(1988) 04 MAD CK 0044

In the Madras High Court

Case No : Criminal M.P. No. 209/88

A. 1586, Pasumalai Co-operative Stores, Pasumalai, and. S. Muthumanickam — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 29-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Essential Commodities Act, 1955 — Section 10, 10(2), 10(l), 15A, 3
Penal Code, 1860 (IPC) — Section 21

Citation : (1988) 04 MAD CK 0044

Hon'ble Judges : P.K. Sethuraman, J

Bench : Single Bench

Advocate : A. Packiaraj, for the Appellant; A.N. Rajan, for the Respondent

Final Decision : Allowed

Judgement

P.K. Sethuraman, J.—This is a petition filed u/s 482, Crl. P.C., and the Petitioners are the accused 1 and 2 in S.T.C. No. 35 of 1987, on the file of the Special Judge for Economic Offences, Madurai. The petition has been filed praying to call for the records in S.T.C. No. 35 of 1987 and quash the said proceedings.

2. According to the petition, the first Petitioner is Al the Co-operative Stores itself and the second Petitioner is A2 and he is the Special Officer of the Co-operative Stores. The other accused A3 and A4 are the employees of the stores looking after the actual day to day business of Al stores. There was a surprise visit by the Tahsildar, Flying Squad, Madurai, on the first accused stores on 28-1-1987, 4-2-1987 and 5-2-1987. They found that the essential articles were supplied exceeding the quantity for which the card-holders were entitled to and A3 and A4 the salesman and the clerk, respectively, were found to have committed irregularities. According to the charge sheet issued Al is said to have contravened the provisions of the Tamil Nadu Scheduled Commodities (Distribution to Card holders Systems) Order, 1982 and A2 is alleged not to have taken action against

A3 and A4. But according to the Petitioners they have not committed any offence and the criminal proceedings as against them would amount to abuse of process of law and therefore it is liable to be quashed.

3. According to the Petitioners A3 and A4 who were salesman and clerk of the Stores, respectively, are the persons alleged to have committed the fraud and they had committed the same to enrich themselves and they have committed the offence against the

Stores Al itself. In such situation the Stores is the aggrieved person and A2 being the Special Officer has to be the complainant or the main witness. So the Respondent erred in making the Stores as an accused. The Petitioner No 2 viz., the Special Officer (A2) has been shown as an accused solely on the ground that when a company or society is an accused, the person in charge of the conduct of the business is liable to be prosecuted. In the present case the Stores itself has been made as an accused which is liable to be set aside and consequently the Special Officer also cannot be prosecuted.

4. As per the resolutions of the Stores A3 and A4 alone are responsible for the conduct of the business. Therefore prosecuting A2 is illegal.

5. It is further contended that A2 is a public servant according to Section 21 of the Indian Penal Code he being a Special Officer appointed through Public Service Commission. u/s 15A of the Essential Commodities Act, 1955 in the case of prosecution of a public servant for violating any order passed u/s 3 of the Essential Commodities Act, no Court shall take cognizance except with the previous sanction of the State Government and in this case there is absolutely no sanction sought for. Hence the prosecution in the absence of sanction is illegal and consequently the prosecution has to be quashed.

6. A3 is shown to have given a confession statement to the Tahsildar stating that he has committed the misdeeds. A2 also initiated a domestic enquiry and is pending against A3. Hence the allegation that A2 has not taken action against the erring officials is contrary to facts.

7. The Tamil Nadu Government has issued an order in D.O.20851/86/VSP, dated 25-9-1986, apprising the fact that the special Officers of the Co-operative Societies should not be prosecuted without the authorisation of the Registrar. The said order is in consonance with S. 15A of the Essential Commodities Act. Hence the present prosecution against A2 is illegal. The Petitioners therefore have prayed to call for the records in S.T.C. No. 35 of 1987 on the file of the Special Judge for Economic Offences, Madurai, and quash the same.

8. The first Petitioner is Pasumalai Cooperative Stores, Pasumalai. and the second Petitioner is the Special Officer, Pasumalai Co-operative Stores, Pasumalai. It is to Restated that the Petitioners along with two, others shown to be the Salesman and Clerk of the Al Stores, have been charge-sheeted under Clause 6(2) of the Tamil Nadu Scheduled Commodities (Regulation and

Distribution by Card System) Order, 1982 read with Ss. 3 and 7(l)(a)(ii) and Section 10 of the Essential Commodities Act, 1955 and Section 14(l)(a) of the Tamil Nadu Scheduled Commodities (Regulation and Distribution by Card system) Order, 1892. Now it is the contention of the Stores and the Special Officer that even according to the charge sheet A3 being the salesman of Al during the relevant time was responsible for maintaining ''A'' register of the Family Card Holders and everyday'' sales chitta of essential commodities. He was responsible to supply essential commodities to the cardholders by making necessary entries in the cards not exceeding the quantity for which the cardholder is eligible and he is also to maintain correct and proper accounts in respect of such sales and stocks of the essential commodities. A4 being the clerk was entrusted with the task of weighing the essential commodities and assist A3 in supplying articles and maintaining accounts in respect of purchase and stock of essential articles. On the three days when the Tahsildar, Flying Squad, visited A3 and A4 were shown to be present in the Stores and A3 also had given the statement admitting the lapses and even in the charge sheet A3 and A4 alone are shown to have committed irregularities in the supply of essential commodities so as to facilitate the sale of the articles in black market. It has been further pointed out in the charge sheet that the District Supply Officer, Madurai, and Co-operative Sub Registrar, Madurai, checked the Stores on 24-12-1986 and 24-1-1987 and found some lapses committed by A3 and A4. But A2 did not take any action against them. Thus the commission and omission are attributable to the negligence and connivance of A2. Since Al as a Company has contravened the provisions of the order A2 to A4 who are in-charge and responsible for the conduct of the business at the relevant time as well as Al are liable.

