

Milan Kumar Pal Vs. State

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SooperKanoon Citation : sooperkanoon.com/878862

Court : Kolkata

Decided On : Aug-13-2007

Reported in : 2007(4)CHN1023

Judge : Ashim Kumar Roy, J.

Acts : [Essential Commodities Act, 1955](#) - Section 7(1); ;Code of Criminal Procedure (CrPC) - Section 251; ;West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982; ;West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977

Appeal No. : C.R.A. No. 498 of 1988

Appellant : Milan Kumar Pal

Respondent : State

Advocate for Def. : Tapas Middy, Adv.

Advocate for Pet/Ap. : Tapandeb Nandy, Adv.

Disposition : Appeal allowed

Judgement :

Ashim Kumar Roy, J.

1. This is an appeal against the order of conviction of the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for alleged violation of the provisions of Paragraph 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 and sentence of rigorous imprisonment for 2 years and a fine of Rs. 2,000/-, in default to suffer rigorous imprisonment for a further period of 6 months, passed in a trial held before the learned Judge, Special Court under E.C. Act, Nadia, Krishnanagar.

2. During the trial while the appellant was examined under Section 251 of the Code of Criminal Procedure, the accusation made against him was as follows:

On June 24, 1988 in between 12 noon to 4.30 p.m. the complainant of the case, inspected the cement shop of the appellant when he was found running the shop, at the time the Stock Register and Sale Register was verified and 1200 bags of cement was found shortage. On being asked the appellant could not give any explanation for such shortage. Besides that the appellant was running a cement business from another godown for which he has neither any separate account nor any license. Thus, he has contravened the provisions of paragraph 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.

3. The provisions of the paragraph 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 for alleged contravention whereof the appellant has been placed on the aforesaid trial read as follows:

5(2) Every license shall maintain separately for each place of business, a register containing correct and true accounts of purchase, sale and storage of cement at premises or places, to be written up at the end of each day. The register shall show:

(a) the opening stock of the day,

(b) the quantity received during the day,

(c) the quantity delivered or otherwise disposed of during the day,

(d) the closing stock of the day, and

(e) such other particulars as the licensing authority may, by order in writing, specify.

4. The case of the prosecution as against the appellant are as follows:

On 24.06.1988 between 12 noon to 4.30 p.m. the complainant, District Enforcement Officer, Kalyani inspected the cement shop of the accused when he was found running his cement business. On demand the accused produced the Stock Register, Sale Register, Cash Memo Book etc. before the concerned officer and the Rate-cum-Stock Board was found displayed properly inside the shop. However, after verifying the physical stock 1200 bags of cement were found short. Against such shortage the accused gave an explanation that the said stock of cement i.e. 1200 bags have been temporarily shifted to a room near the Administrative Building, Kalyani as the rain water seeped inside the godown, due to heavy rain-, where such stock of cement was kept. Thereafter the Investigating Officer was taken to the said godown, near Administrative building, which was half a kilometre away and was found under lock and key. Although after opening of the lock inside the godown 1200 bags of cement was found but the accused on demand could not produce any stock register or stock book showing the true and correct account of such stock.

The defence of the appellant in the trial was that 1200 bags of cement which was allegedly found to be short, was temporarily removed to some other room to avoid possible damage from rain, as there was huge seepage of rain water inside the godwon and if both the stock of cement found in the shop room and those found in the room near the Administrative Building are taken together there would be no shortage.

5. In course of the trial prosecution examined as many as 5 witnesses. Out of those witnesses P.W.2 and P.W.3 were declared hostile, whereas the P.W.5 Radha Ranjan Biswas is the complainant-cum-Investigating Officer of this case and the P. W. 1 Dilip Chakraborty is the only public witness who was present at the time of the raid. P.W.4 Niranjan Biswas is a dealing assistant attached to the

Kalyani Food and Supply Department. The P.W.5 Radha Ranjan Biswas in his evidence admitted amongst other that at the time of the raid the Rate-cum-Stock Board was found displayed and the entries made in it tallied with the stock register checked by him. Some bags of cement sold by cash memo on that day were also duly accounted for. After checking it was found that 1200 bags of cement were short. On enquiry the accused stated that the said stock of 1200 bags of cement were temporarily kept in another near by room to avoid damage from rain water. The accused took the witness to that godown situated by the side of the Administrative Building. The accused open the lock of the room and 1200 bags of cement were found in that room. However, neither any separate accounts nor Rate-cum-Stock Board was found displayed in that godown. The accused failed to produce any license or permit for carrying on his business from that place.

The said witness in his cross-examination admitted that the stock of cement mentioned in the Rate-cum-Stock Board tallied with the total stock of cement bags found in the godown situated at the place of business of the appellant and in the room situated by the side of the Administrative Building.

6. P.W.1, Dilip Chakraborty is a local witness, who was present at the time of the raid and stated as follows:

The day before the day of inspection there was heavy rain at Kalyani for that reason accused shifted 1200 bags of cement to another godown to avoid possible damages. The Rate-cum-Stock Board was found displayed in the shop of the accused. There were total 4 rooms in the shop and in all the three rooms cement was found stored. The said 1200 bags of cement which was found in another godown was seized by police. The fourth room was found vacant which was not in proper condition as water was seeping from the roof. At the fourth room sand and other articles were found which were collected for repairing. The accused himself took the officer to the godown and had shown him the stock of cement after opening the lock.

