation : sooperkanoon.com/869730

Court : Kolkata

Decided On : May-16-1950

Reported in : AIR1950Cal427

Judge : Das Gupta and ;Lahiri, JJ.

Acts : Bengal Foodgrains Control Order, 1945 - Sections 2 and 3(1);; [Evidence Act, 1872](#) - Sections 101 to 103 and 114

Appeal No. : Criminal Revn. No. 228 of 1950

Appellant : Kalipada Nandi

Respondent : The State

Advocate for Def. : Nirmal Kumar Sen, Deputy Legal Remembrancer

Advocate for Pet/Ap. : Sudhansu Sekhar Mukherjee, ;Purnendu Sekhar Basu, ;Sukumar Mitra and ; Sachindra Chandra Das Gupta, Advs.

Judgement :

Das Gupta, J.

1. This rule is directed against an order of conviction and sentence, under Section 7 of Act XXIV [24] of 1946, passed by a Magistrate, at Arambagh, and confirmed in appeal by the Sessions Judge, Hooghly.

2. The prosecution case was that on 26th June 1949, 130 maunds of paddy and 4 maunds and 10 seers of rice were found in a boat moving down stream near the Ghat at Chak Bashia. It is said that the accused Kalipada Nandi was in that boat. Admittedly, he had no license for taking these goods away in the boat. The charge framed against this Kalipada Nandi was that he had contravened the provisions of Section 3(1), Bengal Food Grains Control Order, 1945, by engaging in an undertaking involving storage for sale of this paddy and rice without any license, Section 3(1) of that Order prohibits any dealer or large producer from engaging in any undertaking which involves the purchase, sale or storage for sale in wholesale quantities of any food grain.

3. The first question for decision, therefore, is whether, the accused was a dealer or large producer. No attempt was made by the prosecution to show that the accused is a large producer within the meaning of Section 2(e) of the Order which defines a large producer as a person who cultivates land the area of which is not less than 25 acres at any one time and grows thereon paddy by himself with or without the aid of members of his family or paid labourers or by adhiars, bargardars or bhagdars.

4. Both the Courts below appear to have proceeded on the basis that the accused was a dealer. A dealer is defined in Section 2 (b) of the Older in these words :

' 'dealer' means a person dealing in the purchase or sale of any foodgrain or storing any foodgrain for sale and includes any person so dealing or storing on behalf of another as a commission agent or arhatia, but does not include a producer except in so far as such producer deals in the purchase or sale of any foodgrain or stores any foodgrain other than the foodgrain which is produced by himself with or without the aid of members of his family or paid labourers or by adhiars, bargadars or bhagdars ;'

5. That the accused was a person dealing in the sale of foodgrain or at least in the storing of foodgrain for sale can reasonably be inferred from the fact that he was found in a boat in charge of 130 maunds of paddy when the boat was moving down stream.

6. The question remains whether it has further been proved that the accused was not a producer, or if he was a producer, the foodgrain in the sale of which he was dealing was foodgrain other than the foodgrain produced by himself. Clearly, the burden of proving that the accused is a person coming within the definition of a 'dealer' is on the prosecution. That involves the further consequence, in my opinion, that the prosecution is bound to prove not only that he deals in the purchase or sale of foodgrain or storing in foodgrain for sale, but also that he is not a producer. The prosecution may succeed in showing that he is a dealer even though he is a producer by further showing that the foodgrain which he was dealing was not the foodgrain produced by himself. No attempt has been made in this case to show either that the accused is not a producer, or that if he is a producer, the goods which he was dealing with were foodgrain not produced by himself.

7. The consequence of this, in my opinion, is that the prosecution has failed to prove that the accused is a dealer within the meaning of Section 2(b), Food Grains Control Order, 1945.

8. Both the Courts below have relied on a confession said to have been made by the accused. It is said that the statement, EX. 1, was written out by the accused when Civil Supplies Inspector, prosecution witness No. 1, requested him to put in writing the statement he had already verbally made to him. While Prosecution Witness No. 1 denies the suggestion that the statement was copied out from a draft, the other prosecution witnesses have admitted the defence suggestion that the statement was copied out from a draft. Quite apart from the question whether it was copied out from a draft, it seems to me extremely unlikely that a statement of this nature would be volutarily made by the accused person within a few minutes after the paddy had been seized without any kind of inducement. In my judgment, there is very good reason for the suspicion that the confession which we find in Ex. 1 had been caused by inducement having reference to the charge against the accused person proceeding from the Inspector of Civil Supplies who was clearly & person in authority. In my judgment, this confession is inadmissible in view of the provisions of Section 24, Evidence Act.

9. My conclusion, therefore, is that the conviction and sentence passed on the petitioner cannot stand. I would, therefore, make this rule absolute, and set aside the order of conviction and sentence passed against the accused, as also the order of forfeiture.

Lahiri J.

I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com