9. In the petition a contention had been taken that having regard to the alleged misdeed committed by A3 and A4, Al Stores has suffered and in such circumstances the Stores cannot be made as an accused and in the same manner A2 Special Officer cannot also be prosecuted. It is further contended that as per the resolutions, only A3 and A4 are responsible for the conduct of the business.

10. Section 10 of the Essential Commodities Act, 1955, deals with the offences by companies. u/s 10(l) if the person contravening an order u/s 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly ; Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Under S. 10(2) notwithstanding anything contained in sub-S. (l), where on offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or

other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Pointing out what has been mentioned in the charge-sheet that A2 Special Officer did not take any action against A3 and A4 and it has been stated in the charge sheet that the commission and omission are attributable to the negligence and connivance of A2, it was submitted on behalf of the Special Officer that the Special Officer has initiated domestic enquiry and is pending against A3 and in such circumstances the said allegation that no action had been taken by the Special Officer is not correct and further pointing out that inasmuch as A3 the Salesman has been made solely responsible by the resolution and A3 also had given the statement to the Tahsildar admitting the misdeeds it is contended that the Pasumalai Co-operative Stores and its Special Officer, Al and A2 respectively, cannot be held liable and they cannot be prosecuted.

11. According to the charge-sheet A3 and A4 were present in the stores when the Tahsildar visited the stores and A3 also is shown to have given the statement to the Tahsildar admitting the lapses. Having regard to such allegations made in the charge-sheet and also having regard to the resolution of the stores making A3 responsible and also the fact that the Special Officer had initiated a domestic enquiry against A3, I feel A2 the Special Officer cannot be said to be liable merely because of the fact that he is the Special Officer of the Stores. It is also to be pointed out that having regard to the allegations in the charge sheet itself the Stores as such cannot also be held liable though companies also may become liable for such offences. In the proviso to Section 10(l) such person may not become liable to any punishment on proof that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Having regard to the facts alleged I feel such proof on the part of the stores and the Special Officer may become unnecessary and having regard to the facts it cannot be said that the offence has been committed with the consent of connivance of the Petitioners and it is also to be pointed out that the offence committed may not also be attributable to any neglect on the part of the Special Officer and in such circumstances I feel the contention that the Petitioners being the Stores and the Special Officer (Al and A2 respectively) are not liable to be prosecuted and the proceedings against them has to be quashed has to be accepted.

12. As regards the other contention that the Special Officer who happened to be a public servant appointed through the Public Service Commission and Section 15A of the Essential Commodities Act, 1955 stipulates that in the case of a public servant being prosecuted for violating any order passed u/s 3 of the Act, no Court shall take cognizance except with the previous sanction of the State Government and as there is no such sanction the prosecution is illegal, the learned Counsel for the Respondent submitted the decision reported in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, wherein it has been laid down by the Supreme Court that the term ''public servant'' u/s 21 Clause (12) of

IPC does not include civil servant working on deputation with Cooperative Society and sanction u/s 197 Code of Criminal Procedure is not necessary for his prosecution, In that case a member of the Indian Administrative Service, whose services were placed at the disposal of a co-operative society (Super Bazaar) registered under the Bombay Co-operative Societies Act, 1925, was held not a public servant within the meaning of Clause (12) of Section 21 of the Penal Code for the purposes of S. 197 Code of Criminal Procedure Their Lordships of the Supreme Court pointed out that during the period of such deputation, the officer was not in the service or pay of the Government or in the service of a local authority or a Corporation established by or under an Act or a Government Company. It has been further pointed out by the learned Judges that a Co-operative Society is not a Corporation established by or under an Act of the Central or State Legislature. But such Societies owe their existence not to the act of Legislature but to the acts of parties though they may owe status as a body corporate to an Act of Legislature. Their Lordships also pointed out the distinction between a corporation established by or under an Act and a body incorporated under an Act. Having regard to the said decision I feel the contention put forward with regard to sanction on behalf of the second Petitioner cannot be accepted.

13. Learned Counsel for the Petitioners also submitted that there is an order of the Government of Tamil Nadu with regard to the prosecution of the Special Officers of the Co-operative Department and relied on a copy of the D.O. Letter No. 20851/86/VSP 2, dt. 25-9-1986, issued by the Registrar of Cooperative Societies, Madras, to the effect seeking the Government to issue administrative instructions to the Commissioner of Civil Supplies and Consumer Protection and others not to proceed against the Chief Executives of the Consumer Co-operatives for any offences under the Essential Commodities Act without consulting him. It is not known whether in pursuance of such letter any order has been issued, and further after all administrative instructions had been requested and if there is an order it may not be having a statutory force against prosecution.

14. Inasmuch as I have held having regard to the facts and the S. 10 of the essential Commodities Act, I feel the contention put forward on behalf of the Petitioners has to be accepted. Accordingly this petition is allowed and the proceedings in S.T.C. No. 35 of 1987 on the file of the District and Sessions Judge for Economic Offences, Madurai, are quashed.