
(2006) 02 MP CK 0015

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1360 of 2005

Abdul Rajak

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Essential Commodities Act, 1955 — Section 6

Citation : (2006) 3 RCR(Criminal) 582

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Siddhartha Gulati, for the Appellant; Yogesh Dhande, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—The order passed in this revision shall also govern the disposal of Criminal Revision No. 1359/2005 (Ashok Mahajan v. State of M.P.).

2. Feeling aggrieved by the judgment dated 23.8.2005 passed by Third Additional Sessions Judge, Fast Track Court, Khandwa dismissing the appeal filed by the application u/s 6(c) of the Essential Commodities Act, 1955 (in short "the Act") whereby the order passed by the competent authority constituted under the Act (Collector) directed to confiscate Soyabean 51.70 quintals seized from the possession of applicant, this revision petition has been filed.

2. It has been contended by Shri Siddhartha Gulati, learned Counsel for the applicant that if the entire case of the prosecution is considered in toto, it would be difficult to uphold the confiscation of the impugned Soyabean. Learned Counsel has submitted that the burden of proof that the applicant is a "dealer" was on the prosecution and further it was required to demonstrate by them that the applicant regularly carries on the business. The case of prosecution if stretched to the last point, at the most it would reveal that at one point of time the applicant was possessing the impugned Soyabean exceeding statutory limit

and if that is the position, according to learned Counsel, no confiscation can take place. To buttress his submission, learned Counsel has placed heavy reliance on the decision of the Supreme Court *Manipur Administration Vs. M. Nila Chandra Singh*, . An alternative submission has also been put forth by learned Counsel that the upper limit to possess the Soyabean is 30 quintals and thus, only 21.70 quintals ought to have been confiscated and not the entire quantity i.e. 51.70 quintals. In that context, he has placed reliance on the Single Bench decision of *Murarilal v. State of M.P.* 1995(11) MPWN 197.

3. On the other hand, Shri Yogesh Dhande, learned Counsel has argued in support of the impugned order.

4. Having heard learned Counsel for the parties, I am of the view that both the revision petition deserves to be allowed.

5. The term "dealer" has been defined under Clause 2(e) in Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (In short "the order") which reads thus:

(2) (e) "Dealer" means a person who is engaged or intends to engage in the business of purchase, sale or storage for sale of any one foodgrains specified in Schedule-I in quantity of 10 quintals or more at any one time and in respect of all foodgrains taken together in quantity of 50 quintals or more at any one time, and in addition to the Sugar 10 quintals all kinds of pulses 10 quintals, edible oils including hydrogenated vegetable oil i.e. vanaspati 5 quintals edible oilseeds 30 quintals. [x x x] at any one time, whether on one's own account or in partnership or in association with any other person or as a commission agent or Adhathiya (not including Kachha Adhathiya) or miller and whether or not in conjunction with any other business, but does not include a person who -

(i) Stores any scheduled commodities produced by him by personal cultivation; and

(ii) does not engage in the business of purchase or sale of foodgrains.

If the definition of "dealer" envisaged in the said order is kept in juxtaposition to the definition of dealer of Manipur Foodgrains Dealers Licencing Order (1958) Clause 2(a) which has been referred in the decision of *M. Nila Chandra Singh* (supra), it would reveal that both the clauses are akin to each other. It can be said that the term "dealer" defined in Clause 2(a) of Manipur Foodgrains Dealers Licencing Order, is rather more narrower because there is stipulated presumption in the said order. However, the said statutory presumption is lacking from the definition of the dealer of the present order prevailing the State of M.P. By interpreting the word "dealer" the Supreme Court in the case of *M. Nila Chandra Singh* (supra), in para 7 has held that it is not a single casual or solitary transaction of sale, purchase or storage that would make a person a "dealer". It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the

definition would be satisfied.

6. In the present case, the evidence of the Food Inspector is totally silent that the applicant carries on the business regularly. On the other hand, there is overwhelming material on record in order to show that the applicant is having his own agricultural land and the relevant documents were also filed in that regard. The Soyabean which was found in the possession of the applicant is of his own agricultural produce cannot be ruled out looking to the documents filed in that regard. It has specifically come in the testimony of the applicant that the entire bulk of the Soybean was containing 11.70 quintals of his own and 40 quintals of other applicant of Criminal Revision No. 1359/2005. There is no dispute that the upper ceiling limit to keep the Soyabean is 30 quintals and therefore at the most the quantity which was in excess to 30 quintals could have been confiscated. However, in the present case, since it has not at all been proved by cogent evidence of the Food Inspector or any other evidence that the applicant carries on the business continuously, if at one point of time he was possessing the Soyabean excess to the limit prescribed under the law, I am of the view that the applicant cannot be stretched under the ambit and sweep of the term "dealer" as defined in the Order. The decision of Supreme Court in the case of M. Nila Chandra Singh (*supra*) is fully applicable in the present case.

7. For the reasons stated hereinabove, the revision petitions succeed and are hereby allowed. The impugned order passed by the Appellate Authority dated 23.8.2005 and the order passed by the competent authority dated 17.8.1999 are hereby quashed. The respondents are hereby directed to return the confiscated Soyabean to the applicants.