(2010) 12 MAD CK 0189

In the Madras High Court

Case No : Criminal R.C. No''s. 926 and 927 of 2007 and M.P. No''s. 1 and 1 of 2007

A. Durvasalu Naidu APPELLANT

Vs

The State by Assistant Inspector for Labour, Arakkponam RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 6(1)
Tamil Nadu Shops and Establishments Act, 1947 — Section 11

Citation : (2010) 12 MAD CK 0189

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; I. Nobel Noble Devakumar, Government Advocate (Crl. Side), for the Respondent

Final Decision : Dismissed

Judgement

K.B.K. Vasuki, J.—The accused is the revision Petitioner herein. Both the criminal revisions are filed against the judgment dated 16.3.2007 made in STC. Nos. 16 and 17 of 2006 on the file of Judicial Magistrate, Arakonam, Vellore District. While Crl.R.C. No. 926 of 2007 is filed against the judgment convicting the accused for the offence u/s 11(1) and Rule 16(11) r/w 16(B) of Tamil Nadu Shops and Establishment Act, Crl.R.C. No. 927/2007 is filed against the judgment convicting the accused for the offence under Rule 6(1)(a)(c)(d) & (f) r/w 23(1) of the Standards of Weights and Measures (Packaged Commodities Rules 1977.

2. The case of the prosecution is that the shop belonging to the Petitioner herein was inspected by the Assistant Labour Inspector, Arakonam on 11.7.2005 and in the course of such inspection, the following violations in the shop are noticed: (i) there is no display of the Board in the shop specifying the holidays (ii) visitor''s book was not produced by the shop owner and (iii) 250 grams pocket of Broken dhal meant for sale does not contain the address of the packers, date of

package, weight and rate of the good. After inspection, show cause notice was issued to the shop owner on 11.7.2005 and the shop owner duly replied the notice denying the allegations. However, not satisfied with the same, the complaints are lodged by the same officer who inspected the shop premises and the same are taken on file and the outcome of which are the orders impugned herein.

3. The trial court has, on the basis of the available materials, found the accused guilty of violation of mandatory requirements of T.N. Shops and Establishments Act and Rules and the Standards of Weights and Measures (Packaged Commodities) Rules, convicted him and imposed fine for the offences as mentioned above. Aggrieved over the same, the present Criminal revisions are filed by the accused before this Court.

4. The learned Counsel for the Petitioner has in both the criminal revisions, questioned the correctness of the judgment of conviction mainly on two grounds: (i) Assistant Inspector of Labour, Arakonam who inspected the shop premises and who is the complainant, is not authorised to investigate and file final report based on which the cases are taken on file (ii) The Petitioner''s shop having been manned by the Petitioner-owner without any third party-employee, does not come within the purview of the provisions of Tamil Nadu Shops and Establishments Act for the violation of mandatory provisions of which the Petitioner is charged and (iii) there is no violation of any of the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

5. The learned Government Advocate representing the state has defended the correctness of the judgment of the trial court by contending that there is no legal impediment for the complainant to hold the investigation and file final report and in the absence of any prejudice to the Petitioner, the same shall not render the prosecution version to be doubtful and vulnerable.

6. Both the learned Counsel for the Petitioner and the learned Government Advocate in support of their respective contentions cited the legal authorities and the Petitioner side cited the authorities reported in (i) Megha Singh Vs. State of Haryana, (ii) State of Karnataka, Paper Town Police Station Vs. Sheshadri Shetty and Others, . and the Respondent side relied upon (i) State rep. by Inspector of Police, Vigilance and Anti-Corruption, Tiruchirapalli, Tamil Nadu Vs. V. Jayapaul, (ii) Bhaskar Ramappa Madar and Others Vs. State of Karnataka, .

7.I heard the rival submissions made on both sides and perused the materials available on record.

8. It is true that the Hon''ble Apex court in the first judgment cited on the side of the Petitioner observed that when the complainant and the investigating officer are one and the same person, the same vitiates the entire prosecution case. Though the observation so made is not over ruled, the same is distinguished and clarified by the Apex Court in the latest judgment cited on the side of the Respondent by observing that there is no legal bar for the complainant to take up

investigation and the complainant is not incompetent to take up investigation and to submit final report and merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable and if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias is depending on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High court that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased and bias or prejudice cannot be ipso facto inferred for quashing the proceedings. The apex court has in both the judgments cited on the side of the Respondent discussed the observation made in the earlier judgment reported in Megha Singh Vs. State of Haryana, cited on the side of the Petitioner and observed as above and has finally laid down that it is the question of pleading and proof and it has to be decided on case-to-case basis without any universal generalisation. That being so, on the failure of the accused to raise at the earliest possible time any specific plea of bias and prejudice and to produce substantial proof in support of it, the question of holding that the complaint filed, investigation held and the final report submitted by one and the same person is perse illegal and the entire prosecution case be vulnerable, does not at all arise herein.