The entire stock of cement taking together tallied with the stocks shown in the register and in the Rate-cum-Stock Board.

7. Thus, from the aforesaid evidence of P.W.1 Dilip Chakraborty and P.W.5 the Investigating Officer of this case following facts clearly transpires:

(a) At the time of the alleged raid the appellant produced all the relevant books relating to his business before the Investigating Officer of the case,

(b) The Stock-cum-Rate Board was found to be displayed in his stop,

(c) On physical verification 1200 bags of cement were found shortage,

(d) The appellant on enquiry made by the Investigating Officer disclosed that the said stock of cement has been removed to another place to avoid possible damage from rain.

(e) The appellant took the police officer to the said godown and after opening the lock of the room 1200 bags of cement were found stored there.

(f) There is no evidence that at that material time the appellant was running business at the place where the said stock of 1200 bags of cement were found stored. Nor anything required for running such a business i.e. weighing scales, weights and other equipments were found there. On the other hand, it is the specific evidence of the Investigating Officer as well as the P.W.1 Dilip Chakraborty the room was under lock and key. No allegation about the presence of any customer or running of business, therefrom.

8. At the same time it has further been divulged from the testimony of P.W. 1 Dilip Chakraborty that the day before the day of inspection there was heavy rain at Kalyani and for that reason the appellant shifted 1200 bags of cement to another place to avoid possible damages. Out of 4 rooms cement were found stored in three rooms and in the vacant room sand and other building materials, necessary for repairing works was found lying. It is pertinent to note that this witness P.W.1 Dilip Chakraborty has not been declared hostile and thus the defence is legally entitled to rely on any part of the evidence of said witness to establish the defence case and to prove his innocence.

9. In the case of Nathulal v. State of Madhya Pradesh reported in : 1966 CriLJ71 , the Apex Court, held that the mens rea, in an essential ingredients of an offence punishable under the Essential Commodities Act. As it appears from the evaluation of evidence on records, that taking into account together the stock of cement found in the shop room of the appellant and those found in the room situated near the Administrative Building there was no actual discrepancies between the physical stock and stocks shown in the relevant register. It is also an admitted position that at the time of the alleged raid the appellant disclosed to the complainant about the shifting of stock of cement to another room, which was found to be true. The reasons given for shifting of such stocks i.e. the seepage of rain water in the godown and the facts that the said room was under repair was also found to be true from the evidence of the P.W.1 Dilip Chakraborty. It was also the evidence that on the previous day there was heavy rain in the locality. Thus, I am of the opinion that in the present case there is no mens rea and no contravention of the Control Order.

10. Moreover, under the provisions of paragraph 5(2) of the Control Order the appellant, a licensee is only obliged to maintain for his each place of business a register containing the correct and true accounts of purchase, sell and storage of cement that too, to be written at the end of each day. However, under the said Control Order, place of business does not include the godown i.e. the place where the dealer stores any essential commodities viz. cement and means a place where the books of account of business of a licensee are kept and orders and offers involving purchase or sale of cement are received by him. It is noticeable the place of business defined in the said Control Order is completely different, from the place of business as defined in the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977 and according to the said Control Order, the place of business do include places where the dealer stores any essential commodity. As such no license is required for storing cement at that room where the said 1200 bags of cement was found stored. I am of the further opinion the place where the said stock of cement was found stored cannot be a godown in its true sense and this is merely a place where the stock has been removed temporarily to avoid, possible damages from water seepage due to rain as transpired from the evidence on record.

In the case of Manipur Administration v. Neela Chandra Singh reported in : 1964 CriLJ465 , the Apex Court held the concept of business in the context must necessarily postulates continuity of transaction and observed:

The requirement is not that person should merely sell, purchase or store the food grains in question, but he must be carrying on business of sale, purchase or sale or storage and the concept of business in that context must necessarily postulates continuity of transaction. It is not a single casual or solitary transaction of sell, purchase or storage that would make a person dealer. If the element of continuity is ignored, it would be rendering the word 'business' redundant and meaningless.

In any event, by mere storage simpliciter a person cannot be held to be engaged in the business of such essential commodity without anything to show that such storage was for the purpose of any business involving sale or purchase for sale or storage for sale of cement within the meaning of the Control Order. As such the accusations made against the appellant in his examination under Section 251 of the Code of Criminal Procedure that he was running business at the place where from 1200 bags of cement was seized by the police also do not sustain.

11. For the reasons as aforesaid, I am of the view the appellant cannot be held guilty for violation of the provisions of paragraph 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 and as such his conviction under Section 7(1)(a)(ii) of the Essential Commodities Act for alleged violation thereof cannot be sustained. In the result the appeal stands allowed and the impugned order of conviction and sentence is set aside. The appellant who is now on bail shall be discharged from the bail bonds.

12. Let the LCR be sent down to the Court below.

13. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.