9. On facts, it is the case of the prosecution that the act of contravention of mandatory statutory requirement are found out in the course of surprise investigation held by the Assistant Inspector of Labour and based on which are the complaint and the final report. The factum of inspection held by the Assistant Inspector of Labour is not denied by the Petitioner/accused. The Petitioner/ accused by way of reply to the notice by the Respondent herein admitted the factum of inspection but denied the charges on merits.

10. The charges levelled against the Petitioner in both the cases are u/s 11(1) of Tamil Nadu Shops and Establishment Act and Rule 16(11) r/w 16(B) of Tamil Nadu Shops and Establishment Rules 1948 and Rule 6(1) (a)(c)(d) & (f) r/w Rule 23(1) of Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

11. Regarding the first charge is that there is no display board specifying weekly holidays in contravention of Section 11(1) of the Act, the same is challenged both in law and on facts. The legal objection raised is that the Tamil Nadu Shops and Establishment Act is enacted only to provide comprehensive measure to regulate the conditions of work of employees in shops, commercial undertakings, restaurants etc. regarding various other matters affecting the employees, such as hours of work, payment of wages, health and safety, grant of holidays etc. thereby the main focus of the enactment is only on welfare and safety of the employees and as Chapters II and III containing Sections 11 and 16 provides for

closure of shops and grant of holidays, for the persons employed in the shops, the provisions are not applicable to the shops where no employee is engaged and the only person in charge of the shop to look after the same is the owner of the shop. On facts, it is contended on the side of the Petitioner that the board denoting weekly holiday is available in the shop at the time of inspection and the same is not noticed by the authority concerned.

12. At this juncture, it is but necessary to first analysis the various conditions of work dealt with under various Chapters in the Tamil Nadu Shops and Establishment Act 1947 which read as follows:

Chapter I-Preliminary and deals with the definitions, statutory exemptions and the exemptions granted by the Government.

Chapters II and III enable the government to fix opening and closing hours for the shops, commercial undertakings, restaurant etc, daily and weekly hours of work, intervals for rest and spread over of periods of work, compulsory holiday for one day in a week and if required, a half holiday in a week.

Chapter IV prohibits employment of children below 14 years and employment of persons above 17 years and of women before 6 am and after 7 pm and daily and weekly hours of work for women and young persons.

Chapter v. Contains provisions which are necessary to secure the health and safety of the staff such as Cleanliness, Ventilation, Lighting, precautions against fire.

Chapter VI provides for the grant of annual holidays with pay, holidays and sick leave.

Chapter VII contains the provisions relating to prompt payment of wages for regular working hours, over time work, time of payment of wages, statutory deductions to be made and prohibition of unauthorised deductions from wages.

Chapter VIII deals with appointment, powers and duties of InspectOrs.

Chapter IX prescribes suitable penalties for contravention of different provisions of the Act.

Chapter X deals with miscellaneous matters.

13. In order to appreciate the legal objection, it is necessary to extract the relevant provisions u/s 11(1) of Tamil Nadu Shops and Establishments Act, 1947 which reads as follows:

S.11(1) Every shop shall remain entirely closed on one day of the week which day shall be specified by the shop keeper in a notice permanently exhibited in a conspicuous place in the shop; and the day so specified shall not be altered by the shop keeper more often than once in three months.

The purpose and object of Section 11(1) will be better appreciated if read together with Sections 16(1) and 16(2) as follows:

S. 11(2) Every person employed in a shop shall be allowed in each week a holiday of one whole day:

Provided that nothing in this Sub-section shall apply to any person whose total period of employment in the week, including any days spent on authorised leave, is less than six days, or entitle a person who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of Sub-section (1) to an additional holiday.

S.16(1): Every person employed in an establishment shall be allowed in each week a holiday of one whole day:

Provided that nothing in this Sub-section shall apply to any person whose total period of employment in the week, including any days spent on authorised leave is less than six days.

S.16(2): The State Government may, by notification, require in respect of any establishment or any specified class of establishments, that every person employed therein shall be allowed in each week and additional holiday of one half day commencing at such hour in the afternoon as may be fixed by the state Government.

The combined reading of Sections 11(1), 11(2), 16(1) and 16(2) would go to show that every person employed in a shop shall be granted one day compulsory holiday. If there are more than one employee, the compulsory weekly holiday available to each employee may be one and the same or different either at the option of the employer or the concerned employee. However, if there is one employee either compulsory holiday granted to him shall be the day on which the shop remains closed or shop shall be closed on particular day so as to enable the employee to avail the day as compulsory weekly holiday and in any event, the employee shall be granted one day compulsory weekly holiday and which day shall be specified by the shop keeper in a notice permanently exhibited in a conspicuous place in the shop.

14. The Petitioner herein is charged for his failure to display one such notice board denoting compulsory weekly holiday. As rightly argued by the learned Counsel for the Petitioner, the various matters contained in nearly 10 Chapters of the Act as referred to above would only deal with the matters relating to the persons employed in the shop. All the matters contained in various chapters are intended to be applicable to the employees and its sole intention is to protect the right and interest of the employees during the course of employment as such, none of the provisions of the act are applicable to the shops, commercial establishment, restaurants etc. having no employees. As the provision for specifying weekly holiday is with the sole intention to provide compulsory weekly holiday to the employees, the same is not applicable to the Petitioner''s shop having no employee as such the question of holding the Petitioner responsible for

contravention of the provisions of the Act, does not at all arise herein. The Petitioner being in charge of his shop, is entitled to keep the shop weekly once according to his convenience. Though P.W.1 inspector would admit that the shop was having no employee and the persons engaged in the business in the shop at the time of inspection, were the Petitioner and his son, P.W.1 has introduced new theory for the first time in the course of chief examination that Monday happened to be weekly holiday for the daily market at Arakonam and the inspection was made on Monday and the shop was kept opened and it amounts to contravention of the Act. The inspection report of P.W.1 and the notice issued to the Petitioner would only refer to his failure to display notice board specifying the weekly holiday and non-availability of visitors book and not the running of the shop on weekly holiday. Further, P.W.1 did not produce any document to show that Monday is fixed as weekly holiday for daily market at Arakonam. Such theory is hence rejected.

15. The second charge is the failure of the Petitioner to maintain a visitor''s book to enable the inspector visiting the establishment to record his remarks regarding any defects that may come to light at the time of his inspection and to make it always available in the establishment and to cause it to be produced for inspection at all reasonable hours, amounting to contravention of Rule 16(11) r/w 16(B) of the T.N. Shops and Establishments Rules 1948. Once the Act is not held to be not applicable to the shop belonging to the Petitioner where there is no paid employee, the rules framed in exercise of the power covered u/s 47 of the T.N. Shops and Establishments Act are also not applicable to the Petitioner''s shop and the Petitioner cannot be charged for any contravention of the rules. Viewing from any angle as the Petitioner''s shop does not come under the purview of T.N. Shops and Establishments Act, the Petitioner cannot be prosecuted for the contravention of any of the provisions of Tamil Nadu Shops and Establishments Act or Rules. Hence, the charges 1 and 2 levelled against the Petitioner are held to be without jurisdiction and devoid of merits and the order of conviction made in S.T.C. No. 16 of 2006 for such charges is legally unsustainable.

16. The next charge for which the Petitioner suffered an order of conviction in S.T.C. No. 17 of 2006 under challenge in Crl.R.C. No. 927 of 2007 is for the offence under Rule 6(1)(a)(c)(d) & (f) r/w Rule 23(1) of Standards of Weights and Measures (Packaged Commodities) Rules 1977. According to the prosecution, the complainant has in the course of inspection at 1.30 pm on 11.7.2005 seized one broken dhal pocket weighing 250 grams meant for sale without specifying the particulars regarding the name and address of the manufacturer, the common or generic names of the commodity contained in the package, net quantity in terms of the standard unit of weight or measure, month and year in which the commodity is manufactured or pre-packed and retail sale price of the package etc. as contemplated under contravention of rules 6 (1)(a)(c) (d) & (f) r/w Rule 23(1) of the Rules.

17. Though the Petitioner has admitted that the package is kept in the shop and is seized by the authority concerned and the same does not contain the particulars as required above, he sought to deny the charge as if the same is sample pocket given by the manufacturer to enable the shop owner to test the same and if satisfied, to place more orders. As rightly pointed out by the learned Counsel for the Respondent, the explanation so made by the Petitioner is not accepted for the simple reason that the Petitioner is not able to furnish the particulars as to when and from where and whom the sample pocket is obtained. The learned Counsel for the Petitioner has also sought to contend before this Court that what is available in the shop is only one pocket weighing 250 grams and the same at any stretch of imagination cannot be said to be meant for sale and that can only probablise that it is only for sample pocket. Such contention raised on the side of the Petitioner is liable to be rejected as P.W.1 has in the course of his chief examination categorically stated that there were 7 or 8 packages in the selling rack and he seized only one pocket under Ex.P2 seizure mahazar. That being so, M.O.1 cannot be presumed to be only sample pocket and not for sale. The trial court has rightly on the basis of the available records, arrived at a conclusion that the Petitioner is guilty of charges levelled against him for the contravention of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 and imposed reasonable fine and this Court finds no reason to interfere with the finding against the Petitioner in S.T.C. No. 17 of 2006.

18. In the result, Crl.R.C. No. 926/2007 is allowed by setting aside the order dated 16.3.2007 made in S.T.C. No. 16/2006 on the file of the Judicial Magistrate, Arakonam, Vellore District. The Petitioner is acquitted from the charges and the fine amount if any paid by the Petitioner shall be refunded to him.

19. Crl.R.C. No. 927/2007 is dismissed by confirming the order dated 16.3.2007 made in S.T.C. No. 17/2006 on the file of the Judicial Magistrate, Arakonam, Vellore District. Consequently, connected Miscellaneous Petitions are closed.